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# STATE OF ALABAMA ETHICS COMMISSION

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January 10, 1996

**ADVISORY OPINION NO. 96-08**

Charles H. Murphy  
 Mayor  
 City of Robertsdale  
 Post Office Box 429  
 Robertsdale, Alabama 36567

Public Official/ Voting On  
 Matters Concerning Business  
 With Which Associated.

A public official may not  
 vote or otherwise participate  
 in any matters concerning a  
 business with which he is  
 associated.

A public official may not use  
 or allow to be used  
 confidential information  
 obtained in the course of his  
 public duties to aid a business  
 with which he is associated.

Dear Mayor Murphy:

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

Should a city council member, who is employed by his father-in-law and who owns a minor interest in the business, abstain from any involvement in litigation between the business and the city?

### FACTS AND ANALYSIS

A member of a city council is employed by his father-in-law, with the father-in-law as the principal owner of the business. The council member holds a minor interest in the business which consists of less than 25 percent.

It is anticipated, that in the future, the City of Robertsdale may enter into litigation with the council member's father-in-law. The outcome of the litigation could have financial recourse for the city, and could render financial results for the father-in-law and his business.

The Mayor of the City of Robertsdale has posed the above question.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(2) states:

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

*"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:

*"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."*

*Section 36-25-1(12) states:*

*"FAMILY MEMBER OF THE PUBLIC OFFICIAL. The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official."*

*Section 36-25-1(25) states:*

*"PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2."*

*Section 36-25-5(a) states:*

*"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 36-25-8 states:*

*"No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business."*

*Section 36-25-9(c) states:*

*"No member of any county or municipal agency, board, or commission shall vote or participate in any matter in which the member or family member of the member has any*

*financial gain or interest."*

No member of society should be denied access to the courts; however, a public official may not use his public position in a manner that would benefit a business with which he is associated in any litigation between that business and the public entity which he serves.

Based on the facts as presented and the above cited statutes, the city council member may not vote or otherwise participate in any matters involving potential litigation between his father-in-law's business and the City of Robertsdale. He must totally separate himself from the litigation in all respects.

In addition, it is extremely important that the council member not allow confidential information that was obtained as a result of his serving as a city council member to aid or assist the father-in-law or the business with which he is associated in any aspect of the litigation.


### **CONCLUSION**

A public official may not vote or otherwise participate in any matters concerning a business with which he is associated.

A public official may not use or allow to be used confidential information obtained in the course of his public duties to aid a business with which he is associated.

### **AUTHORITY**

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

  
H. Dean Buttram, Jr.  
Chair  
Alabama Ethics Commission