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ADVISORY OPINION NO. 97-69

The Honorable Austin McArdle
Mayor
Town of Kinsey
6947 Walden Dr.
Kinsey, Alabama 36303-9517

Conflict Of Interests/City Councilman
Employed By Engineering Firm On Retainer
With The Town.

A City Councilman, who is a paid employee of an engineering firm on retainer with the Town of Kinsey, may not vote, attempt to influence, or otherwise participate in any matter in which he has a financial gain or interest.

A City Councilman, who is a paid employee of an engineering firm on retainer with the Town of Kinsey, may not discuss portions of work the engineering firm is doing for the City that involve his or his company's financial interest, and further, may not discuss raising water rates to fund the project, as the funding will benefit a business with which he is associated.

A City Councilman, who is a paid employee of an engineering firm on retainer with the Town of Kinsey, may discuss matters regarding work being done by the engineering firm with other Council members either in a public forum or outside

of a public forum; provided, his discussion is strictly limited to providing a status update as to the work being done, and does not involve any matters relating to the financing of the project or projects.

Dear Mayor McArdle:

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 Council member, who is a paid employee of an engineering firm on retainer with the Town of Kinsey:

- (1). In a public meeting, discuss a portion of the work being done by the engineering firm and also discuss raising the water rates to fund the project;
- (2). Participate in discussions outside the public meeting in the presence of other Council members; and
- (3). If a violation occurs, what are the penalties and what measures can be taken to prevent a conflict of interests in regards to this Councilman?

FACTS AND ANALYSIS

The Town of Kinsey has a Councilman who is a paid employee of an engineering firm the Town has on retainer. In the future, the Town of Kinsey may undertake a project requiring engineering services. The Mayor has asked that if this project is undertaken, would the Councilman be in violation of the Ethics Law in the above hypothetical situations.

The three questions are easily answered together, in that, the Council member may not vote, attempt to influence, or in any manner participate in any dealings between the City Council of Kinsey and the engineering firm with which he is employed. This prohibition would extend to not only official action taken in public session with the Commission, but would also extend to his participating in conversations with either Town employees or other Town Council members

outside the public meeting environment.

The only way the Council member may prevent a conflict of interests from occurring, is that he totally remove himself from the process and not vote, attempt to influence, or in any manner participate in the dealings where his or his company's financial interest is concerned.

The Ethics Law would not, however, prohibit the Council member from providing his fellow Council members or the general public with status updates as to the work his firm is performing for the City. However, his communications regarding the subject should be strictly limited to status updates, and should, in no manner, involve funding of the project, raising rates, etc., anything which would touch on his or his business's financial interest.

As relates to question number three, a violation of the Alabama Ethics Law is a Class B felony, punishable by two to twenty years in prison and up to a ten thousand dollar (\$10,000) fine.

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 36-25-1(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."

Based on the facts as provided and the above law, a Town Council member, who is a paid employee of an engineering firm on retainer with the Town, may not vote, attempt to influence, or in any manner participate in discussions or dealings between the Town Council and the business with which he is employed where he or his business has a financial interest involved but may provide status updates to the Council and citizenry involving work being done by his company.

CONCLUSION

A City Councilman, who is a paid employee of an engineering firm on retainer with the Town of Kinsey, may not vote, attempt to influence, or otherwise participate in any matter in which he has a financial gain or interest.

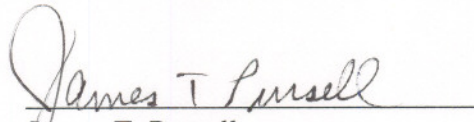
A City Councilman, who is a paid employee of an engineering firm on retainer with the Town of Kinsey, may not discuss portions of work the engineering firm is doing for the City that involve his or his company's financial interest, and further, may not discuss raising water rates to fund the project, as the funding will benefit a business with which he is associated.

A City Councilman, who is a paid employee of an engineering firm on retainer with the Town of Kinsey, may discuss matters regarding work being done by the engineering firm with other Council members either in a public forum or outside of a public forum; provided, his discussion is strictly limited to providing a status update as to the work being done, and does not involve any matters relating to the financing of the project or projects.

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AUTHORITY

By 4 - 0 vote of the Alabama Ethics Commission on August 13, 1997.


James T. Pursell
Chair
Alabama Ethics Commission