November 20, 1996

ADVISORY OPINION NO. 96-115

Patrick H. Tate
City Attorney
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Conflict Of Interests/City Council Member And Spouse Employed By Fort Payne Improvement Authority.

A City Councilman, who is employed by the Fort Payne Improvement Authority, may not vote on, attempt to influence, or otherwise participate in the appointment of his superiors to the Improvement Authority, nor may he vote on, attempt to influence, or otherwise participate in matters which would affect his or his spouse's employment in a manner different than it would affect other members of the class to which they belong.

Conflict Of Interests/Council Member, whose wife is employed by the local school system, voting on bond issue to affect the schools.

A member of the City Council may vote on a proposed bond issue to fund a new elementary school within the City of Fort Payne.
A City Council member, whose spouse is employed as a teacher by the City of Fort Payne School System, may vote on an appointment to the City School Board.

A City Council member, whose spouse is employed by the City of Fort Payne School System, may vote on matters affecting his spouse, as long as the spouse is not affected in a manner different than other members of the class to which she belongs.

Dear Mr. Tate:

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.

QUESTIONS PRESENTED

(1). May a City Council member, who is employed with the Fort Payne Improvement Authority, and whose wife is also employed with the Improvement Authority, vote on or nominate individuals for positions on the Board of Trustees at the Improvement Authority?

(2). May a City Council member, whose spouse is employed by the Fort Payne City School System, vote on an ordinance to adopt a proposed bond issued to fund a new elementary school within the City?

(3). May a City Council member, whose spouse is employed as a teacher with the City of Fort Payne School System, vote on appointments to the Board of Education?

FACTS AND ANALYSIS

In September of 1996, the City of Fort Payne held Municipal elections in which five new Council members were elected. Due to this, several potential conflicts of interests questions have arisen.
The Fort Payne Improvement Authority is a public utility which provides electric power services to the City of Fort Payne. It is governed by a five-member Board of Trustees that are appointed on staggered terms by the Mayor and City Council. In the recent election, one of the Trustees was elected to the City Council, and by virtue of the Improvement Authority statutes, was required to resign his position on the Board of Trustees. It will now be up to the Mayor and the Council to appoint a replacement for him.

An employee of the Fort Payne Improvement Authority was also elected to serve on the City Council. This individual is employed as the Outside Construction Foreman for the Improvement Authority, and his wife is employed by the Improvement Authority as a Clerk/Cashier. The individual is classified as a Journeyman Lineman and his rate of pay is in excess of $15.00 per hour. He reports directly to the operations manager of the Improvement Authority, who in turn, reports to the General Manager. The General Manager is the Chief Executive Officer of the Board of Trustees and runs the day-to-day operations of the Authority.

Since this individual is employed by the Fort Payne Improvement Authority, and his wife is also employed by the Improvement Authority, the question has arisen as to whether or not he may vote for or nominate, or vote for individuals for positions on the Board of Trustees.

As the Commission has previously ruled, a Council member, who is employed by a Municipal Utility, may not vote, attempt to influence, or otherwise participate in the appointment of Board Members to the Utility that employs that Council member. To do so, would have the effect of the Council member appointing his superiors.

Likewise, the Council member may vote on matters that affect his and his wife's employment with the Improvement Authority; provided, that he and his wife are not affected in a manner different than the other members of the class to which they belong. In other words, all employees of the Improvement Authority.

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

"(25) 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 36-25-1(12) states:

"(12) 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 26-25-5(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 36-25-1(8) 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."

In OPINION OF THE JUSTICES NO. 317, 474 So.2d. 700, the Justices of the Supreme Court were of the opinion that legislators, employed and paid by the public education system or those whose spouses were so employed and paid, could constitutionally vote on the bill granting a pay raise for public education system employees, so long as the bill did not affect any such legislator in a way different from the way it affected the other members of the class to which he belonged.

Likewise, a City Council member, whose spouse is employed with the local school system, may vote on an appointment to the City Board of Education. Further, it would not be improper for the Council member to vote on a bond issue to construct a new elementary school in the City, as his spouse would not be affected differently than other employees of the school system would be affected.
In addition, the Council member may vote on matters that affect his wife's employment; provided, she not be affected in a manner different than the other members of the class to which she belongs.

CONCLUSION

A City Councilman, who is employed by the Fort Payne Improvement Authority, may not vote on, attempt to influence, or otherwise participate in the appointment of his superiors to the Improvement Authority, nor may he vote on, attempt to influence, or otherwise participate in matters which would affect his or his spouse's employment in a manner different than it would affect other members of the class to which they belong.

A member of the City Council may vote on a proposed bond issue to fund a new elementary school within the City of Fort Payne.

A City Council member, whose spouse is employed as a teacher by the City of Fort Payne School System, may vote on an appointment to the City School Board.

A City Council member, whose spouse is employed by the City of Fort Payne School System, may vote on matters affecting his spouse, as long as the spouse is not affected in a manner differently than other members of the class to which she belongs.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on November 20, 1996.

James T. Pursell
Chair
Alabama Ethics Commission