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January 10, 1996

ADVISORY OPINION NO. 96-04

Mr. Jamey Vernon
Mapper and Appraiser
Lamar County/State of Alabama
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Use Of Office For Personal
Gain/ County Appraiser And
Mapper Purchasing Property
In The County.

An appraiser and mapper for
Lamar County Alabama may
not purchase property that
came to his attention through
his position and further where
he requested to purchase the
property.

Dear Mr. Vernon:

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.

QUESTION PRESENTED

May a mapper and appraiser for Lamar County, Alabama purchase property in the county

that came to his attention through his position and where he offered to buy the property?

FACTS AND ANALYSIS

A mapper and appraiser for Lamar County, while performing the duties of his position, met a man from Henderson, Tennessee, who owns property in Lamar County. The man from Henderson, Tennessee, contacted the mapper/appraiser for Lamar County about his land lines, and during their conversation made the statement that he lives too far off to care for the land or check on it.

As a result of the statements, the mapper/appraiser asked the landowner if he would consider selling it to the mapper/appraiser.

In further discussions with the person requesting this opinion, it appears that at no time has the mapper/appraiser personally appraised this specific piece of property.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(24) states:

"24) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income."

Section 36-25-5(a) states:

"(a) No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain."

Section 36-25-2(3) states:

"(3) No public office should be used for private gain other than the remuneration provided by law."

Section 36-25-5(e) states:

"(e) No public official or public employee shall, other than in the ordinary course of business, solicit a thing of value from a subordinate or person or business with whom he or she directly inspects, regulates, or supervises in his or her official capacity."

There is an inherent conflict of interest when a public employee learns of property that may be sold while he is performing the duties of his public employment.

It is further a use of public position for personal gain when the public employee while performing the duties of his employment, solicits or requests to purchase the property.

While public employees are entitled to all rights of private sector employees in regards to the purchase of property, the purchase of the property should be in no way related to his public employment, or arise from that employment.

Had the above property been advertised and made available for sale to all persons who might be interested in purchasing the property, the result of this opinion would be different.

However, under the facts as presented it would be a use of public office for personal gain for a county mapper/appraiser to solicit the sale of property that he potentially could appraise when he learned of the property through his public employment.

CONCLUSION

An appraiser/mapper for Lamar County may not purchase property that came to his attention through his position and further where he requested to purchase the property.

Mr. Jamey Vernon
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AUTHORITY

By 5 - 0 vote of the Alabama Ethics Commission on January 10, 1996.

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