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December 18, 1996

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ADVISORY OPINION NO. 96-122

Donald E. Hall
Councilman
2109 Springdale Drive, SW
Hartselle, Alabama 35640

Conflict Of Interests/City Councilman
Accepting Employment With Company
Doing Business With City On Whose
Council He Serves.

A City Councilman may accept employment with an insurance company that does business with the City on whose Council he serves; provided, he did not use his position as Councilman to obtain the employment, that any future business dealings between the insurance company and the City be done through the competitive bid process, that the Councilman not vote, attempt to influence, or otherwise participate in any matters relating to the business dealings between the insurance company and the City, that the Councilman not disclose any confidential information obtained in the course of his service on the City Council that would affect or provide a benefit to the insurance company by which he is employed, and that the Councilman not communicate with adjusters or otherwise involve himself in any settlement or other matters that relate to a claim on behalf of or against the City on a policy written through his employer.

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Dear Councilman Hall:

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 City Councilman accept employment with an Insurance Company which does business with the City?

FACTS AND ANALYSIS

Donald E. Hall was recently elected City Councilman in the City of Hartselle, Alabama. He is presently employed with Allstate Insurance; however, during the past several months, including the time before the recent Municipal elections, Councilman Hall was corresponding with Art Glasgow about joining the firm of Peck & Glasgow Insurance Agency as an employee.

At the present time, Peck & Glasgow does business with the City of Hartselle by providing the City's insurance needs. In recent years, the insurance needs of the City have gone through the competitive bid process. Councilman Hall's responsibilities, should he accept the employment with Peck & Glasgow, would be in the area of sales and service of personal lines of insurance. Commercial lines and municipal lines of insurance fall under a different category of expertise than personal lines, and Councilman Hall will not be working in this area.

Councilman Hall understands that, should he accept employment with Peck & Glasgow, competitive bid laws must be adhered to, and that he not participate in any matter relating to the insurance transactions between his employer and the City of Hartselle.

As Peck & Glasgow is an independent agency and writes for several different companies, Councilman Hall would like to reserve the right, in the event of a claim, to communicate to the adjusters who are employees or under contract with the insurance company regarding settlements of those claims.

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(2) states:

"(2) 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:

"(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 36-25-8 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:

"(c) 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."

Section 36-25-11 states:

"Unless exempt pursuant to Alabama competitive bid laws or otherwise permitted by law, no public official or public employee, or a member of the household of the public employee or the public official, and no business with which the person is associated shall enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county, or municipal funds unless the contract has been awarded through a process of competitive bidding and a copy of the contract is filed with the commission. All such contract awards shall be made as a result of original bid takings, and no awards from negotiations after bidding shall be allowed. A copy of each contract, regardless of the amount, entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the commission within 10 days after the contract has been entered into."

Based on the facts as provided and the above law, a City Councilman may accept employment with an insurance company that does business with the City on whose Council he serves; provided,

- (1). The Councilman did not use his position on the Council to obtain the employment,
- (2). That any dealings between the insurance company and the City be done through the competitive bid process,
- (3). That the Councilman not vote, attempt to influence, or otherwise participate in any matters relating to the transactions between the insurance company and the City,

(4). That the Councilman not use any confidential information obtained as a result of his service on the Council in any matter that would provide a benefit to the insurance company that employs him, and

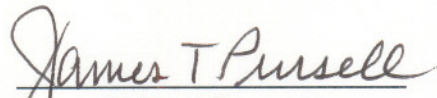
(5). That the Councilman not communicate with adjusters or otherwise involve himself in any settlement matters that relate to a claim on behalf of or against the City on a policy written through his employer.

CONCLUSION

A City Councilman may accept employment with an insurance company that does business with the City on whose Council he serves; provided, he did not use his position as Councilman to obtain the employment, that any future business dealings between the insurance company and the City be done through the competitive bid process, that the Councilman not vote, attempt to influence, or otherwise participate in any matters relating to the business dealings between the insurance company and the City, that the Councilman not disclose any confidential information obtained in the course of his service on the City Council that would affect or provide a benefit to the insurance company by which he is employed, and that the Councilman not communicate with adjusters or otherwise involve himself in any settlement or other matters that relate to a claim on behalf of or against the City on a policy written through his employer.

AUTHORITY

By 4 - 0 vote of the Alabama Ethics Commission on December 18, 1996.


James T. Pursell
Chair
Alabama Ethics Commission