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July 30, 1997

## ADVISORY OPINION NO. 97-66

The Honorable Barrown D. Lankster  
District Attorney  
17th Judicial Circuit  
Post Office Box 906  
Demopolis, Alabama 36732

Personal Gain/District Attorney Providing  
Office Space For Use By District Attorney's  
Office.

A District Attorney may use his personal  
office to perform the functions of District  
Attorney; provided, he not accept rent  
payments from the County when he has  
previously approached the County  
Commission about renting the property from  
him, and that the County pay only those  
expenses that are reasonably related to  
performing the functions of the office of  
District Attorney.

Dear Mr. Lankster:

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 District Attorney provide office space rent-free to the County Commission for use by the District Attorney's Office?

### FACTS AND ANALYSIS

Barrown D. Lankster is the District Attorney for the 17th Judicial Circuit working out of Demopolis, Alabama. He has been the District Attorney for four and one-half years.

When Mr. Lankster was elected as District Attorney in 1992, he requested an Ethics Commission Opinion as to whether or not he could rent his downtown building to Marengo County; provided, that the Marengo County Commission determine what the fair market rental value should be. At that time, the Ethics Commission advised that his renting from himself under any set of circumstances would be a possible Ethics violation.

Subsequent to 1992, Mr. Lankster has petitioned the various County Commissions in his Circuit for office space in the Court House but has been unsuccessful. The building he owns in downtown Demopolis has approximately twenty-one hundred (2100) square feet and is ideally suited for use by the District Attorney's Office.

Mr. Lankster requests an opinion as to whether or not it would be permissible for his office to move into his building rent-free. He states that the District Attorney's Office will pay for telephone installation and monthly utilities. Mr. Lankster will pay the insurance on the building, as well as repairs, and he will continue to pay five hundred dollars (\$500) per month as rent to his landlord.

The Alabama Ethics Law, Code of Alabama, 1975, 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 36-25-1(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:

"(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."

Over the years, the Ethics Commission has addressed the situation whereby an elected District Attorney is not provided with adequate space by the County Commission in which to enable them to perform the duties of the office held. The Commission has previously held as follows:

On December 2, 1992, the Alabama Ethics Commission rendered Advisory Opinion No. 92-102, which asked if a District Attorney could rent office space from himself without violating the Alabama Ethics Law. The Commission opined that such rental would constitute use of his official position or office to obtain direct personal financial gain and would be prohibited by Section 36-25-5(a) of the Code of Alabama.

Likewise, on August 4, 1993, the Commission rendered Advisory Opinion No. 93-102 which held that the County Commission could rent office space in a building owned by the District Attorney for use by the District Attorney without violating the Alabama Ethics Law, based on the fact that there was no other space available in the County, that it was for less than fair market value, as well as the critical fact that the County Commission had first approached the District Attorney about the feasibility of renting his office space and the District Attorney had taken no affirmative action to get the Commission to rent his office.

As Mr. Lankster has previously approached the County about renting his office, Advisory Opinion No. 93-102 should be inapplicable.

Based on the above law and the facts as provided, a County Commission may not rent office space from the District Attorney, as the County would, in effect, be paying the District Attorney's mortgage.

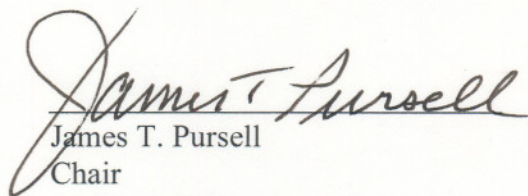
Further, the County Commission may only pay those expenses that are reasonably related to performing the functions of the Office of District Attorney such as telephone and utilities.

**CONCLUSION**

A District Attorney may use his personal office to perform the functions of District Attorney; provided, he not accept rent payments from the County when he has previously approached the County Commission about renting the property from him, and that the County pay only those expenses that are reasonably related to performing the functions of the office of District Attorney.

**AUTHORITY**

By 4 - 0 vote of the Alabama Ethics Commission on July 30, 1997.

  
James T. Pursell  
Chair  
Alabama Ethics Commission