



James T. Pursell, Chairman
Henry B. Gray III, Vice-Chairman
Camille S. Butrus
Helen Shores Lee, Esq.
H. Dean Buttram, Jr., Esq.

STATE OF ALABAMA ETHICS COMMISSION

MAILING ADDRESS

P.O. BOX 4840
MONTGOMERY, AL
36103-4840

STREET ADDRESS

RSA UNION
100 NORTH UNION STREET
SUITE 104
MONTGOMERY, AL 36104



James L. Sumner, Jr.
Director

August 13, 1997

TELEPHONE (334) 242-2997
FAX (334) 242-0248

ADVISORY OPINION NO. 97-71

The Honorable Rannel Presnell
Mayor
City of Citronelle
19135 South Main Street
Citronelle, Alabama 36522

Personal Gain/Municipality Allowing
Employees To Play At City Golf Course For
Free.

It would not violate the Alabama Ethics Law for the City of Citronelle to allow Municipal employees and officials, board employees, and volunteer firemen to play free at the City Golf Course; provided, all City employees and officials are given the same opportunity and it is governed by City policy; and provided further, that the City Council, as policy makers, not vote to allow themselves free use of the golf course during their current term of office, as this would involve a financial gain to themselves, but may vote to allow Council members free use of the golf course effective upon a new Council being seated.

The City of Citronelle may allow area school golf teams to practice free of charge at the City Golf Course without violating the Alabama Ethics Law.

In addition, the Chamber of Commerce may give free passes for play at the City Golf Course without violating the Alabama Ethics Law, as this is a promotional item available to the general public and is not a thing of value.

Dear Mayor Presnell:

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 City of Citronelle allow public employees, public officials, board members, and volunteer firemen to play free at the City Golf Course?

FACTS AND ANALYSIS

The City of Citronelle owns and operates a golf course within the City of Citronelle. Over the past years, the City employees have been allowed to play golf free as a benefit. In more recent years, it has evolved into allowing elected officials, City Board Members, and volunteer firemen to also play free at the golf course. The Chamber of Commerce, in addition, gives free passes to individuals and companies as a promotion for the golf course.

The City of Citronelle is also interested in allowing area school golf teams the opportunity to practice at the golf course for free.

The City Council for the City of Citronelle develops policies as relates to City programs and departments. The City has a Recreation Committee, consisting of appointed members from the community, who serve in a strictly advisory capacity.

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(24) states:

"(24) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income."

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 36-25-2(a)(3) states:

"(a) The Legislature hereby finds and declares:

(3) No public office should be used for private gain other than the remuneration provided by law."

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."

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 36-25-5(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.**" (emphasis added)

Section 36-25-1(32)(b)(5) states:

"b. The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:

5. Promotional items commonly distributed to the general public and food or beverages of a nominal value."

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 above law and the facts as presented, it would not violate the Alabama Ethics Law for the City of Citronelle to allow public employees, public officials, board members, and volunteer firemen to play free of charge at the City Golf Course, as the City has a policy allowing the practice and, in addition, the opportunity is available to all City employees and officials.

However, the City Council, as City policy makers, may not vote to allow themselves free use of the golf course during their current term of office, as this would involve a financial gain to themselves, but may vote to allow Council members free use of the golf course effective upon a new Council being seated.

In addition, it does not violate the Alabama Ethics Law for the City of Citronelle to allow area school golf teams to practice free of charge at the City Golf Course.

In addition, the Chamber of Commerce may give free passes for play at the City Golf Course without violating the Alabama Ethics Law, as this is a promotional item available to all members of the public and is not a thing of value.

CONCLUSION

It would not violate the Alabama Ethics Law for the City of Citronelle to allow Municipal employees and officials, board employees, and volunteer firemen to play free at the City Golf Course; provided, all City employees and officials are given the same opportunity and it is governed by City policy; and provided further, that the City Council, as policy makers, not vote to allow themselves free use of the golf course during their current term of office, as this would involve a financial gain to themselves, but may vote to allow Council members free use of the golf course effective upon a new Council being seated.

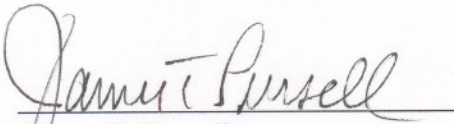
The City of Citronelle may allow area school golf teams to practice free of charge at the City Golf Course without violating the Alabama Ethics Law.

In addition, the Chamber of Commerce may give free passes for play at the City Golf Course without violating the Alabama Ethics Law, as this is a promotional item available to the general public and is not a thing of value.

Mayor Rannel Presnell
Advisory Opinion No. 97-71
Page six

AUTHORITY

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


James T. Pursell
Chair
Alabama Ethics Commission