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ETHICS COMMISSION



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September 19, 1996

ADVISORY OPINION NO. 96-91

Mr. Frederic A. Ransom
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Anniston, AL 36201

Conflict Of Interest/Wife Of Municipal Department Head Receiving Business Loan Through "Revolving Loan Fund".

The Director of the Public Works Department for the City of Anniston is a public employee covered by the prohibitions and obligations of the Alabama Ethics Act as per Section 36-25-1(24).

The Alabama Ethics Act does not specifically prohibit a public employee's wife from applying for a municipalities' RLF Loan Program, so long as the public employee does not use, or attempt to use his position in an effort to influence the City's representatives on the non-profit board that administers the fund.

There are no financial disclosure documents or Statements of Economic Interests triggered by a public employee's wife applying for the City's RLF Loan which is administered by a non-profit corporation.

Dear Mr. Ransom:

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 the Director of the Public Works Department for the City of Anniston covered by the prohibitions and obligations of the State Ethics Act?
2. Does the Ethics Act prohibit Mr. Johnson's wife from applying for the City's RLF Program?
3. What if any financial disclosure documents or Statements of Economic Interests are triggered by the afore-described facts?

FACTS AND ANALYSIS

The City of Anniston has various Department Heads who are responsible for overseeing the activities of the respective Departments. The Departments are Revenue, Police, Fire, Parks and Recreation, Public Works, and general. The Head of the Public Works Department and the person whose dilemma has prompted this request is Mr. Charles Johnson.

Mr. Johnson's wife wishes to apply for a loan from a "revolving loan fund" which has been established by the City of Anniston to encourage the development of retail and commercial business within the City of Anniston.

The funds are federal monies that are channeled to the Anniston Retail and Commercial Development Company, Inc. which is an independent non-profit cooperation. The ARCDC is in charge of the fund and is charged with the general overseeing of the city's development goals.

The ARCDC Fund Committee is the body charged with the responsibility for granting or denying applications for RLF loans. The Committee is comprised of 1) a Representative of the City (ex-officio) 2) the Executive Director of the ARCDC (ex-officio) 3) the Administrative Assistant to the City Manager (ex-officio) 4) a Realtor from the community 5) two retail merchants from the community 6) a Representative from a local lending institution, and 7) two interested citizens from the City concerned with retail and commercial development.

The Committee focuses on collateralization and the ability to pay, as factors in determining whether or not to grant a particular application. While the requestor of the opinion states that he has no personal knowledge as to Mr. and Mrs. Johnson's financial affairs, he is assuming for purposes of this opinion that at least some of Mrs. Johnson's assets are jointly held in her and her husband's name. The assumption is further made that the form of business proposed by Mrs. Johnson is a sole-proprietorship.

Based on further inquiries by the staff of the Alabama Ethics Commission, it would appear that based on the application submitted to the Revolving Loan Fund, that the venture will operate as a proprietorship wholly owned by Jackie C. Johnson and Charles D. Johnson, Jr.

Further, according to the application, Mr. Johnson is considered key personnel in the undertaking. However, Mr. Johnson will not actually participate in the business other than to assist his wife on Saturdays. He will receive no pay from the business.

Neither the City nor the Public Works Department has direct connection with the ARCDC or the Committee nor has any control over either entities regulations or operations. Mr. Johnson is not individually connected to either the Committee or the ARCDC. Each individual applicant for loans must meet all the various eligibility requirements and must be approved by the Committee.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(24) states:

"(24) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income."

Section 36-25-1(11) states:

"(11) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The spouse or a dependent of the public employee."

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."

Section 36-25-8 states:

"(8) Use or disclosure of confidential information for private financial gain. 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 36-25-14(a)(2) states:

"(2) Any person appointed as a public official and any person employed as a public employee at the state, county, or municipal level of government or their instrumentalities who occupies a position whose base pay is fifty thousand dollars (\$50,000) or more annually."

Based on the above law and the facts as presented as to question number one. The director of the Public Works Department for the City of Anniston is a public employee as defined by Section 36-25-1(24) of the Code of Alabama and is therefore subject to the Alabama Ethics Law.

As to question number two, the fact that Mr. Johnson is a public employee covered by the Alabama Ethics Law does not, in and of itself, prohibit Mr. Johnson's wife from applying for the

City's RLF Loan Program. However, Mr. Johnson may not use his position as a City Department Head to attempt to influence in any manner, the decision-making process so as to give his wife favorable treatment in obtaining the loan.

As to question number three, there are no financial disclosure documents or Statements of Economic Interests triggered by the afore-mentioned set of facts.

However, should Mr. Johnson, as a public employee, make \$50,000 or more per year in base salary he must file a Statement of Economic Interests with the Alabama Ethics Commission.

CONCLUSION

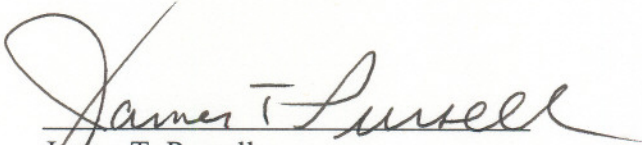
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AUTHORITY

By 3 - 0 vote of the Alabama Ethics Commission on September 19, 1996.


James T. Pursell
Chair
Alabama Ethics Commission