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May 1, 1996

ADVISORY OPINION NO. 96-41

Mr. Steve E. Miller
Senior Vice President
Miller Roofing, Inc.
Post Office Box 1484
Jasper, Alabama 35502

Conflict Of Interest/ Roofing
Contractor Having Repair
Contract With County Board
Of Education And Running
For Seat On County Board Of
Education.

A conflict of interest does not
arise when a roofing
contractor who has been
awarded a repair contract
with a County Board of
Education chooses to run for
a seat on the County Board of
Education.

Should the roofing contractor
win election to the County
Board of Education, the
original contract must not be
altered by any change orders
and the contract may not be
renewed upon its expiration,
as long as the contractor
continues to serve on the
Board of Education.

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Dear Mr. Miller:

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 Senior Vice President of a roofing company which has recently been awarded the roofing repair contract for the Walker County Board of Education facilities, run for a position on the County Board of Education without creating a conflict of interest?

FACTS AND ANALYSIS

Miller Roofing Company located in Jasper, Alabama has just been awarded the roofing repair contract for the Walker County Board of Education facilities. The Senior Vice President of Miller Roofing Company intends to seek election to the post of Chairman of the Walker County Board of Education. He is concerned that with Miller Roofing, Inc. holding the aforementioned contract and his election to the post of Chairman of the Walker County Board of Education, a conflict of interest would arise.

He has requested an opinion based on the above information.

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. 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.*
- b. An occasional nonpecuniary award publicly presented by an organization for performance of public service.*

c. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for the personal attendance of a public official or public employee at a convention or other meeting at which he or she is scheduled to meaningfully participate in connection with his or her official duties and for which attendance no reimbursement is made by the state.

d. Any campaign contribution, including the purchase of tickets to, or advertisements in journals, for political or testimonial dinners, if the contribution is actually used for political purposes and is not given under circumstances from which it could reasonably be inferred that the purpose of the contribution is to substantially influence a public official in the performance of his or her official duties."

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 36-25-5(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 36-25-11 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."

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."

The fact that Miller Roofing, Inc. has been awarded a contract with the Walker County Board of Education does not prohibit the Senior Vice President from seeking the post of Chairman of the Walker County Board of Education.

A conflict of interest would arise should the facts be reversed. In other words, should the Senior Vice President for Miller Roofing, Inc. be elected to the post of Chairman of the Walker County Board of Education, and then should Miller Roofing, Inc. be awarded the contract, a conflict of interest may possibly present itself.

The above mentioned notwithstanding, should the Senior Vice President of Miller Roofing, Inc. be elected to the post of Chairman of the Walker County Board of Education, he may not use his position as Chairman to change any terms of the contract between the Walker County Board of Education and Miller Roofing, Inc.

Further, upon its expiration, the contract may not be renewed as long as Mr. Miller continues to serve on the Board of Education.

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CONCLUSION

A conflict of interest does not arise when a roofing contractor who has been awarded a repair contract with a County Board of Education chooses to run for a seat on the County Board of Education.

Should the roofing contractor win election to the County Board of Education, the original contract must not be altered by any change orders and the contract may not be renewed upon its expiration, as long as the contractor continues to serve on the Board of Education.

AUTHORITY

By 5 - 0 vote of the Alabama Ethics Commission on May 1, 1996.

A handwritten signature in dark ink, appearing to read 'H. Dean Buttram, Jr.', written over a horizontal line.

H. Dean Buttram, Jr.
Chair
Alabama Ethics Commission