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November 5, 1997

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ADVISORY OPINION NO. 97-97

The Honorable Robert E. Owens, Jr.
District Attorney
Eighteenth Judicial Circuit
Shelby County Courthouse
Post Office Box 706
Columbiana, Alabama 35051

**Conflict Of Interests/Brother-In-Law Of
District Attorney Bidding On Contract With
District Attorney's Office.**

A District Attorney may enter into a contract for construction work to the District Attorney's Office with his brother-in-law; provided, the contract is bid and the brother-in-law is the lowest responsible bidder.

Should the brother-in-law of the District Attorney be the only bidder after the contract has been sufficiently publicized, the District Attorney may enter into the contract; provided, other bidders were not discouraged from submitting a bid, nor were bids let with the preconceived arrangement that the brother-in-law would be the successful bidder.

Dear Mr. Owens:

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

Would the District Attorney for Shelby County be in violation of the Ethics Law if, after following the bid laws of the State of Alabama, his brother-in-law's company would become the only bidder, and therefore, receive the contract?

FACTS AND ANALYSIS

Robert E. Owens, Jr. is the District Attorney for the Eighteenth Judicial Circuit which is made up of Shelby County, Alabama. It is the intention of the Shelby County Advocacy Center, Inc., a Center funded by the State Legislature and designed to advocate the appropriate handling of crimes against children, to add an additional parking lot to their facility. The Shelby County Advocacy Center is approximately one year old and at the present time contains only a concrete drive which leads up to the Center. It has become important to add to this drive for safety purposes.

Mr. Owens anticipates that the addition will cost in the neighborhood of four thousand dollars (\$4,000). While this amount does not require bidding under the State Bid Laws, it is his intention to follow the State Bid Law. The purpose for this is that one of the bidders will be a company owned by his brother-in-law (his sister's husband).

Mr. Owens recognizes the potential for a conflict of interest and specifies that he will not in any way engage in any practices to discourage any bids; however, he states that jobs of this nature do not attract many bidders in a rural area such as Columbiana, Alabama.

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 36-25-5(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."

Based on the above law and the facts as presented, it would not violate the Ethics Law for a District Attorney to enter into a contract to provide contracting services with a company owned

by his brother-in-law; provided, the contract has been bid and that the brother-in-law's company is the lowest responsible bidder.

In addition, the District Attorney must properly advertise the letting of the bid and must not engage in any activity which would discourage interested individuals or companies from submitting a bid.

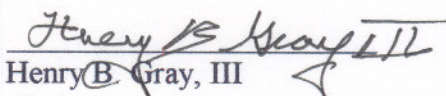
CONCLUSION

A District Attorney may enter into a contract for construction work to the District Attorney's Office with his brother-in-law; provided, the contract is bid and the brother-in-law is the lowest responsible bidder.

Should the brother-in-law of the District Attorney be the only bidder after the contract has been sufficiently publicized, the District Attorney may enter into the contract; provided, other bidders were not discouraged from submitting a bid, nor were bids let with the preconceived arrangement that the brother-in-law would be the successful bidder.

AUTHORITY

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


Henry B. Gray, III
Chair
Alabama Ethics Commission