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March 6, 1996

ADVISORY OPINION NO. 96-33

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Conflict Of Interest/City Councilman
Owning Printing Business And
Voting On Matters Concerning
Customers.

A City Councilman voting on matters affecting customers of his private business does not create a conflict of interest if there is no gain passing to the Councilman or his business, and transactions between the Councilman's business and the person appearing before the Council are conducted in the ordinary course of business.

A councilman may not vote or otherwise participate in matters which grant a financial benefit to his private business customers, if in return for his vote, he or his business receives benefit.

Should the situation arise whereby a private business customer is doing business with the City, the Councilman cannot vote or otherwise

participate in the discussion of a contract for one of his private business customers if part of the contract is to be performed by his printing business.

Dear Mr. Stout:

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. Does a conflict of interest exist when a City Councilman, who owns a printing business, votes on matters that affect customers of that printing business?
2. Must the Councilman abstain from voting or otherwise participating in any matters, under consideration by the Council, where the exercise of his vote may grant a benefit to a customer of his private business?

FACTS AND ANALYSIS

A Mobile City Council member owns a printing business in the City of Mobile, Alabama. His business prints business forms and provides supplies and related material to his business customers in the Mobile area. He has been in business for many years, and was elected to the Mobile City Council approximately two and one-half years ago. A situation has arisen whereby customers of his private business may have dealings with the City, which may require approval of the City Council and this Councilman's vote on the matter without specifics being provided. He has presented the above questions.

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

"A conflict of interest shall not include any of the following:

a. A loan or financial transaction made or conducted in the ordinary course of business."

The Alabama Ethics Law specifically excludes from the definition a "thing of value", a loan or financial transaction made or conducted in the ordinary course of business.

In the facts presented to the Commission, there would not be a conflict of interest for a Councilman to vote on matters affecting customers of his private business if the transactions between the customers and himself are conducted in the ordinary course of business, and there is no gain or possibility of gain to the Councilman's business resulting from his vote.

Under the same analysis, there is a conflict of interest present, if the Councilman votes on matters which grant some benefit to his private business customers if in return for his vote, he or his business receives some benefit in return, i.e., business for his company.

In other words, is his vote in exchange for customers doing business with his printing business? If so, there exists a conflict of interest, and a use of office for personal gain.

CONCLUSION

A City Councilman voting on matters affecting customers of his private business does not create a conflict of interest if there is no gain passing to the Councilman or his business, and transactions between the Councilman's business and the person appearing before the Council are conducted in the ordinary course of business.

A councilman may not vote or otherwise participate in matters which grant a financial benefit to his private business customers, if in return for his vote, he or his business receives benefit.

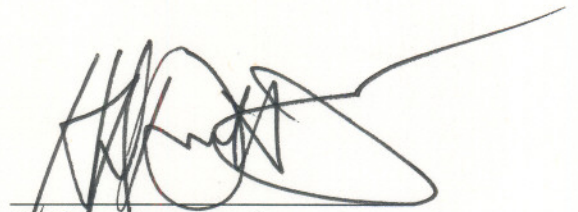
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City, the Councilman cannot vote or otherwise participate in the discussion of a contract for one of his private business customers if part of the contract is to be performed by his printing business.

AUTHORITY

By 4 - 0 vote of the Alabama Ethics Commission on March 6, 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