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May 1, 1996

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ADVISORY OPINION NO. 96-45

Mr. Robert C. Walker, Jr., AICP
Director of Planning
City of Decatur
Post Office Box 488
Decatur, Alabama 35602

Conflict Of Interest/City
Planning Director Running
For Position On City School
Board.

The Director of a municipal
planning commission may
run for a position on a city
school board without creating
a conflict of interest.

Should the Director of the
City of Decatur Planning
Department run for a position
on the City School Board, all
campaign activities must be
conducted on his own time,
either after hours or while on
annual leave, and he may not
use any public equipment,
facilities, time, materials,
human labor, or other public
property under his or her
discretion or control to assist
in any manner, his campaign.

Should the Director of the City of Decatur Planning Commission win a seat on the City School Board, all School Board business must be conducted on his own time, either after hours or while on annual leave.

Should the City Planning Director be elected to the City Board of Education, he may vote for an across the board pay raise that affects all school employees the same, but he may not vote or otherwise participate on a matter that will affect his spouse in a manner different than the rest of the class to which she belongs.

Dear Mr. Walker:

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 the Alabama Ethics Law prohibit a city employee from continuing in his present capacity and being a candidate for the city school board?
2. Would the Alabama Ethics Law prohibit a city employee from continuing in his present position and simultaneously serving as a member of the city board of education, if elected?
3. Would the Alabama Ethics Law prohibit this city employee from serving as a member of the city board of education, if elected, when his spouse is a tenured teacher

who works for the board?

FACTS AND ANALYSIS

Robert C. Walker, Jr. is the Director for the City of Decatur Planning Department. He is presently contemplating running for the Decatur City Board of Education, and has requested an advisory opinion on the above matters.

As Director of Planning for the City of Decatur, he provides the following services relative to the Decatur City School Board.

He provides population projections for the City of Decatur, as well as annual growth updates and status reports monitoring the direction, location, and actual growth trends, long range planning for all city capital needs, including schools, location and timing.

Mr. Walker also is involved in the negotiations for site purchases of specific property on behalf of the City of Decatur, Alabama.

The only nexus between his position as Planning Director and the City School Board is the fact that the City Planning Commission maintains official maps of the City of Decatur, including the school zone boundary maps. It should be pointed out that the school board staff does the studies, demographics, and actually determines locations for school zone boundary maps. While the city county district lines and school board lines are the same, the Planning Commission merely maps the lines and does not determine them.

With an indirect impact on the City School Board, the City Planning Department does the demographic study, recommends to the City Council, and prepares full submission to the United States Department of Justice for the delineation of City Council voting districts under the Voting Rights Act of 1965.

He also serves as the liaison for the City of Decatur with the Department of Justice on matters affecting annexation and election pre-clearance under the Voting Rights Acts of 1965.

In August of 1996, Mr. Walker is interested in running for a position on the school board.

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 36-25-5(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 36-25-5(c) states:

"(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy."

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."

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Based on the facts as presented and the applicable law, a conflict of interest would not exist for the Director of the Decatur Planning Department to run for a position on the City Board of Education as there is not a nexus between the two units other than administrative matters relating to pre-clearance with the United States Department of Justice under the Voting Rights Act of 1965, and the overlap of council/school board district lines.

Likewise, the Ethics Law would not prohibit him from maintaining his employment and serving on the school board.

The above notwithstanding, should the Planning Director run for office, all such activities must be conducted on his own time, and there may not be the use of any public equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control to benefit his campaign. Likewise, should he be elected, all board of education matters should be done on his own time within the aforementioned guidelines.

Another issue raised by this request is whether or not the Planning Director may serve on the Board of Education when his wife is employed as a tenured teacher for the school system.

In OPINION OF THE JUSTICES NO. 317, 474 So.2d. 700, the Supreme Court stated that educators who also served as legislators could vote on teachers pay raises; provided, that they or a family member was not effected in a manner different from the rest of the class.

In the situation before the Ethics Commission, Mr. Walker may serve on the board and may vote on matters relating to matters that involve his spouse; provided, that the matters and the result of the vote does not effect his spouse in a manner different than the rest of the class to which she belongs.

In other words, Mr. Walker may vote for an across the board raise that affects all school employees the same, but he may not vote on a matter that will affect his spouse and a very limited class of school board employees.

CONCLUSION

The Director of a municipal planning commission may run for a position on a city school board without creating a conflict of interest.

Should the Director of the City of Decatur Planning Department run for a position on the City School Board, all campaign activities must be conducted on his own time, either after hours

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or while on annual leave, and he may not use any public equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control to assist in any manner his campaign:

Should the Director of the City of Decatur Planning Commission win a seat on the City School Board, all School Board business must be conducted on his own time, either after hours or while on annual leave.

Should the City Planning Director be elected to the City Board of Education, he may vote for an across the board pay raise that affects all school employees the same, but he may not vote or otherwise participate on a matter that will affect his spouse in a manner different than the rest of the class to which she belongs.

AUTHORITY

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