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ETHICS COMMISSION



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February 5, 1997

ADVISORY OPINION NO. 97-13

The Honorable Joseph C. Mitchell
Representative
District 103
Mobile County
465 Dexter Avenue
Mobile, Alabama 36604

Conflict Of Interests/Member Of
Alabama House Of Representatives
Contracting With Municipality To
Evaluate Department Of Justice
Grant.

A member of the Alabama House of Representatives may enter into a contract with the City of Mobile to evaluate a Department of Justice grant administered through the City; provided, he did not use his position as a member of the House of Representatives to obtain the contract; that he did not use any confidential information obtained in the course of his service in the House of Representatives to assist him in getting the contract; where there is no relationship between his service as a member of the House of Representatives and his contract with the City of Mobile; and further, that all matters pertaining to the completion of the contract be done

on his own time, using his own facilities, materials and equipment, and not on time when he is performing the duties of his office as a member of the Alabama House of Representatives.

Dear Representative Mitchell:

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 a member of the Alabama House of Representatives enter into a contract to evaluate a United States Department of Justice program that is administered by the City of Mobile?

FACTS AND ANALYSIS

The United States Department of Justice has granted the City of Mobile funds to implement strategies to reduce crime and enhance community empowerment for selected high crime areas of the municipality. The City competed for the grant. It is a multi-year grant with opportunity for renewal. The grant stipulates that systematic evaluation of the impact of the project must be conducted periodically. The grant allocates funds for the evaluation. All funds for the evaluation are a part of the Department of Justice budget and grant. There are no Municipal, County, or State funds involved. Municipal resources such as support staff, information systems, and data remain the property of the Municipality.

Joseph C. Mitchell is a member of the Alabama House of Representatives who also holds a Ph.D. in Educational Administration. He has a long career-history of business and professional activities that would directly enable him to successfully compete for and complete the contract.

The job responsibilities under the contract, should Representative Mitchell be the chosen individual, are to evaluate the outcome and process objectives of the local grant. His responsibilities would further be to empirically describe the impact of national project objectives and strategies as applied to the local project. He would further be required to report in a format

designated by the Department of Justice and the National Institute of Justice relating to the various strategies to reduce crime and enhance community empowerment for selected high crime areas of the Municipality.

There is no relationship between the contract with the City of Mobile and his position as a member of the Alabama House of Representatives.

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(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 36-25-2(b) states:

"(b) It is also essential to the proper operation of government that those best qualified be encouraged to serve in government. Accordingly, legal safeguards against conflicts of interest shall be so designed as not to unnecessarily or unreasonably impede the service of those men and women who are elected or appointed to do so. An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided."

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."

Based on the facts as provided and the above law, a member of the Alabama House of Representatives may enter into a contract with the City of Mobile to evaluate a grant from the United States Department of Justice; provided, he did not use his position as a member of the House of Representatives to get the contract; that he used no confidential information obtained in the course of his service in the House of Representatives to enable him to obtain the contract; where there is no relationship between his service in the Alabama House of Representatives and his performance of the contract; and further, that all matters pertaining to the completion of the contract be done on his own time, using his own facilities, materials and equipment, and not on time when he is performing the duties of his office as a member of the Alabama House of Representatives.

CONCLUSION

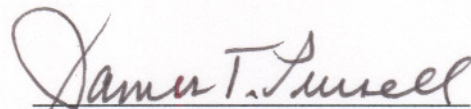
A member of the Alabama House of Representatives may enter into a contract with the City of Mobile to evaluate a Department of Justice grant administered through the City; provided, he did not use his position as a member of the House of Representatives to obtain the contract; that he did not use any confidential information obtained in the course of his service in the House of Representatives to assist him in getting the contract; where there is no relationship

Representative Joseph C. Mitchell
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between his service as a member of the House of Representatives and his contract with the City of Mobile; and further, that all matters pertaining to the completion of the contract be done on his own time, using his own facilities, materials and equipment, and not on time when he is performing the duties of his office as a member of the Alabama House of Representatives.

AUTHORITY

By 4 - 0 vote of the Alabama Ethics Commission on February 5, 1997.



James T. Pursell

Chair

Alabama Ethics Commission