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December 18, 1996

ADVISORY OPINION NO. 96-113

Judy E. Dye
 Mapper/Appraiser
 Pickens County
 Route 2, Box 240
 Ethelsville, Alabama 35461

Conflict Of Interests/ Mapper-
 Appraiser Contracting With
 Computer Company.

The Mapper/Appraiser of Pickens County may renew a contract with a computer company to market computer software developed by the Mapper/Appraiser, where the software is utilized by the employer of the Mapper/Appraiser, and when that software is provided to her employer at no cost and the software was developed on her own time, at her own expense, and on her own equipment.

Dear Ms. Dye:

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 the Mapper/Appraiser of Pickens County renew a contract with a computer marketing firm to market exclusive rights in the State of Alabama to certain sketching software developed by the Mapper/Appraiser when that software is being used by the County employing that Mapper/Appraiser?

FACTS AND ANALYSIS

Judy E. Dye is the Mapper/Appraiser of Pickens County. She has been so employed since 1990.

In August of 1994, she entered into an agreement with S & W Minicomputers in which she granted them the exclusive marketing rights in the State of Alabama to certain sketching software she had written on her own time, at her own expense, and on her own equipment. It is her understanding that this software has been implemented by S & W Minicomputers in Pickens, Dallas, Wilcox, Pike, and Franklin Counties as part of their property appraisal software.

Ms. Dye developed the package to enable Pickens County Clerks to assist her and the State Evaluation Specialists with the sketching and area calculations that are required in real property appraisal. Both Ms. Dye's software and the interface software developed by S & W are utilized by Pickens County at no cost to Pickens County. The arrangement with S & W insures that if Ms. Dye leaves her employment with Pickens County, the software will continue to be available and maintained by S & W.

Ms. Dye is desirous of renewing the contract with S & W and has requested an Advisory Opinion on whether or not a conflict of interests would exist.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(8)(a) states:

"(8) 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 36-25-5(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 36-25-5(c) states:

"(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy."

The Alabama Ethics Law prohibits a public employee or a public official from using their office to obtain personal gain for themselves, a family member, or a business with which they are associated. The Ethics Law does not, however, preclude a public employee or a public official from maintaining outside employment; provided, that outside employment does not conflict with their public employment, that no public property, time, labor, equipment, materials, etc., are used to assist the public employee or public official in that outside employment, and when the secondary employment does not conflict with the public employment.

In the facts before the Ethics Commission, a conflict of interests or a use of office for personal gain does not exist, in the fact that the computer software developed by Ms. Dye and marketed by S & W Minicomputers, is available to her employer, Pickens County, at no charge to the County. There would, therefore, be no prohibition in Ms. Dye renewing the contract with S & W under the original terms and conditions.

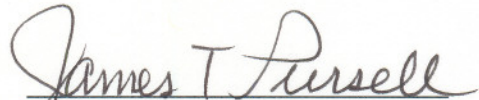
CONCLUSION

The Mapper/Appraiser of Pickens County may renew a contract with a computer company to market computer software developed by the Mapper/Appraiser, where the software is utilized by the employer of the Mapper/Appraiser, and when that software is provided to her employer at no cost and the software was developed on her own time, at her own expense, and on her own equipment.

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AUTHORITY

By 3-0-1 vote of the Alabama Ethics Commission on December 18, 1996.


James T. Pursell
Chair
Alabama Ethics Commission