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ADVISORY OPINION NO. 96-78

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Conflict Of Interests/ Superintendent
Of School System Recommending
Pay Raises For Employees, Including
His Wife.

The Superintendent of a County
School System may recommend an
across-the-board pay raise for all
school board employees, including
his wife, as long as his wife does not
benefit in a manner different than
other members of the class to which
she belongs.

Conflict Of Interests/ Superintendent
Of School System Serving On Bank
Board Of Directors And Soliciting
Bids For CD Rates.

The Superintendent of a County
School System may solicit bids for
CD rates and award to highest
bidder, including the bank on whose
board he serves; provided, all the
competitive bid laws are strictly
adhered to.

Dear Mr. Pilcher:

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 Superintendent of a County System make a recommendation for a pay raise involving all employees of the Board of Education without violating the provisions of the Alabama Ethics Act, even if his recommendation directly involves a pay raise for his wife?

(2). May a Superintendent of a County School System, who serves on the Board of Directors of a local bank, solicit bids for CD rates each time a school board CD matures and award those CD's to the highest bidder?

FACTS AND ANALYSIS

George P. Evans serves as Superintendent of the Dallas County School System. In his capacity, and in accordance with applicable law, he is required to make all recommendations relative to the employment of school board employees and the payment of all salaries. Last year the Alabama Legislature altered the method of paying school board employees. In order to comply with the new law, Mr. Evans made a recommendation that the school board adopt pay raises as mandated by applicable Alabama law. Mr. Evans' wife is an employee of the Board of Education, and she benefited from this recommendation; however, in the absence of a recommendation by Mr. Evans, the board cannot act.

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 36-25-5(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."

The Alabama Ethics Law prohibits a public official or public employee from using their public position to obtain personal gain for themselves, a family member, or a business with which they are associated. In the issue before the Commission, there is no gain received by the spouse of the Superintendent that is not received by all other school board employees.

In OPINION OF THE JUSTICES NO. 317, 474 So.2d. 700, the Alabama Supreme Court when discussing legislators who also were educators stated that the legislators/educators could vote on teacher pay raises when they or a family member was a teacher; provided, that the teacher receiving the pay raise did not benefit in a way different from other members of the class to which they belonged.

Based on the above, a School Board Superintendent may recommend an across-the-board pay raise for all school board employees, including his wife; provided, that the spouse does not benefit in a way different than other members of the class to which she belongs, the School System employees.

Question number two relates to whether or not the Superintendent, who also serves as a Director on the Board of Directors for a local bank, may solicit bids for CD rates and award those bids to the highest bidder.

As has been previously stated, the Alabama Ethics Law prohibits a public official or public employee from using his or her public position to obtain personal gain to himself/herself, a family member, or a business with which he or she is associated. This extends to the depositing of school board funds in a bank on whose Board of Directors the person responsible for depositing those funds sits as a member. However, Certificates of Deposit are somewhat

different than ordinary school funds, as the CD's accumulate interest for the depositor.

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."

Based on the above, the Superintendent of a County School System may solicit bids for CD rates and award those bids to the highest bidder; provided, all competitive bid laws are strictly adhered to.

CONCLUSION

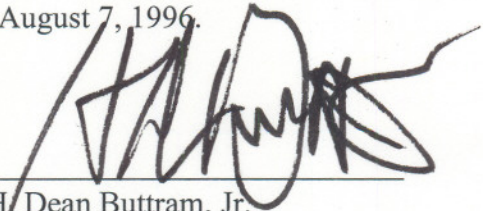
The Superintendent of a County School System may recommend an across-the-board pay raise for all school board employees, including his wife, as long as his wife does not benefit in a manner different than other members of the class to which she belongs.

The Superintendent of a County School System may solicit bids for CD rates and award to highest bidder, including the bank on whose board he serves; provided, all the competitive bid laws are strictly adhered to.

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AUTHORITY

By 5 - 0 vote of the Alabama Ethics Commission on August 7, 1996.



H. Dean Buttram, Jr.
Chair
Alabama Ethics Commission