



STATE OF ALABAMA
ETHICS COMMISSION

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November 1, 1995

ADVISORY OPINION NO. 95-89

Mr. Thomas E. Dasinger
Assistant District Attorney
Office Of The District Attorney
Post Office Box 1269
Bay Minette, Alabama 36507

Conflict Of Interests/ Assistant
District Attorney Prosecuting Cases
In Which Assistant District
Attorney's Sibling Is The Counsel
For The Defendant.

There would be no prohibition under
the Alabama Ethics law for an
Assistant District Attorney
prosecuting cases in which the
Assistant District Attorney's sibling
is the counsel for the defendant;
provided however, he would not be
involved in any aspect of plea
bargaining or other matters in which
an Assistant District Attorney, his
sibling, might be involved, but is
strictly limited to the trial of the case.

Dear Mr. Dasinger:

The Alabama Ethics Commission is in receipt of your request for an Advisory Opinion of this Commission, and this opinion is issued pursuant to that request.

business.

b. An occasional representative of an organization for performance of public service.

QUESTION PRESENTED
Is there a conflict of interests or an ethical issue for a prosecutor to try a case or negotiate a plea agreement at the juvenile, district or circuit court level when counsel for the defendant is the prosecutor's sibling?

at a convention or other meeting at which he or she is scheduled to meaningfully participate in connection with his or her official duties and for which attendance no reimbursement is made by the state.

FACTS AND ANALYSIS
An Assistant District Attorney in the State of Alabama has contacted this office with the following situation: His older brother, an attorney, does a lot of criminal defense work in the circuit in which the Assistant District Attorney prosecutes. Due to this fact, there is the distinct possibility that at some time, the Assistant District Attorney will be prosecuting a case in which his brother is the defense counsel.

The Alabama Ethics law, Code of Alabama, Section 36-25-1(1) states:

"BUSINESS. Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, or any other legal entity."

"FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The spouse or a dependent of the Section 36-25-1(2) states:

"BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, Board of Director member, employee, or holder of more than five percent of the fair market value of the business."

Section 36-25-1(8) states: on state, county or municipal funds. For purposes of this

chapter, a public employee does not include a person employed on a part-time basis
"CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs. A conflict of interest shall not include any of the following:

person a. A loan or financial transaction made or conducted in the ordinary course of w.

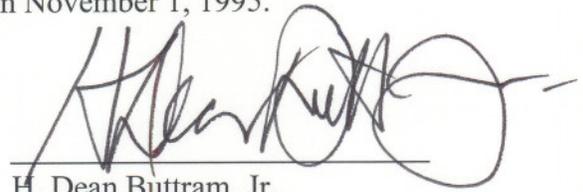
Mr. Thomas E. Dasinger
Advisory Opinion No. 95-89
Page Five

Notwithstanding the above, it is imperative that both parties avoid even the appearance of impropriety. All dealings should be done at arms length. No confidential information should be exchanged, and neither attorney should use his position for personal gain to either himself, his sibling, or a family member, as provided by law.

While this does not appear to be a violation of the Ethics law, the commission would suggest the party requesting the opinion contact the Alabama State Bar Association, as the rules of professional responsibility might be involved. It is the further opinion of the Ethics Commission that the Office of the Attorney General be contacted to ascertain whether or not any other laws may be applicable in this matter.

AUTHORITY

By 5 - 0 vote of the Alabama Ethics Commission on November 1, 1995.

A handwritten signature in black ink, appearing to read 'H. Dean Buttram, Jr.', written over a horizontal line.

H. Dean Buttram, Jr.
Chair
Alabama Ethics Commission