STATE OF ALABAMA
ETHICS COMMISSION

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

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

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

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ADVISORY OPINION NO. 96-71

Solomon S. Seay, Jr.
General Counsel
Board of Trustees for
Alabama State University
524 South Union Street
Montgomery, Alabama 36104

Conflict Of Interests/Chairman Of Board Of Trustees Of State University Voting On Lease Agreement Between The University And Non-Profit Entity (a church) Where The Public Official Is A Member And Officer Of The Non-Profit Entity, And Has Individually Endorsed A Mortgage On The Church.

Conflict Of Interests/Board Of Trustees Of State University Entering Into Lease Agreement With Non-Profit Entity (a church) Where The Chairman Of The Board Of Trustees Of The University Is A Member And Officer Of The Non-Profit Entity, And Has Personally Endorsed A Mortgage On The Non-Profit Entity's Facility.

A public official who sits on the Board of Trustees of a State University may not vote on a lease agreement between the University and a non-profit entity where the public official is a member and officer of the non-profit entity, and has individually endorsed a mortgage on the non-profit entity's physical facility even though there is no opportunity for personal gain, as he has a financial interest in the church's mortgage being satisfied.

The Board of Trustees of a State University may enter into a lease agreement with a non-profit entity where the Chairman of the Board of Trustees of the University is a member and officer of the church, and has personally endorsed a mortgage on the church facility when the Chairman of the Board does not vote, attempt to influence, or otherwise participate in the lease issue.

Dear Mr. Seay:

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. Is it a violation of the Ethics Law for a public official, who sits on the Board of Trustees of a State University, to vote on a lease agreement between the University and a non-profit entity (a church) where the public official is a member and officer of the church, and has individually endorsed a mortgage on the church?

2. Is there a violation of the Ethics Law if the Board of Trustees of a State University enters into a lease agreement with a non-profit entity (a church) where the Chairman of the Board of Trustees of the University (who does not vote on a lease issue) is a member and officer of the church, and has personally endorsed a mortgage on the church facility?

FACTUAL BACKGROUND

A State University is seeking a facility to temporarily locate new programs it will begin offering. The space will be needed for two to three years until a permanent building on the campus can be constructed. The University has received proposals from several entities, two of which are church facilities, which have education buildings.

The Chairman of the Board of Trustees for the State University is an incorporator for a non-profit corporation which purchased a church facility where a newly organized church will be located. He also serves on the Board of Trustees for the newly organized church. The University Board Chairman and another individual, who provides legal services to the University on a regular basis, and who is also a member of the church, endorsed a mortgage for the purchase of the church facility. Title to the church facility is being held in the non-profit corporation which exists exclusively for the benefit of the church.

The church facility was purchased by the non-profit corporation directly from another church. There were no commissions paid to anyone, nor was any income received by any individual on the sale. The purchase of the church and the execution of the mortgage was and remains completely unrelated to any University business or transaction.

Payments made by the University for rental space will be made directly to and in the name of the newly formed church.

The Alabama Ethics Law, Code of Alabama, 1975, 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 36-25-1(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(8)(a) states:

"a. A loan or financial transaction made or conducted in the ordinary course of 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 36-25-5(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 36-25-9(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."

Based on the facts as presented and the above law, a public official, who sits on the Board of Trustees of a State University may not vote on a lease agreement between the University and a non-profit entity, where the public official is a member and officer of the non-profit entity, and has individually endorsed a mortgage on the non-profit entity, as he has a financial interest in the matter.

At the same time, the Board of Trustees of a State University may enter into a lease agreement with a non-profit entity where the Chairman of the Board of Trustees of the University is a member and officer of the church, and has personally endorsed a mortgage on the church facility, as long as the Chairman of the Board of Trustees does not vote, attempt to influence, or otherwise participate in the lease agreement.

CONCLUSION

A public official who sits on the Board of Trustees of a State University may not vote on a lease agreement between the University and a non-profit entity where the public official is a member and officer of the non-profit entity, and has individually endorsed a mortgage on the non-profit entity's physical facility even though there is no opportunity for personal gain, as he has a financial interest in the church's mortgage being satisfied.

The Board of Trustees of a State University may enter into a lease agreement with a non-profit entity where the Chairman of the Board of Trustees of the University is a member and officer of the church, and has personally endorsed a mortgage on the church facility when the Chairman of the Board does not vote, attempt to influence, or otherwise participate in the lease issue.

AUTHORITY

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

H. Dean Buttram, Jr.
Chair
Alabama Ethics Commission