

STATE OF ALABAMA  
ETHICS COMMISSION



H. Dean Buttram, Jr., Esq. Chairman  
James T. Pursell, Vice-Chairman  
Henry B. Gray III  
Camille S. Butrus  
Helen Shores Lee, Esq.

MAILING ADDRESS

P.O. BOX 4840  
MONTGOMERY, AL  
36103-4840

STREET ADDRESS

RSA UNION  
100 NORTH UNION STREET  
SUITE 104  
MONTGOMERY, AL 36104



E. J. (Mac) McArthur  
Director

TELEPHONE (334) 242-2997  
FAX (334) 242-0248

March 6, 1996

**ADVISORY OPINION NO. 96-34**

Roy Sanderson, Mayor  
City of Rainsville  
Post Office Box 309  
Rainsville, Alabama 35986

Conflict Of Interest/ Municipal Court  
Judge And City Attorney For Same  
Municipality As Law Partners.

There is not a conflict of interest or use of a position for personal gain when a part-time municipal court judge and a city attorney for the same municipality practice law together; provided, the city attorney not practice in municipal court or otherwise appear before the municipal court judge; that the municipal court judge not benefit financially from the fact his law partner serves as a city attorney; that the city attorney not benefit financially from the fact that his partner is a municipal court judge; and further, that no confidential information obtained in the course of their public employment be used to benefit the law firm.

Dear Mayor Sanderson:

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 City of Rainsville employ an attorney for municipal court judge and another attorney as city attorney when the two attorneys are in private practice together?

### **FACTS AND ANALYSIS**

Attorney A and Attorney B wish to form a corporation for the purpose of practicing law together. Attorney A is a judge of a municipal court. His duties as a municipal judge are performed after hours and without any connection to the law firm. All the remuneration for his services as a municipal judge pass directly to him and do not pass through the firm.

Attorney B is the city attorney for the same municipality. In his job, this city attorney does no prosecutions of any cases which appear before Attorney A. All prosecutions of city cases are handled by a third attorney, Attorney C, who is totally independent and practices in another firm. All the remuneration for Attorney A's services as city attorney pass directly to him and do not pass through the firm.

From the facts as provided, it would appear that there is no overlap of responsibility, nor situations where the two attorneys, in private practice together, are handling or involved in the same municipal matters.

The Alabama Ethics Law, Code of Alabama, 1975, 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 36-25-1(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 36-25-5(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."*

From the information provided to the Ethics Commission, both Alabama State Bar Association and the Judicial Inquiry Commission have previously determined that a conflict of interest does not exist.

In their opinion, the Alabama Bar Association held "In responding to your specific

inquiry, based on the foregoing opinions of the Disciplinary Commission, it does not appear that either Attorneys A or B have any ethical problems or are disqualified in any way from performing their respective tasks as municipal judge and city attorney. The scenario posed in your inquiry is further removed from conflict than that set forth in RO-84-190, above, wherein the Commission found no conflict. Any conflict is diminished to a great extent by the fact that remuneration is separate and distinct for the municipal judge services, and the fact that Attorney B has absolutely no participation in prosecution of any cases presided over by Attorney A as municipal judge."

Further, the Judicial Inquiry Commission, in addressing this question, ruled that "It is the opinion of the Commission that a part-time municipal judge may form a professional corporation for the purpose of practicing law with an attorney who is the city attorney for the same municipality so long as the conditions stated above are observed and the judge also does not sit in any case in which the city attorney has participated either directly or indirectly."

Those conditions discussed by the Judicial Inquiry Commission are as follows:

"(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, or exploit his judicial position."

"(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified."

Canon 3C(1) (Canons of Judicial Ethics) "provides generally that a judge should disqualify himself in any proceeding in which his impartiality might reasonably be questioned, and Canon 3C(1)(b) specifically provides that a judge is disqualified in a proceeding in which a lawyer with whom he has practiced law served during such association as a lawyer in the matter in controversy."

Under the facts as provided, there would not be a conflict of interest under the Ethics Law for a municipal court judge and a municipal city attorney to form a private practice of law together; provided,

(1) that the municipal court judge not receive a financial benefit from the fact that his partner is city attorney; and,

(2) that the city attorney not receive a financial benefit from the fact that his partner is a municipal court judge; and,

(3) that the municipal court judge and the city attorney are not involved in the same

proceedings; and,

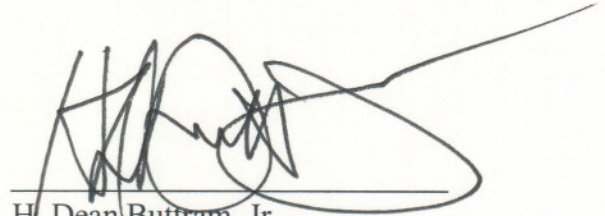
(4) that no confidential information gained in the course of their employment as municipal court judge and city attorney respectively be used to provide a financial benefit to the law firm.

### CONCLUSION

There is not a conflict of interest or use of a position for personal gain when a part-time municipal court judge and a city attorney for the same municipality practice law together; provided, the city attorney not practice in municipal court or otherwise appear before the municipal court judge; that the municipal court judge not benefit financially from the fact his law partner serves as a city attorney; that the city attorney not benefit financially from the fact that his partner is a municipal court judge; and further, that no confidential information obtained in the course of their public employment be used to benefit the law firm.

### AUTHORITY

By 4 - 0 vote of the Alabama Ethics Commission on March 6, 1996.



H. Dean Buttram, Jr.  
Chair  
Alabama Ethics Commission