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July 2, 1997

ADVISORY OPINION NO. 97-53

Tom Wilson
Coroner
DeKalb County, Alabama
Post Office Box 1950
Rainsville, Alabama 35986

Conflict Of Interests/Coroner Appointing
Brother As Deputy Coroner.

A County Coroner may appoint his brother to the position of Deputy Coroner, where the position of Deputy Coroner is a non-compensated position and when there is no opportunity for personal gain.

Dear Mr. Wilson:

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 the Coroner for DeKalb County, Alabama re-appoint his brother as a Deputy Coroner for the County, even though the position does not pay anything?

FACTS AND ANALYSIS

Tom Wilson was recently elected to serve as Coroner of DeKalb County, Alabama. As Coroner, he has previously appointed one or more Deputy Coroners to assist him in the performance of his duties.

Deputy Coroners serve without pay or reimbursement for expenses. There are no funds to reimburse these individuals for expenses and, on occasion, Mr. Wilson has reimbursed them from his own personal funds.

He is in the process of appointing several Deputy Coroners. He would like to re-appoint his brother who is a fireman/paramedic in the City of Fort Payne, and who has occasionally worked for Mr. Wilson at his funeral home. He will also appoint several other individuals from other funeral homes within the County to serve in this capacity.

Based on potential problems with the Ethics Law, he has requested this Advisory Opinion.

The Ethics Law prohibits public officials or public employees from using their public position in any manner that might provide a personal gain to themselves, a family member, or a business with which they are associated.

In the case of an elected County Coroner, who is a public official, a brother would be considered a family member under the Alabama Ethics Law.

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(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 position of Deputy Coroner is not a paid position, therefore there is no opportunity of personal gain accruing to the family member by having his brother, an elected official, appoint him as Deputy Coroner.

A County Coroner may appoint his brother as a Deputy Coroner for the County in which he serves where the position of Deputy Coroner is a non-compensated position and when there is no opportunity for personal gain.

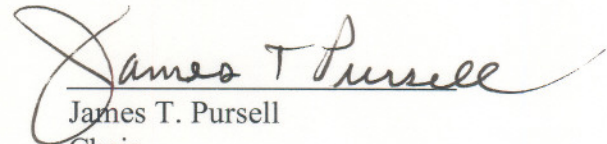
CONCLUSION

A County Coroner may appoint his brother to the position of Deputy Coroner, where the position of Deputy Coroner is a non-compensated position and when there is no opportunity for personal gain.

Tom Wilson
Advisory Opinion No. 97-53
Page four

AUTHORITY

By 3 - 2 vote of the Alabama Ethics Commission on July 2, 1997.


James T. Pursell
Chair
Alabama Ethics Commission