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ADVISORY OPINION NO. 97-67

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Conflict Of Interests/Member Of City School Board Voting On The Hiring Of An Auditing Firm That Is A Former Client Of The School Board Member's Law Firm.

A Member of the Birmingham School Board may vote on the hiring of an auditing firm for the School Board when the Principal of the auditing firm, as well as the auditing firm itself, have been clients of the School Board Member's law firm.

Dear Mr. Stewart:

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 Birmingham School Board vote on the hiring of an auditing firm to do work for the School Board when the Principal of that auditing firm, as well as the firm itself, are former clients of the School Board Member's law firm?

FACTS AND ANALYSIS

David W. Long is a member of the Sirote & Permutt law firm in Birmingham, Alabama. He is also a member of the Birmingham School Board. The Birmingham School Board is in the process of voting on hiring the accounting firm of Banks, Finley & White as the auditing firm for the Birmingham School Board. The accounting firm of Banks, Finley & White and Jim White, who is one of the principals in that firm, have both, over the years, been clients of the law firm Sirote & Permutt of which Mr. Long is a member. At the present time, there are no active files in Sirote & Permutt whereby the firm is representing either Mr. White individually or Banks, Finley & White.

An individual in the community has raised a question as to whether or not Mr. Long would have a conflict of interests that would prohibit him from voting or participating in the vote on the hiring of Banks, Finley & White as the auditing firm for the Birmingham School Board. This individual claims that the simple fact that Sirote & Permutt has represented or is currently representing Mr. White or Banks, Finley & White in regard to legal matters, constitutes a conflict of interests which would prohibit Mr. Long from voting on that firm being retained as the auditing firm for the School Board.

The Alabama Ethics Law, 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 36-25-1(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 36-25-9(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."

The mere fact that Mr. Long's law firm in the past has represented Mr. White or the firm of Banks, Finley & White, does not create a conflict of interests that would prohibit Mr. Long from participating in the vote to hire the accounting firm as the auditing firm for the Birmingham School Board, as Mr. White nor any member of his firm is a family member of Mr. Long's, nor is the accounting firm of Banks, Finley & White, a business with which Mr. Long is associated.

The above notwithstanding, the only way a conflict of interests would be created, would be, if in return for Mr. Long's vote on the hiring of Mr. White's firm, Mr. White or Banks, Finley & White offered a quid pro quo back to either Mr. Long or to Sirote & Permutt so that either Mr. Long or the firm would realize a personal financial gain as a result of Mr. Long's vote.

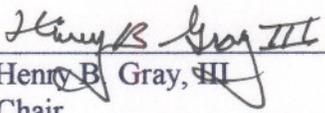
CONCLUSION

A Member of the Birmingham School Board may vote on the hiring of an auditing firm for the School Board when the Principal of the auditing firm, as well as the auditing firm itself, have been clients of the School Board Member's law firm.

Thomas L. Stewart
Advisory Opinion No. 97-67
Page four

AUTHORITY

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



Henry B. Gray, III
Chair
Alabama Ethics Commission