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November 5, 1997

**RECONSIDERATION OF  
 ADVISORY OPINION NO. 97-92**

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Faye Dyer  
 Commissioner  
 District 2  
 Madison County Commission  
 Madison County Courthouse  
 Huntsville, Alabama 35801-4820

Conflict Of Interests/County Commissioner allocating funds to entity contracting with spouse's accounting firm.

A member of the Madison County Commission may not allocate discretionary money to entities who contract with her husband's accounting firm to provide accounting services.

A member of the Madison County Commission may vote on a General Fund Budget which includes allocations made to entities who contract with her husband's accounting firm to provide accounting services; provided, that the Commissioner did not place, attempt to influence, or otherwise participate in the placement of that appropriation in the budget.

Any votes or allocations previously taken by the Commission member in reliance on Advisory Opinion 97-92 issued in its original form on October 1, 1997, are valid actions and do not violate the Ethics Law based on her reliance on that opinion.

Commissioner Dyer  
Advisory Opinion No. 97-92  
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Dear Commissioner Dyer:

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 County Commissioner allocate funds to entities who contract with her spouse's accounting firm?

### **FACTS AND ANALYSIS**

Faye Dyer is the elected Commissioner for District 2 on the Madison County Commission. She was elected in November of 1988 and first took office in January of 1989. She has been re-elected in 1992 and 1996.

Ms. Dyer's husband, Tom Dyer is a practicing CPA and partner with the firm of Dudley, Hopton-Jones, Sims, and Freeman, PLLP. She is requesting an Advisory Opinion based on several fact scenarios that involve her allocating money from either the Madison County Commission budget or her own discretionary funds to entities that contract with her husband and his accounting firm for accounting and auditing services. The scenarios are as follows:

Scenario Number One: The Huntsville-Madison County Public Library.

"My husband has done the audit for this agency since 1986 (before my election to the County Commission). The Ethics Division of the National Society of Certified Public Accountants has issued an opinion (copy attached) to my husband that it would not be a conflict of interests for him to perform accounting services or conduct the audit of an entity which receives a budget allocation from the County Commission of which his wife is a voting member, as long as County Commission does not exercise managerial control of the day-to-day operation of the entity in question, or appoint the members of the governing board of the agency. The Huntsville-Madison County Library meets the criteria and I would like an advisory opinion on whether I would be able to vote on their budget allocation from the Madison County Commission. I have absolutely no control over who the Public Library hires to perform their accounting and audit services (they have chosen my husband since 1986 before my election in 1988). The County Commission is not involved in the day-to-day operation of the Public

Library and the Madison County Commission does not appoint the members of their governing board. The board members of the Huntsville-Madison County Library are appointed by the Huntsville City Council.”

Scenario Number One(a):

The Public Library has also requested that Ms. Dyer make a special budget allocation to them from her discretionary fund. The Commission retroactively votes on whether or not to approve her discretionary expenditures. The Public Library has requested a ten thousand dollar (\$10,000) allocation from her of which the Huntsville City Council will meet dollar-for-dollar.

Scenario Number Two: The Huntsville/Madison County Senior Center.

“My husband has done the audit for this agency since 1987 ((before my election to the County Commission). As noted above, the Ethics Division of the National Society of Certified Public Accountants has issued an opinion (copy attached) to my husband that it would not be a conflict of interest for him to perform accounting services or conduct the audit of an entity which receives a budget allocation from the County Commission of which his wife is a voting member, as long as the County Commission does not exercise managerial control of the day-to-day operations of the entity in question or appoint the members of the governing board of the agency. The Huntsville-Madison County Senior Center meets these criteria and I would like an advisory opinion on whether I would be able to vote on their budget allocation from the Madison County Commission. I have absolutely no control over who the Senior Center hires to perform their accounting and audit services (they have chosen my husband since 1987 before my election in 1988). The County Commission is not involved in the day-to-day operation of the Senior Center and the Madison County Commission does not appoint the members of their governing board. The Huntsville-Madison Senior Center is a tax-exempt organization and has a self-perpetuating board of directors.”

Scenario Number Two(a):

In addition, the Director of the Senior Center has informed Ms. Dyer that he has requested any budgetary assistance possible from each of the seven County Commissioners to help pay for the resurfacing of the Senior Center parking lot. He specifically has asked Ms. Dyer for an allocation of twenty-five hundred

dollars (\$2,500.00) from her discretionary funds to be used for this purpose. The Commission retroactively votes on whether or not to approve her discretionary expenditures.

Scenario Number Three: The Huntsville-Madison County Rescue Squad.

“My husband was asked to submit a proposal for accounting and audit services for the Madison County Rescue Squad (we do not know if other bids were solicited) and was hired by the Rescue Squad after my election to the Madison County Commission. As noted above, the Ethics Division of the National Society of Certified Public Accountants has issued an opinion (copy attached) to my husband that it would not be a conflict of interest for him to perform accounting services or conduct the audit of an entity which receives a budget allocation from the County Commission of which his wife is a voting member, as long as the County Commission does not exercise managerial control of the day-to-day operations of the entity in question or appoint the members of the governing board of the agency. The Madison County Rescue Squad meets these criteria and I would like an advisory opinion on whether I would be able to vote on their budget allocation from the Madison County Commission. I have absolutely no control over who the Rescue Squad hires to perform their accounting and audit services. The County Commission is not involved in the day-to-day operation of the Rescue Squad and the Madison County Commission does not appoint the members of their governing board. The Rescue Squad is a tax-exempt organization and has a self-perpetuating board of directors.”

Scenario Number Four: The Arts Council.

“My husband was asked to submit a bid to conduct the audit of the Art Center last year. My husband’s firm was low bid and hired to perform their audit for a three-year time-frame. As noted above, the Ethics Division of the National Society of Certified Public Accountants has issued an opinion (copy attached) to my husband that it would not be a conflict of interest for him to perform accounting services or conduct an audit of an entity which receives a budget allocation from the County Commission of which his wife is a voting member, as long as the County Commission does not exercise managerial control of the day-to-day operations of the entity in question or appoint the members of the governing board of the agency. The Arts Council meets these criteria and I would like an advisory opinion on whether I can vote on their budget allocation from the Madison County Commission. I have absolutely no control over who the Arts Council hires to perform their accounting and audit services (they have chosen my husband’s firm

because they submitted the lowest bid). The County Commission is not involved in the day-to-day operation of the Arts Council and the Madison County Commission does not appoint the members of their governing board. The Arts Council is a tax-exempt organization and has a self-perpetuating board of directors."

Scenario Number Five: Care Assurance System for the Aging and Homebound of Madison County (CASA).

Tom Dyer has done the audit for CASA since 1993. At the present time, CASA is requesting a general budget appropriation from the Madison County Commission. At the same time, they or other entities may in the future ask for either general and/or discretionary appropriations. Again, Ms. Dyer has no control over who CASA hires to perform their accounting and auditing services, nor is the County Commission involved in the day-to-day operation of the CASA. Further, the Madison County Commission does not appoint the members of their governing board. CASA is a tax exempt organization and has a self perpetuating Board of Directors.

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(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 36-251(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."

In several of the provided scenarios, Mr. Dyer has been performing the accounting services for that entity since before his wife was elected to the County Commission. In addition, he has obtained several of the contracts through the competitive bid process.

In each of the scenarios provided, Ms. Dyer has had no involvement or discussions with anyone from the various entities regarding her husband's accounting contract, nor does she intend to. In addition, most of the entities being funded have been funded for many years by the Madison County Commission.

Based on the above law and the facts as provided, a member of the Madison County Commission may not allocate discretionary money to entities who contract with her husband's accounting firm to provide accounting services;

In addition, it would not violate the Ethics Law for a Commission Member to vote on a General Fund Budget which included allocations to entities who contracted with her husband; provided however, that the Commissioner was not the individual who placed the allocations in the budget.

Any votes or allocations previously taken by Ms. Dyer based on Advisory Opinion No. 97-92 issued in its original form on October 1, 1997 are valid and do not violate the Ethics Law based on her reliance on that opinion.

#### CONCLUSION

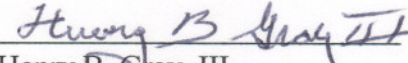
A member of the Madison County Commission may not allocate discretionary money to entities who contract with her husband's accounting firm to provide accounting services.

A member of the Madison County Commission may vote on a General Fund Budget which includes allocations made to entities who contract with her husband's accounting firm to provide accounting services; provided, that the Commissioner did not place, attempt to influence, or otherwise participate in the placement of that appropriation in the budget.

Any votes or allocations previously taken by the Commission member in reliance on Advisory Opinion 97-92 issued in its original form on October 1, 1997, are valid actions and do not violate the Ethics Law based on her reliance on that opinion.

#### AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on November 5, 1997.

  
Henry B. Gray, III  
Chair  
Alabama Ethics Commission