



James T. Pursell, Chairman
Henry B. Gray III, Vice-Chairman
Camille S. Butrus
Helen Shores Lee, Esq.
H. Dean Buttram, Jr., Esq.

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



Hugh R. Evans, III
Acting Director
General Counsel

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

ADVISORY OPINION NO. 97-08

Andrew Archie
Councilman
Post Office Box 787
Carbon Hill, Alabama 35549

Conflict Of Interests/Member Of
City Council Voting On
Appointment Of Spouse To The
Utility Board Of That City.

A member of the Carbon Hill City
Council may not vote, attempt to
influence, or otherwise participate in
the appointment of his or her spouse
to the Utility Board of the City of
Carbon Hill.

Conflict Of Interests/City Council
Member Voting On Appointment Of
In-Law, Brother Or Sister, To The
Utility Board Of That City.

A member of the Carbon Hill City
Council may not vote, attempt to
influence, or otherwise participate in
the appointment of a spouse, a
dependent, an adult child and his or
her spouse, a parent, a spouse's
parents, a sibling and his or her
spouse, of the public official to the
Utility Board of Carbon Hill.

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Conflict Of Interests/Member Of
Municipal Utility Board Voting On
Matters Concerning Hiring, Salary,
And Employment Of That Member's
Brother Or Sister.

A member of the Carbon Hill Utility
Board may not vote, attempt to
influence, or otherwise participate in
any matters relating to the hiring,
salary, or employment of that
member's spouse, dependent, adult
child and his or her spouse, parent,
spouse's parents, sibling and his or
her spouse.

Personal Gain/ Distinction Between
Compensated Service And
Uncompensated Service.

A member of the Carbon Hill City
Council may not vote, attempt to
influence, or otherwise participate in
any matters concerning the
appointment of a family member to a
Municipal Board where the family
member has any financial gain or
interest.

A member of the Carbon Hill City
Council may not vote on matters
relating to the appointment of a
family member to a Municipal
Board, as service on Carbon Hill's
Municipal Board is compensated.

Dear Councilman Archie:

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 permissible for a City Council member to vote on the appointment of a spouse to the Utility Board of the City of Carbon Hill?
2. Is it permissible for a City Council member to vote on the appointment of an in-law, brother or sister, to the Utility Board of the City of Carbon Hill?
3. Is it permissible for a member of the Utility Board of the City of Carbon Hill to vote on issues of hiring, salary, and employment of the member's brother or sister?

FACTS AND ANALYSIS

Andrew Archie is a member of the Carbon Hill City Council. In recent months, several questions have been raised regarding decisions which affect a sibling of either a Council member or Board member of the Utility Board of the City of Carbon Hill. This request for an opinion is pursuant to those questions.

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(12) states:

"(12) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official."

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 36-25-5(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(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 above law and the facts as presented, a member of the Carbon Hill City Council may not vote, attempt to influence, or otherwise participate in any matters that may involve a financial gain or interest on behalf of a family member as defined by the Alabama Ethics Law.

Therefore, a City Council member may not vote on the appointment of a spouse to the Utility Board for that City, may not vote on the appointment of a spouse, dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, to the Utility Board of that City, and likewise, a member of the Utility Board may not vote on issues of hiring, salary, and employment of the member's brother or sister.

Be that as it may, from the facts as provided, the Utility Board of the City of Carbon Hill is a compensated board; therefore, the above prohibitions strictly apply.

CONCLUSION

A member of the Carbon Hill City Council may not vote, attempt to influence, or otherwise participate in the appointment of his or her spouse to the Utility Board of the City of Carbon Hill.

A member of the Carbon Hill City Council may not vote, attempt to influence, or otherwise participate in the appointment of a spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official to the Utility Board of Carbon Hill.

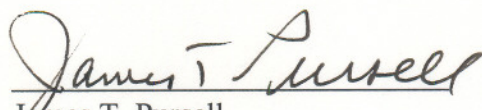
A member of the Carbon Hill Utility Board may not vote, attempt to influence, or otherwise participate in any matters relating to the hiring, salary, or employment of that member's spouse, dependent, adult child and his or her spouse, parent, spouse's parents, sibling and his or her spouse.

A member of the Carbon Hill City Council may not vote, attempt to influence, or otherwise participate in any matters concerning the appointment of a family member to a Municipal Board where the family member has any financial gain or interest.

A member of the Carbon Hill City Council may not vote on matters relating to the appointment of a family member to a Municipal Board, as service on Carbon Hill's Municipal Board is compensated.

AUTHORITY

By 5 - 0 vote of the Alabama Ethics Commission on March 5, 1997.


James T. Pursell
Chair
Alabama Ethics Commission