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May 1, 1996

ADVISORY OPINION NO. 96-48

Mr. Terry M. White
Lee County Commissioner
District 4
1807 Oakbowery Road
Opelika, Alabama 36801

Conflict Of Interests/County
Commissioner Who Serves
As Chairman of Solid Waste
Committee Accepting
Employment With Waste
Management, Inc.

Service On Regulatory Board
And Commission Regulating
Business With Which Person
Associated/ Member Of
County Commission Serving
As Chairman Of Solid Waste
Committee Accepting
Outside Employment With
Waste Management, Inc.

A County Commission
Member who serves as
Chairman of the Solid Waste
Committee for the County
Commission may not accept
outside employment with
Waste Management as this is
a business that is regulated by
the County Commission.

A County Commission member may not accept outside employment with Waste Management, as this is a business that is regulated by the County Commission.

Subsequent to June 19, 1996, no public official or public employee who personally participates in the direct regulation, audit, or investigation of a private business, corporation, partnership, or individual shall within two years of his or her departure from such employment solicit or accept employment with such private business, corporation, partnership, or individual.

Dear Commissioner White:

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. May a County Commissioner who serves as Chairman of the Commission's Solid Waste Committee accept outside employment with Waste Management?
2. What type of notification should the Commission Member give the Commission if he accepts the position?
3. How should he handle votes taken by the Commission concerning Solid Waste issues with private or public concerns?

4. Will he be able to discuss Solid Waste issues with his fellow Commissioners, even if Waste Management is not involved in the issue?
5. May he involve himself in discussions on Solid Waste issues that do not deal with a specific issue or contract?
6. May he continue serving as Chairman of Solid Waste Committee for the County Commission if he accepts employment with Waste Management?
7. Should he accept employment with Waste Management, is he restricted from County Commissioners and other governmental officials throughout the State of Alabama in his capacity as employee of Waste Management?
8. Other than the Lee County Commission, will there be any restriction on dealings with governmental entities?
9. If he accepts employment with Waste Management, may the County Commissioner continue to be involved in the Solid Waste Hauling Department for Lee County?
10. May the Commissioner become involved in the City of Auburn's upcoming request for approval of an inert land fill in Lee County?

FACTS AND ANALYSIS

Terry M. White is presently Lee County Commissioner representing District 4 of Lee County, Alabama. He is considering accepting employment with Waste Management as a Sales Manager for Alabama's East and South Region which would include Opelika and Montgomery. He has requested responses to the above questions.

The Alabama Ethics Law, Code of Alabama, 1975, Section 26-25-1(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(26) states:

"(26) REGULATORY BODY. A state agency which issues regulations in accordance with the Alabama Administrative Procedure Act or a state, county, or municipal department, agency, board, or commission which controls, according to rule or regulation, the activities, business licensure, or functions of any group, person, or persons."

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 36-25-9(a) states:

"(a) Unless expressly provided otherwise by law, no person shall serve as a member or employee of a state, county, or municipal regulatory board or commission or other body that regulates any business with which he is associated."

An inherent conflict of interest exists in the mere fact that a County Commissioner is employed with a business that is regulated to a certain degree by the Commission on which he serves. The fact that the County Commissioner is also Chairman of the Commission's Solid Waste Committee is an even greater conflict, as any action taken by the Chairman on Solid Waste matters, either as Chairman of the Solid Waste Committee or as voting Commission member, would either directly or indirectly affect his employer, Waste Management.

The questions presented in this request are somewhat broad and will be addressed individually.

Question No. 1: What type of notification should I give the Commission if I accept this position?

Question No. 2: How should I handle votes taken by the Commission concerning Solid Waste issues of private or public concerns?

Question No. 3: Will I be able to discuss Solid Waste issues with my fellow Commissioners if Waste Management is not involved in the issues?

Question No. 4: What about discussion on Solid Waste issues that do not deal with a specific issue or contract?

(QUESTION NO. 5, SEE BELOW)

Question No. 6: During the course of the year, he attends many meetings with County Commissioners and other governmental officials from throughout Alabama, will there be any restrictions on his dealings with these individuals?

Question No. 7: Other than the Lee County Commission, will there be any restrictions on dealing with governmental entities?

Question No. 8: Lee County operates its own Solid Waste Hauling Department, and has a person supervising this, will I be able to continue to be involved in this?

Question No. 9: The City of Auburn will soon be requesting local governmental approval on an inert land fill in Lee County. Will I be allowed to be involved in this process?

Section 36-25-9(a) prohibits an individual from serving as a member or employee of a state, county, or municipal regulatory board or commission, or other body that regulates any business with which he is associated.

As a County Commissioner, Mr. White would be voting from time to time on Solid Waste issues that would have either a direct or indirect impact on Waste Management and its business opportunities in Lee County.

By the terms of this Section, the County Commissioner may not continue serving on the County Commission if he accepts the employment with Waste Management, as the County Commission is involved in regulating Waste Management's activities within Lee County.

Should Mr. White decide to resign from serving on the County Commission, and going to work for Waste Management, Section 36-25-13 would bar him from doing so for a period of two years, should he resign subsequent to June 19, 1996.

Should he resign from the board and accept employment with Waste Management prior to June 19, 1996, the two year bar would not be applicable to him.

Question No. 5: I am Chairman of the Solid Waste Committee for our Commission, will I be allowed to continue serving in that capacity?

Should Commissioner White accept employment with Waste Management and continue to serve as Chairman of the Solid Waste Committee for the Lee County Commission, or even as a member of the Commission, he will be in violation of Section 36-25-9 which prohibits a person from serving as a member or employee of a state, county, or municipal regulatory board or commission or other body that regulates any business with which he is associated.

In other words, should Commissioner White accept employment with Waste Management, he may not continue to serve on the Lee County Commission, as the County Commission is involved in regulating the activities of Waste Management within Lee County's jurisdiction.

Should Commissioner White choose to resign from the County Commission and accept employment with Waste Management, subsequent to June 19, 1996, he may not represent Waste Management before the Lee County Commission, as per Section 36-25-13 for a period of two years after he resigns from the Commission.

CONCLUSION

A County Commission Member who serves as Chairman of the Solid Waste Committee for the County Commission may not accept outside employment with Waste Management as this is a business that is regulated by the County Commission.

A County Commission member may not accept outside employment with Waste Management, as this is a business that is regulated by the County Commission.

Subsequent to June 19, 1996, no public official or public employee who personally participates in the direct regulation, audit, or investigation of a private business, corporation, partnership, or individual shall within two years of his or her departure from such employment solicit or accept employment with such private business, corporation, partnership, or individual.

Terry M. White
Advisory Opinion No. 96-48
Page seven

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