



# STATE OF ALABAMA ETHICS COMMISSION



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June 4, 2008

**ADVISORY OPINION NO. 2008-08**

Mr. Stephen A. Jones  
Chairman  
Red Mountain Park Greenway and  
Recreational Area Commission  
Box 11252  
Birmingham, Alabama 35202

Conflict Of Interest/Member Of Red Mountain Park Greenway And Recreational Area Commission, Who Is Employed By United States Steel (USS), Being Involved In Business Dealings Between The Board And USS

A member of the Red Mountain Park Greenway and Recreational Area Commission may not vote, attempt to influence or in any manner participate in any business dealings or transactions between his employer, United States Steel (USS), and the Red Mountain Park Greenway and Recreational Area Commission, on whose Board he serves.

For a period of two years after resigning from the Red Mountain Park Greenway and Recreational Area Commission, the Commission member may not represent his employer, USS, in negotiating any land transaction deals, or other matters between the Commission and USS.

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Dear Mr. Jones:

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) May a member of the Red Mountain Park Greenway and Recreational Area Commission, who is employed by United States Steel (USS), be involved in business dealings, transactions or other matters between the Red Mountain Park Greenway and Recreational Area Commission and his employer, United States Steel?
- 2) In the alternative, if the member of the Red Mountain Park Greenway and Recreational Area Commission resigns from the Commission, may he represent his employer, United States Steel (USS), in business dealings, transactions or other matters between his employer and the board on which he formerly served?

### **FACTS AND ANALYSIS**

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

The Red Mountain Park Greenway and Recreational Area Commission was established by the Alabama Legislature to acquire, operate and maintain the Red Mountain Greenway and Recreational Area (referred to as the 'Park'). It is made up of 15 individuals appointed by various authorities as set out in Alabama Act 2006-542.

One of their Commission members is an employee of the United States Steel Corporation (USS). USS is the former owner of the park property and owner of land contiguous to the park property. The establishment of this park has been and will be of significant benefit to all contiguous nearby landowners, including the USS. This commissioner has raised the issue of possible future conflicts of interest or at least the perception of conflicts if the Commission should do business with USS in the future. This individual has been a valued member of the Commission, and they would like for him to remain on the Commission if they can function within the Alabama Ethics Law. They write seeking an Advisory Opinion which will give guidance and clarification on the best way to handle this situation.

Examples of possible conflicts that might arise are the following:

- 1) *The USS might sell additional lands to the Commission.*
- 2) *The Commission might ask USS for donations of in kind services.*
- 3) *The Commission and USS might jointly approach neighboring landowners, both corporate and individual, for sales.*
- 4) *The Commission and USS might jointly approach governments for specific infrastructure improvements.*
- 5) *The Commission and the USS might disagree over any of the above.*
- 6) *USS and the Park might find it advantageous to exchange lands.*

It is anticipated that more land sale transactions will occur between USS and the Park. It is further anticipated that this Commissioner will be intimately involved in the transactions, as his job responsibilities with US Steel involve the negotiation of land transactions on their behalf.

The Commissioner is specifically concerned in two areas:

1. What, if any, involvement he may have in any transaction between USS and the Park, and
2. If he resigns from the Park Commission, must he wait two years before negotiating the sale of land between USS and the Park?

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 36-25-5(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 36-25-9(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 36-25-13(a) states:

“(a) No public official shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, department, or legislative body, of which he or she is a former member for a period of two years after he or she leaves such membership. For the purposes of this subsection, such prohibition shall not include a former member of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.”

As relates to issue number one, in all scenarios, the Commission member, who is employed by USS, should recuse himself from any business dealings between the Board and USS. In other words, he should not vote, attempt to influence or in any manner participate in any negotiations or dealings between the two. While there is nothing that prohibits the Commission and USS from negotiating or dealing with each other, it is the Commission member's activities that must be scrutinized.

As relates to issue number two, it has been pointed out that the Commission member's job responsibilities involve negotiating land transactions on the part of USS. While he obviously cannot negotiate on behalf of USS with the Park while serving on its Board, the question arises as to whether or not the revolving door comes into play.

The revolving door provisions of the Ethics Law set out certain limitations and prohibitions on what public officials and public employees may do after leaving the public

sector. As relates to this scenario, the applicable revolving door provision is 13(a), which prohibits former public officials from serving for a fee as a lobbyist or otherwise representing clients, **including his or her employer before the Board on which he or she formerly served.** There are no exceptions to this prohibition. Therefore, for a period of two years after resigning from the Park Board, the Commission member may not interact on behalf of USS with the Park Board in any negotiations of whatever kind.

Based on the facts as provided and the above law, a member of the Red Mountain Park Greenway and Recreational Area Commission may not vote, attempt to influence or in any manner participate in any business dealings or transactions between his employer, United States Steel (USS), and the Red Mountain Park Greenway and Recreational Area Commission, on whose Board he serves.

Further, for a period of two years after resigning from the Red Mountain Park Greenway and Recreational Area Commission, the Commission member may not represent his employer, USS, in negotiating any land transaction deals, or other matters between the Commission and USS.

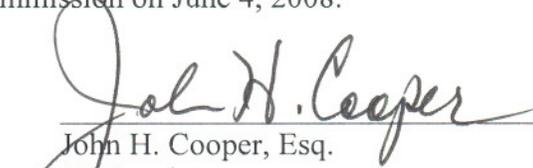
### CONCLUSION

A member of the Red Mountain Park Greenway and Recreational Area Commission may not vote, attempt to influence or in any manner participate in any business dealings or transactions between his employer, United States Steel (USS), and the Red Mountain Park Greenway and Recreational Area Commission, on whose Board he serves.

For a period of two years after resigning from the Red Mountain Park Greenway and Recreational Area Commission, the Commission member may not represent his employer, USS, in negotiating any land transaction deals, or other matters between the Commission and USS.

### AUTHORITY

By 3-0-1 vote of the Alabama Ethics Commission on June 4, 2008.

  
John H. Cooper, Esq.  
Chair  
Alabama Ethics Commission