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July 10, 1996

Reconsideration of **ADVISORY OPINION NO. 96-62**

G. William Noble
Mayor
City of Gardendale
Post Office Box 889
Gardendale, Alabama 35071

Conflict Of Interests/City Of
Gardendale Purchasing
Property Owned By Mayor.

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 a family member
of the public employee, or a
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.

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 a family member of the public official, or for any other person or business.

A municipality may acquire real property from a municipal officer or employee by eminent domain; provided, the officer or employee does not participate in the decision making process or voting regarding the condemnation of the lands which they own.

As Title 18 of the Code of Alabama relates to condemnation proceedings, the Ethics Commission recommends that the interested parties contact the Attorney General's Office for an opinion relative to that issue.

The requestor of this opinion is advised to contact the Alabama Attorney General's Office for the applicability of Section 11-43-12.

Dear Mayor Noble:

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 Mayor of the City of Gardendale sell property to the City of Gardendale for use by the Parks and Recreation Department?

FACTS AND ANALYSIS

G. William Noble, Attorney At Law, presently serves as the Mayor of the City of Gardendale. He currently owns an undivided interest in property that has frontage on U.S. Highway 31 and abuts property owned by the City of Gardendale.

The City property contains the City's major park facilities, including kiddie parks, tennis courts, and Little League fields. The Gardendale Parks and Recreation Board desires to expand the park and relocate some of the facilities on to the Mayor's property and two other parcels of land. The Parks and Recreation Department has obtained an appraisal prepared by an individual MAI Appraiser.

The Mayor is agreeable to selling his property to the City in the amount of the appraisal provided that it is not in violation of the Alabama Ethics Law. This opinion results from that request.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-5(a) states:

Section 36-25-1(33) states:

"(33) VALUE. The fair market price of a like item if purchased by a private citizen"

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."

There is an inherent opportunity for a conflict of interests and the receipt of personal gain when a Mayor sells real estate to a municipality.

Because of the inherent conflict of interests, a public official may not negotiate with the municipality or governmental body on which he serves for the sale of land. All such transactions should be done through eminent domain.

Further, Section 11-43-12 provides that no alderman or officer or employee of a municipality shall be directly or indirectly interested in any work, business, or contract which is to be paid from the treasury of the municipality.

Based on the above, the requestor of this opinion is advised to contact the Alabama Attorney General's Office to determine the applicability of Section 11-43-12 to their request for an advisory opinion.

CONCLUSION

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 a family member of the public employee, or a 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.

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 a family member of the public official, or for any other person or business.

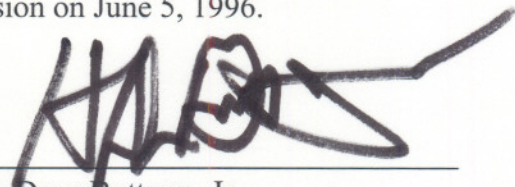
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As Title 18 of the Code of Alabama relates to condemnation proceedings, the Ethics Commission recommends that the interested parties contact the Attorney General's Office for an opinion relative to that issue.

The requestor of this opinion is advised to contact the Alabama Attorney General's Office for the applicability of Section 11-43-12.

AUTHORITY

By 4 - 0 vote of the Alabama Ethics Commission on June 5, 1996.



H. Dean Buttram, Jr.
Chair
Alabama Ethics Commission

Reconsidered by 5 - 0 vote of the Alabama Ethics Commission on July 10, 1996.