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June 4, 2008

ADVISORY OPINION NO. 2008-11

Mr. Albert M. Thompson, III
Chairman
Baldwin County Board of Equalization
801 Mixon Avenue
Bay Minette, Alabama 36507

Conflict Of Interest/Member Of Baldwin County Board Of Equalization (BOE) Leasing Property From The Fairhope Single Tax Corporation (FSTC) And Participating In BOE Decisions Regarding Assessment Valuation Appeals Of Other FSTC Parcels

A member of the Baldwin County Board of Equalization (BOE), who leases a lot from the Fairhope Single Tax Corporation (FSTC), may participate and vote on the assessment valuation appeals of other FSTC parcels in which he or his family has no financial interest, and where the vote does not affect his lease.

Dear Mr. Thompson:

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 member of the Baldwin County Board of Equalization, who leases a vacant lot from the Fairhope Single Tax Corporation (FSTC), vote on the assessment valuation appeals of FSTC parcels other than the parcel he leases in which neither he nor his family has any financial interest?

FACTS AND ANALYSIS

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

Albert M. Thompson, III is the Chairman of the Baldwin County Board of Equalization (BOE). He has always recused himself from voting or participating in any matter in which he or a family member has a financial interest. The Fairhope Single Tax Corporation (FSTC) has appealed the assessment valuations of some 3000 parcels for the 2007 tax year. Mr. Thompson presently leases a vacant lot from the FSTC and states that he will, of course, recuse himself from participating in BOE decisions in regard to the vacant lot he leases from the FSTC. His question is whether or not he may participate and vote on the assessment valuation appeals of the other FSTC parcels in which neither he nor any members of his family has any financial interest.

Mr. Thompson states that the amount of assessment valuation appeals in Baldwin County this year have reached historic numbers (some 22,000). Due to the current crisis, he asks for this opinion regarding his participation.

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(12) defines a family member of the public official as:

> "(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) 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 36-25-9(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 36-25-5(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."

The definition of a conflict of interest contemplates a situation where action on the part of public officials or public employees may financially benefit them or their family, but may also benefit other individuals similarly situated. Therefore, it is important to look at the size of the class affected by the action.

In conjunction with the Ethics Law's definition of a conflict of interest, the Supreme Court of Alabama, in <u>Opinion of the Justices No. 317</u>, rendered on September 5, 1998, stated that:

> "Legislators employed and paid by the public education system, or those whose spouses were so employed and paid, could constitutionally vote on the bill granting a pay raise for public education system employees, so long as the bill did

not affect any such legislator in a way different from the way it affected the other members of the class to which he belonged."

Arguably, the class in this scenario is large enough (some 22,000) that, if a single vote was cast affecting all assessment valuation appeals, Mr. Thompson could participate.

However, it appears that the valuations are handled separately. Therefore, while Mr. Thompson may vote and participate in the assessment valuation appeals of other FSTC parcels in which neither he nor his family has any financial interest, he may not vote, attempt to influence or in any manner participate in the assessment valuation appeal affecting the vacant lot he leases from the FSTC.

Based on the facts as provided and the above law, a member of the Baldwin County Board of Equalization (BOE), who leases a lot from the Fairhope Single Tax Corporation (FSTC), may participate and vote on the assessment valuation appeals of other FSTC parcels in which he or his family has no financial interest, and where the vote does not affect his lease.

CONCLUSION

A member of the Baldwin County Board of Equalization (BOE), who leases a lot from the Fairhope Single Tax Corporation (FSTC), may participate and vote on the assessment valuation appeals of other FSTC parcels in which he or his family has no financial interest, and where the vote does not affect his lease.

AUTHORITY

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

John H. Cooper

John H. Cooper, Esq.
Chair
Alabama Ethics Commission