



STATE OF ALABAMA ETHICS COMMISSION



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August 4, 1999

ADVISORY OPINION NO. 99-31

The Honorable Charley F. Foster
Councilman, Town of Coaling &
President, Charley Foster & Associates, Inc.
Post Office Box 70788
Tuscaloosa, Alabama 35407

Conflict Of Interests/Personal Gain/City
Councilman, Who Is Owner And Operator
Of A Surveying And Engineering Firm,
Designing Plans And Specifications For A
New Town Hall At No Cost To The Town
Of Which He Serves As Councilman.

A city councilman, who is the owner and
operator of a surveying and engineering firm,
may design plans and specifications for a
new town hall at no cost to the town of
which he serves as councilman; provided,
that no particular course of action is required
as a condition to the receipt of the volunteer
services.

Dear Councilman Foster:

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 councilman, who is the owner and operator of a surveying and engineering firm, design plans and specifications for a new town hall at no cost to the town of which he serves as councilman?

FACTS AND ANALYSIS

The facts as have been presented to this Commission are as follows:

Charley Foster is a councilman for the Town of Coaling, Alabama. Councilman Foster is also the owner and operator of a surveying and engineering firm, Charley Foster & Associates, Inc., in the City of Tuscaloosa, Alabama.

The town council and mayor of the Town of Coaling are in the process of drawing plans for the construction of a new town hall building.

Charley Foster & Associates, Inc. has volunteered their free of cost services to design plans and specifications for the new town hall building to the Town of Coaling and the town council has accepted.

The Town of Coaling does not have the funds and cannot afford to hire other professional firms to design this building.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(24) defines a public official as:

“(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(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."

Sections 36-25-7(b) & (d) state:

"(b) No public official or public employee shall solicit or receive a thing of value for himself or herself or for a family member of the public employee or family member of the public official for the purpose of influencing official action."

“(d) No public official or public employee, shall solicit or receive any money in addition to that received by the public official or public employee in an official capacity for advice or assistance on matters concerning the legislature, lobbying a legislative body, an executive department or any public regulatory board, commission or other body of which he or she is a member. Notwithstanding the foregoing, nothing in this section shall be construed to prohibit a public official or public employee from the performance of his or her official duties or responsibilities.”

Section 36-25-1(31)(a) defines a “thing of value” as:

“(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 Ethics Law would not prohibit a public official from performing volunteer services to the town of which he serves as councilman, as there would be no personal gain or benefit to the public official. However, there must be no particular course of action required as a condition to the receipt of the volunteer services.

Based on the above law and the facts as provided, a city councilman, who is the owner and operator of a surveying and engineering firm, may design plans and specifications for a new town hall at no cost to the town of which he serves as councilman; provided, that no particular course of action is required as a condition to the receipt of the volunteer services.

CONCLUSION

A city councilman, who is the owner and operator of a surveying and engineering firm, may design plans and specifications for a new town hall at no cost to the town of which he serves as councilman; provided, that no particular course of action is required as a condition to the receipt of the volunteer services.