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October 1, 1997

ADVISORY OPINION NO. 97-84

The Honorable Van C. Gholston
 District Attorney
 Second Judicial Circuit of Alabama
 Butler County Courthouse
 700 Court Square
 Greenville, Alabama 36037-2393

Conflict Of Interests/District Attorney
 Appointing And Paying Stepbrother As
 Assistant District Attorney.

A District Attorney may appoint and pay his
 stepbrother to serve as a Lowndes County
 Assistant District Attorney, when the
 stepbrother was not raised as the District
 Attorney's sibling.

Dear Mr. Gholston:

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 District Attorney appoint and pay his stepbrother to serve as a Lowndes County Assistant District Attorney?

FACTS AND ANALYSIS

The Honorable Van C. Gholston is the District Attorney for the Second Judicial Circuit which covers Lowndes, Butler, and Crenshaw Counties. Mr. Gholston has been the District Attorney for the Second Judicial Circuit for many years.

A few months ago he was asked by his Assistant District Attorney in Lowndes County, Jerry Thornton, to consider appointing a young lawyer by the name of Joel Gregg to also serve as an Assistant District Attorney in Lowndes County. Mr. Gregg was hired by Mr. Thornton as a Law Clerk approximately three years ago. Mr. Gregg started law school at Jones School of Law shortly after Mr. Thornton hired him. After obtaining his law degree and passing the Bar exam, Mr. Gregg became an Associate in Mr. Thornton's firm in May of 1996. Because of his work load and the fact that he is sometimes out of Lowndes County, Mr. Thornton asked that Mr. Gholston appoint Mr. Gregg as an Assistant District Attorney to fill in when needed.

Sometime in the later part of 1996, Mr. Gholston did appoint Mr. Gregg to serve as an Assistant District Attorney in Lowndes County. Since that time, Mr. Gregg has prosecuted some cases for Mr. Gholston's office in both District and Circuit Courts in the Second Judicial Circuit. Mr. Gholston has never paid Mr. Gregg any compensation for the work he has done, nor has he increased Mr. Thornton's compensation during the time that Mr. Gregg has done work for the District Attorney's Office.

Joel Gregg is Van Gholston's stepbrother. While they are not related by blood, Mr. Gholston's adoptive father and Mr. Gregg's mother married after Mr. Gholston was grown and out on his own. At the time Mr. Gholston's father and Mr. Gregg's mother married, Mr. Gregg was a teenager.

Mr. Gholston would like to continue the current arrangement because it is convenient for Mr. Thornton, as well as for Mr. Gholston due to the fact that he does not have to send an Assistant District Attorney from another county in his circuit to fill in when needed in Lowndes County.

Mr. Gholston states that Mr. Thornton has served as his Assistant District Attorney in Lowndes County for 15 years and it is possible that in the next few years he may wish to give up this position. He asked whether or not it would be permissible for him to appoint and pay Mr. Gregg as Lowndes County Assistant District Attorney.

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 36-25-5(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."

The Ethics Law prohibits a public official or a public employee from using their office in a manner that would provide a personal gain to themselves or a family member as defined by law.

While the definition of a family member of a public official includes a sibling, it does not include a stepsibling.

The American Heritage College Dictionary, Third Edition, defines a sibling as, "One of two or more individuals having one or both parents in common; a brother or sister."

For practical purposes, stepsiblings who have been raised together more often than not consider themselves to be brothers and/or sisters. The important determination in the facts before the Ethics Commission, is the fact that Mr. Gholston's adoptive father married Mr. Gregg's mother after Mr. Gholston was grown and out on his own, and Mr. Gregg and Mr. Gholston were not raised as siblings per se.

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It should be noted that this Advisory Opinion addresses only the specific facts before the Ethics Commission and does not universally exclude a stepsibling from the definition of a family member of a public official.

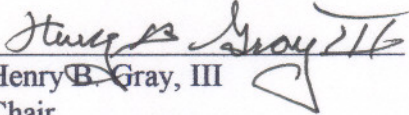
Based on the above law and the facts as provided, it would not be a conflict of interests for a District Attorney to hire his stepbrother as an Assistant District Attorney when the two are not related by blood and were not raised as siblings.

CONCLUSION

A District Attorney may appoint and pay his stepbrother to serve as a Lowndes County Assistant District Attorney, when the stepbrother was not raised as the District Attorney's sibling.

AUTHORITY

By 3-2 vote of the Alabama Ethics Commission on October 1, 1997.


Henry B. Gray, III
Chair
Alabama Ethics Commission