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June 4, 2008

ADVISORY OPINION NO. 2008-12

Mr. Braxton W. Ashe
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Conflict Of Interest/Former Mayor Of
Sheffield Running For Re-Election And
Owning Interest In Company Involved In
Golf Course Development With The City Of
Sheffield

The former Mayor of Sheffield, who is running for re-election as Mayor, may, if elected, maintain an ownership interest in the River City Development Company, a company dealing with the City of Sheffield regarding the building of a municipal golf course. However, he may not vote, attempt to influence or in any manner participate in any aspect of any transaction or negotiations between River City Development and the City of Sheffield regarding the golf course.

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Dear Mr. Ashe:

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

Would it violate the Alabama Ethics Law if Mr. Sanford is elected mayor of Sheffield in 2008, but recuses himself from any discussions with or for either River City Development Company or the City of Sheffield concerning the building or completion of the golf course, and if he abstains from voting on any issue or taking part in any discussions about matters which deal with the River City Development golf course project?

FACTS AND ANALYSIS

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

Mr. Ian Sanford plans to run for mayor of the City of Sheffield this year. Mr. Sanford was mayor of Sheffield for two terms from 1996 to 2004. He chose not to seek re-election in 2004, and has been out of public office for the past four years. He has been encouraged by numerous people to run for the office this year.

During Mr. Sanford's terms from 1996 to 2004, the City purchased approximately 70 acres of property, which had been used by the City for its landfill for approximately 30 years. The City had attempted to purchase this property several times over the years, including before Mr. Sanford was elected to office the first time in 1996. There was no planned use for the property when it was purchased, but Sheffield is a land-locked city, and this property adjoined Sheffield's west side. The City was looking for property to piece together with other property for an undetermined use. During the terms from 1996-2004, after the 70 acres were purchased, the City Clerk suggested that possibly a lighted golf course could be placed in that area if some more property could be obtained. It was felt this would bring additional business to the City and be an asset. The City Clerk explored the feasibility of a golf course with the approval of Mayor Sanford. A golf course consultant was contacted as well as a company, the Bear Trace, which has several courses in Tennessee. The City was told that there was not enough property available for a golf course, plus the cost would be prohibitive for the City even if additional property was obtained.

The City purchased approximately 45 acres of property (referred to as the McKinney Property) in 2007. This was approximately three years after Mr. Sanford had left the office of

mayor. When that property was purchased, the golf course plans were not firm because there was not enough property available, and it was too expensive for the City. After Mr. Sanford left office in 2004, a private company, River City Development, LLC, was created to pursue developing a first rate golf course and country club in that area of Sheffield designed by Jack Nicholas. Mr. Sanford was not involved in the creation of River City Development, and he owned no part of that company. Mr. Sanford was not a personal friend or business associate of the people who formed River City Development, although he recognized the name of one of the people.

The landfill property and the McKinney Property mentioned above are on the east side of Spring Creek which flows into the Tennessee River. Some of the old landfill property lies along the south bank of the Tennessee River. Other property in the area includes some owned by an oil company, approximately seven acres owned by a private individual, and the City Recreation Department has property in that area referred to as Park West. Even with all of that property east of Spring Creek, River City Development Company would not have enough property for the golf course planned, so River City Development purchased additional property on the west side of Spring Creek, which was necessary to have sufficient property for the golf course project. The property on the west side of the creek was deeded to River City Development approximately three years after Mr. Sanford had left the office of mayor. River City Development Company plans to build a bridge across Spring Creek to join the two tracts of property.

The property on the west side of Spring Creek was owned by Associated Developers, Inc., which was owned by Mr. Sanford and others, including a trust created by his father, known as the W. E. Sanford, Jr. Trust. Mr. Sanford's mother is trustee of that Trust. Mr. Sanford and his mother controlled over 60 percent of Associated Developers. This property was deeded to River City Development on August 17, 2007, approximately three years after Mr. Sanford had left office. Associated Developers took a mortgage on the property. The full purchase price has not been paid to date.

At the present time, River City Development Company is in a lawsuit to enforce a contract to purchase the seven acres from the individual on the east side of Spring Creek, and River City Development is working with the Sheffield Recreation Department to reach an agreement to lease or use part of the Recreation Department's property for the golf course. Mr. Sanford does not know how that will be worked out, whether it will be a lease or some other arrangement, but it will not be an outright purchase, because of restrictions in the deeds to that property when it was given to the City of Sheffield.

After Associated Developers sold the acreage west of Spring Creek to River City Development Company, Mr. Sanford personally purchased a one percent interest in River City Development to show his support of the project, and because he believes it would be a valuable

addition for the City. His sister also purchased a one percent interest in River City Development for the same reason. Mr. Sanford has a personal financial interest in the success of the golf course planned by River City Development.

Mr. Sanford is committed, if elected mayor, to not being involved on either side of the golf course project, that being the side of River City Development Company or the City of Sheffield.

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(2) defines a business with which the person is associated as:

“(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 36-25-9(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 36-25-2(b) in pertinent part states:

“(b) An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided.”

While the Ethics Law does not prevent public officials from having outside business interests, they may not take action in their official capacity which would benefit their personal

outside business interests, or the interests of a family member or business with which they are associated.

In the facts before the Commission, there is nothing improper in Mr. Sanford continuing to own an interest in River City Development, however, if he is elected as mayor of Sheffield, he may not vote, attempt to influence or in any manner participate in any dealings between River City Development and the City of Sheffield. He must totally remove himself from any and all negotiations, transactions, etc.—on both sides of the situation.

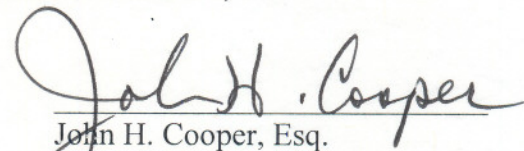
Based on the facts as provided and the above law, the former Mayor of Sheffield, who is running for re-election as Mayor, may, if elected, maintain an ownership interest in the River City Development Company, a company dealing with the City of Sheffield regarding the building of a municipal golf course. However, he may not vote, attempt to influence or in any manner participate in any aspect of any transaction or negotiations between River City Development and the City of Sheffield regarding the golf course.

CONCLUSION

The former Mayor of Sheffield, who is running for re-election as Mayor, may, if elected, maintain an ownership interest in the River City Development Company, a company dealing with the City of Sheffield regarding the building of a municipal golf course. However, he may not vote, attempt to influence or in any manner participate in any aspect of any transaction or negotiations between River City Development and the City of Sheffield regarding the golf course.

AUTHORITY

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


John H. Cooper, Esq.
Chair
Alabama Ethics Commission