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ADVISORY OPINION NO. 99-60

Gerald Hughes
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Lamar County Board of Education
Office of Superintendent
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Conflict Of Interests/Personal Gain/Board Of Education Member Who Is Also Employed As An Insurance Agent Of An Agency Which Is The Insurance Carrier On The Board's Transportation Fleet, Motioning And/Or Voting On The Issue Of The Board's Insurance Of Its Transportation Fleet.

A member of the Lamar County Board of Education, who is employed as an insurance agent with the Turner Agency of Fayette, Alabama, the insurance carrier for the Board's transportation fleet, may not vote, attempt to influence or otherwise participate in any matters relating to the business dealings between the insurance agency and the Board. The member of the Board may not disclose any confidential information obtained in the course of his service on the Board that would affect or provide a benefit to his employer, nor may he communicate with adjusters or otherwise involve himself in any settlement or other matters that relate

to a claim on behalf of or against the Board on a policy written through his employer. Further, any future business dealings between his employer and the Board must be done through the competitive bid process; and, a copy of any contracts between his employer and the Board must be filed with the Ethics Commission within 10 days after the contracts have been entered into.

Dear Superintendent Hughes:

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.

QUESTIONS PRESENTED

- 1) Under the provisions of the Alabama Ethics Law, should a recently appointed member of the Lamar County Board of Education, who is employed with the carrier of the Board's transportation fleet insurance, abstain from motioning or voting on any issues pertaining to the Board's insurance of its transportation fleet through his employer?
- 2) What other guidelines under the Alabama Ethics Law should the member of the Lamar County Board of Education be made aware of, while he is employed as an insurance agent for the agency carrying the Board's transportation fleet insurance?

FACTS AND ANALYSIS

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

The Lamar County Board of Education recently appointed Mr. Ray Kilpatrick to fill a vacancy on the Board created by a resignation. Mr. Kilpatrick is employed as an insurance agent with the Turner Agency of Fayette, Alabama, which is also the carrier of the insurance the Board has on its transportation fleet. Mr. Kilpatrick is also the son-in-law of Mr. Zodus Turner, who is the owner of the Turner Agency. The premium the Board paid to the Turner Agency last year was approximately \$20,600.00.

The auditors with the Examiners of Public Accounts have not required a bid for this insurance service in the past. The service was bid about three years ago and the Turner Agency (formerly Lamar Insurance) was the only insurance company to make a bid. In fact, this agency has been part of the Board's fleet insurance carrier for many years.

Gerald Hughes, Superintendent of the Lamar County Schools requests this opinion on behalf of the Lamar County Board of Education and Mr. Ray Kilpatrick, and questions whether Mr. Kilpatrick should abstain from motioning or voting on this issue, and also asks that the Commission provide any other recommendations it believes necessary in this particular situation.

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(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 36-25-1(8) defines a conflict of interest as:

“(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.”

Section 36-25-8 states:

"No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business."

Section 36-25-9(c) states:

“(c) No member of any county or municipal agency, board, or commission shall vote or participate in any matter in which the member or family member of the member has any financial gain or interest.”

Section 36-25-11 states:

“Unless exempt pursuant to Alabama competitive bid laws or otherwise permitted by law, no public official or public employee, or a member of the household of the public employee or the public official, and no business with which the person is associated shall enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county, or municipal funds unless the contract has been awarded through a process of competitive bidding and a copy of the contract is filed with the commission. All such contract awards shall be made as a result of original bid takings, and no awards from negotiations after bidding shall be allowed. A copy of each contract, regardless of the amount, entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the commission within 10 days after the contract has been entered into.”

Based on the above law and the facts as provided, a member of the Lamar County Board of Education, who is employed as an insurance agent with the Turner Agency of Fayette, Alabama, the insurance carrier for the Board’s transportation fleet, may not vote, attempt to influence or otherwise participate in any matters relating to the business dealings between the insurance agency and the Board. The member of the Board may not disclose any confidential information obtained in the course of his service on the Board that would affect or provide a benefit to his employer, nor may he communicate with adjusters or otherwise involve himself in any settlement or other matters that relate to a claim on behalf of or against the Board on a policy written through his employer. Further, any future business dealings between his employer and the Board must be done through the competitive bid process; and, a copy of any contracts between his employer and the Board must be filed with the Ethics Commission within 10 days after the contracts have been entered into.

CONCLUSION

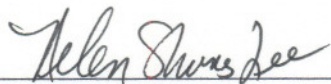
A member of the Lamar County Board of Education, who is employed as an insurance agent with the Turner Agency of Fayette, Alabama, the insurance carrier for the Board’s transportation fleet, may not vote, attempt to influence or otherwise participate in any matters relating to the business dealings between the insurance agency and the Board. The member of the Board may not disclose any confidential information obtained in the course of his service on the Board that would affect or provide a benefit to his employer, nor may he communicate with adjusters or otherwise involve himself in any settlement or other matters that relate to a claim on behalf of or against the Board on a policy written through his employer. Further, any future

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business dealings between his employer and the Board must be done through the competitive bid process; and, a copy of any contracts between his employer and the Board must be filed with the Ethics Commission within 10 days after the contracts have been entered into.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on December 1, 1999.



Helen Shores Lee
Chair
Alabama Ethics Commission