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September 3, 1997

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## ADVISORY OPINION NO. 97-76

The Honorable Joe C. Brantley  
Mayor  
Town of Flomaton  
Post Office Box 632  
Flomaton, Alabama 36441-0632

Conflict Of Interests/Mayor And Members Of City Council, Who Are Volunteer Firefighters, Voting On Fire Department Matters Including, But Not Limited To, Fiscal Year Budgets, Spending, Fire Call Compensation, And Appointment And/Or Hiring Of A Fire Chief, Whether Full-Time Or Volunteer.

The Mayor and Members of the Town of Flomaton City Council, who are volunteer firefighters, may vote on Fire Department matters including fiscal year budgets for the operation of the Volunteer Fire Department, as well as spending matters related to the operation of the Volunteer Fire Department; provided, the Mayor and Members of the City Council, who are volunteer firefighters are not affected in a manner differently than other members of the class to which they belong.

The Mayor and Members of the Town of Flomaton City Council may vote on fire call compensation matters; provided, they not receive fire call compensation themselves.

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The Mayor and members of the Town of Flomaton City Council may not vote on fire call compensation matters when they receive fire call compensation.

The Mayor and Members of the Town of Flomaton City Council, who are volunteer firefighters, may vote on the appointment and/or hiring of the Fire Chief, whether full-time or volunteer, when the Mayor and members of the City Council are not compensated for their service on the Volunteer Fire Department.

Dear Mayor Brantley:

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 Council Members and the Mayor of the Town of Flomaton, Alabama, who are volunteer firefighters, vote with regard to any fire department matters including, but not limited to, fiscal year budgets, spending, fire call compensation, and appointing and/or hiring of a Fire Chief, whether full-time or volunteer?

#### **FACTS AND ANALYSIS**

The City Council of the Town of Flomaton, Alabama, respectfully requests an opinion as to the voting eligibility of three Council members and the Mayor, who are volunteer firefighters, with regard to any fire department matters including, but not limited to, fiscal year budgets, spending, fire call compensation, and appointing and/or hiring of a Fire Chief, whether full-time or volunteer.

The City Council consists of five Council Members and the Mayor. Council Members from Districts 1, 3, and 5, and the Mayor are also volunteer firefighters. The Fire Chief is appointed by the Council; he draws a weekly salary of \$50.00 and is considered neither full-time nor part-time.

Further, the Fire Department has a line item budget of approximately \$31,000. Of this amount, \$14,400.00 is paid to the Department for fire call compensation. The firefighters are paid five dollars (\$5.00) for each fire call. Last year there was an average of 121 fire calls. The firefighters are also paid three dollars(\$3.00) for each meeting. They meet twice a month.

On August 4, 1997, the Office of Attorney General issued Advisory Opinion No. 97-00248 addressed to the Honorable Joe C. Brantley, Mayor of the Town of Flomaton, Alabama, regarding the identical questions presented here. In that opinion, the Attorney General held, "A mayor and city councilman may serve as members of the volunteer fire department, but they cannot receive compensation for their services."

"This office opines that the above provisions are not violated when a mayor or members of the city council, who are volunteer firemen and receive no compensation as volunteer firemen, vote on matters pertaining to the city's volunteer fire department."

On January 10, 1986, the Honorable Charles A. Graddick, Attorney General for the State of Alabama, issued Advisory Opinion No. 96-00117 regarding the classification as a Volunteer Fire Department and whether or not the fact that Volunteer Firefighters were paid to attend meetings and fires would be considered compensation or expenses.

In that opinion, the Attorney General said, "In order to be classified as a Volunteer Fire Department under Code of Alabama, 1975, Section 9-3-17, there must be no less than 80 percent unsalaried membership in each department. However, the money received for attending meetings and fires must be considered expense payments rather than salary or other forms of compensation. Therefore, the Summerdale Fire Department may pay firemen an expense allowance for attending meetings and fires."

Even if the Volunteer Firefighters are given an expense allowance to attend meetings and respond to fires, a Mayor and Councilperson may not vote on increasing the amount of that expense allowance, as this would be voting on an issue that would provide them with financial gain.

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(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 36-25-1(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(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 36-25-9(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."

Section 36-25-8 states:

"No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business."

In OPINION OF THE JUSTICES NO. 317, 474 So.2d. 700, the Justices of the Supreme Court were of the opinion that legislators, employed and paid by the public education system or those whose spouses were so employed and paid, could constitutionally vote on the bill granting a pay raise for public education system employees, so long as the bill did not affect any such legislator in a way different from the way it affected the other members of the class to which he belonged.

In many small Municipalities, a Volunteer Fire Department is the only means available to offer fire protection to the residents of the community, and it is not uncommon for public officials and public employees to volunteer time to serve on the Volunteer Fire Department.

Based on the facts as provided and the above law, the Mayor and Members of the Town of Flomaton City Council, who are volunteer firefighters, may vote on Fire Department matters including fiscal year budgets for the operation of the Volunteer Fire Department, as well as spending matters related to the operation of the Volunteer Fire Department; provided, the Mayor and Members of the City Council, who are volunteer firefighters are not affected in a manner differently than other members of the class to which they belong.

Further, the Mayor and Members of the Town of Flomaton City Council may vote on fire call compensation matters; provided, they not receive fire call compensation themselves.

Finally, the Mayor and Members of the Town of Flomaton City Council, who are volunteer firefighters, may vote on the appointment and/or hiring of the Fire Chief, whether full-time or volunteer, when the Mayor and Members of the City Council are not compensated for their service on the Volunteer Fire Department.

**CONCLUSION**

The Mayor and Members of the Town of Flomaton City Council, who are volunteer firefighters, may vote on Fire Department matters including fiscal year budgets for the operation of the Volunteer Fire Department, as well as spending matters related to the operation of the Volunteer Fire Department; provided, the Mayor and members of the City Council, who are volunteer firefighters are not affected in a manner differently than other Members of the class to which they belong.

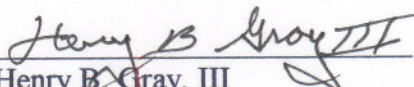
The Mayor and Members of the Town of Flomaton City Council may vote on fire call compensation matters; provided, they not receive fire call compensation themselves.

The Mayor and Members of the Town of Flomaton City Council may not vote on fire call compensation matters when they receive fire call compensation.

The Mayor and Members of the Town of Flomaton City Council, who are volunteer firefighters, may vote on the appointment and/or hiring of the Fire Chief, whether full-time or volunteer, when the Mayor and Members of the City Council are not compensated for their service on the Volunteer Fire Department.

**AUTHORITY**

By 4-0 vote of the Alabama Ethics Commission on September 3, 1997.

  
Henry B. Gray, III  
Chair  
Alabama Ethics Commission