



STATE OF ALABAMA ETHICS COMMISSION



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ADVISORY OPINION NO. 98-29

Carter B. Tutwiler
1306 Donna Avenue, S.E.
Decatur, Alabama 35601-4440

Personal Gain/Mayor Requesting Cost-Of-Living Raise For City Employees When Wife Is Employed By City.

The Mayor of the City of Decatur may request a cost-of-living raise for all City employees of the City of Decatur, including his wife, when his wife does not receive a benefit different than that received by other members of the class to which she belongs.

Dear Mr. Tutwiler:

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 the Mayor of the City of Decatur request a cost-of-living raise for City employees if his wife is a City employee?

FACTS AND ANALYSIS

Carter B. Tutwiler is a potential candidate for the Office of Mayor of the City of Decatur. The City of Decatur has a strong Mayor, weak Council (5 members) form of government. The City of Decatur has a population of about 55,000 people.

The Mayor is responsible for providing an annual budget for the Council's approval. Mr. Tutwiler states that the budget can be altered, modified or completely ignored by the Council, and that the Council's approval is the final word in what the budget will be. In the preparation of the budget, the Mayor may ask for a cost-of-living increase in salaries for City employees. Mr. Tutwiler states that his wife is a City employee and works in the Police Department. Mr. Tutwiler further states that the Mayor has no vote on the outcome of the budget, but merely recommends a budget to the Council.

The Alabama Ethics Law, Code of Alabama, Section 36-25-1(24) states:

"(24) 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."

In dealing with this issue in the past, the Alabama Supreme Court in rendering OPINION OF THE JUSTICES NO. 317, 474 So.2d. 700, stated that Legislators who are also educators or who had family members employed by the education system, could vote on budgetary matters which affected all employees of the education system the same; provided, they or their family members did not receive a benefit that was different than other members of the class to which they belonged.

On May 1, 1996, the Alabama Ethics Commission rendered Advisory Opinion No.96-45, which held that should the City Planning Director be elected to the City Board of Education, he may vote for an across-the-board pay raise that affects all school employees the same, but he may not vote or otherwise participate in a matter that will affect his spouse in a manner different than the rest of the class to which she belongs.

Further, on August 7, 1996, the Alabama Ethics Commission rendered Advisory Opinion No. 96-78, which held that the Superintendent of a County School System may recommend an across-the-board pay raise for all School Board employees, including his wife, as long as his wife does not benefit in a manner different than other members of the class to which she belongs.

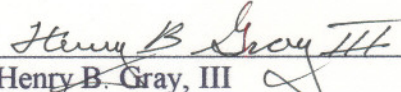
In the situation before the Commission, it would not present a conflict of interests for the Mayor of Decatur to recommend an across-the-board pay raise for all City employees when his wife is employed by the City; provided his wife does not receive a benefit, nor is affected in a manner different than other members of the class to which she belongs, that class being all City employees.

CONCLUSION

The Mayor of the City of Decatur may request a cost-of-living raise for all City employees of the City of Decatur, including his wife, when his wife does not receive a benefit different than that received by other members of the class to which she belongs.

AUTHORITY

By 3-0 vote of the Alabama Ethics Commission on June 3, 1998.


Henry B. Gray, III
Chair
Alabama Ethics Commission