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August 13, 1997

ADVISORY OPINION NO. 97-73

The Honorable Paul E. Craig
Mayor
Town of Fort Deposit
Post Office Box 260
Fort Deposit, Alabama 36032

Conflict Of Interests/Family Member Of
City Council Person Receiving Funds From
Community Development Block Grant
(CDBG).

The spouse of a City Council Person may receive funds from a CDBG Grant to make repairs to the home of the spouse and Council member, when the CDBG Grant was applied for and approved by ADECA prior to the Council member taking office, as the Council member did not take part in the application process for the project; provided, there is enough grant money to provide for all applicants.

Dear Mayor Craig:

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.

QUESTIONS PRESENTED

- (1). Can a "seated" Town Council member (who was not on the Town Council at the time the Grant was prepared and did not serve on the Council until after the Grant was awarded) participate in the CDBG Housing Rehabilitation Program under any circumstance?

(2). If said Town Council member was to resign from the Town Council (having never participated in the Grant project area selection, etc...), could this person participate in the CDBG Housing Rehabilitation Program (upon the effective date of the resignation)?

FACTS AND ANALYSIS

The Honorable Paul E. Craig is the Mayor of the Town of Fort Deposit, Alabama. They are in the process of implementing a Housing Rehabilitation Project under the Community Development Block Grant Program, as administered by ADECA.

The CDBG Grant was applied for April of 1996 and was approved by ADECA in August of 1996. The Council member involved took office in October of 1996 and had no part in the application process for the CDBG Grant Program.

The Council member's spouse, a homeowner in the project area, has applied for individual housing rehabilitation assistance under the CDBG Comprehensive Grant Program approved by ADECA for the Town of Fort Deposit. The application for housing rehabilitation assistance would be approved if the owner's spouse was not a Council member.

Based on the above fact scenario, the Mayor has submitted the above questions.

On August 23, 1996, the Alabama Ethics Commission rendered Advisory Opinion No. 96-80 which stated, "Non-dependent family members of a City Council person as defined by Section 36-25-1(12), may receive funds from a CDBG Grant to make repairs to the non-dependant family member's dwelling; provided, there are adequate funds available at the time the application process is completed to make repairs to the dwellings of all persons who have applied for such funds."

The opinion further stated that, "Non-dependent family members of a City Council person as defined by Section 36-25-1(12), may not receive funds from a CDBG Grant to make repairs to the non-dependent family member's dwelling should a rating system be necessary by the City Council to determine which applicants are eligible for the CDBG funds."

Specific to Advisory Opinion No. 96-80 was the fact that the Council member was serving on the Council during the application process, whereby their non-dependent family member applied for the CDBG Grant.

In the scenario before the Commission, at present, the CDBG Grant was applied for in April of 1996 and approved in August of 1996 prior to the Council member taking office in October of 1996.

Critical to the determination is the fact that the Council member did not vote, attempt to influence, or in any manner participate in the CDBG Grant; and further, but for the fact that the applicant's spouse is a Councilman, the application would have already been approved.

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(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(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 36-25-9(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 presented, it would not present a conflict of interests for the spouse of a City Council member to receive a CDBG Grant through the Municipality when the application was submitted and approved prior to the Council member taking office; provided, there is enough grant money to provide for all applicants.

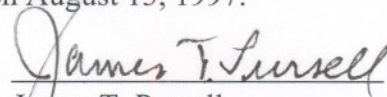
As relates to question number two, as the Council member has taken no action nor had any participation in the application process, it would not make any difference if the Town Council member was to resign from the Council.

CONCLUSION

The spouse of a City Council person may receive funds from a CDBG Grant to make repairs to the home of the spouse and Council member, when the CDBG Grant was applied for and approved by ADECA prior to the Council member taking office, as the Council member did not take part in the application process for the project; provided, there is enough grant money to provide for all applicants.

AUTHORITY

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


James T. Pursell
Chair
Alabama Ethics Commission