

STATE OF ALABAMA
ETHICS COMMISSION



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April 8, 1998

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ADVISORY OPINION NO. 98-21

The Honorable Chris Pringle
State Representative
Alabama House of Representatives
District No. 101
Mobile County
Post Office Box 8342
Mobile, Alabama 36689

**Conflict Of Interests/State Funds Used To
Pay Attorneys' Fees For Legislators
Involving Litigation Challenging Their Dual
Employment As State Employees And
Legislators.**

Members of the Alabama Legislature, who have been sued in a challenge to their holding office as legislators, while being employed in the public sector, may use public funds to pay for their defense, if the Legislature determines that they have a proper corporate interest in the outcome of the litigation.

Dear Representative Pringle:

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

Can legislators use taxpayers' money to defend themselves in a civil action challenging their employment as State employees and legislators at the same time?

FACTS AND ANALYSIS

On January 20, 1998, a civil action was filed in the Circuit Court of Jefferson County against numerous members of the Alabama Legislature, who are also public employees. These legislators are employed in various schools and educational institutions and other public entities around the State of Alabama. The lawsuit challenges their right to hold two public offices.

On March 5, 1998, contract #98CLEG018 came before the Contract Review Committee. The contract was between the Speaker of the House and a private attorney, to pay the cost of defending the litigation.

The contract calls for the Legislature to pay James Blacksher, a Birmingham attorney, one hundred fifty dollars (\$150.00) per hour up to a maximum of one hundred thousand dollars (\$100,000.00) in fees and expenses over the next two years.

In the case of City of Montgomery, et. al. vs. James Collins, 355 So. 2d. 1111, City taxpayers brought a class action to enjoin the City of Montgomery from expending municipal funds to defend City police officers indicted for perjury.

In the Collins case, the Court held that there was a proper corporate interest in defending the police officers, due to the fact that a civil action against the City would be forthcoming and would be directly related to the perjury charges.

In the case of Collins, the Court held that there were four issues to be resolved in determining whether or not public funds could be expended in the above situation. Those four issues are as follows:

- (1) It must be in the proper corporate interest to expend its funds for the purpose;
- (2) That this proper corporate interest depends upon the existence of a risk of future civil litigation against the "public entity" itself, arising out of the same or similar circumstances;
- (3) The act allegedly committed must be done by the official in the discharge of his or her corporate duties; and,

- (4) The officers performing these duties must have acted honestly and in good faith.

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(31)(a) states:

“(31) THING OF VALUE.

a. Any gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event offered only to public officials, unsecured loan, other than those loans made in the ordinary course of business, reward, promise of future employment, or honoraria.”

The Alabama Legislature has a proper corporate interest in seeing that its members are allowed to continue serving and performing the functions of their offices.

In addition, it is important to point out that the legislators have not been challenged or accused on any act beyond the scope of their service as a legislator, but the lawsuit merely challenges their right to hold two public positions.

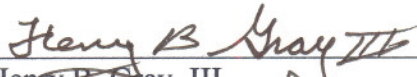
CONCLUSION

Members of the Alabama Legislature, who have been sued in a challenge to their holding office as legislators, while being employed in the public sector, may use public funds to pay for their defense, if the Legislature determines that they have a proper corporate interest in the outcome of the litigation.

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AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on April 8, 1998.


Henry B. Gray, III
Chair
Alabama Ethics Commission