

STATE OF ALABAMA
ETHICS COMMISSION



James T. Pursell, Chairman
Henry B. Gray III, Vice-Chairman
Camille S. Butrus
Helen Shores Lee, Esq.
H. Dean Buttram, Jr., Esq.

MAILING ADDRESS
P.O. BOX 4840
MONTGOMERY, AL
36103-4840

STREET ADDRESS
RSA UNION
100 NORTH UNION STREET
SUITE 104
MONTGOMERY, AL 36104



James L. Sumner, Jr.
Director

TELEPHONE (334) 242-2997
FAX (334) 242-0248

June 11, 1997

ADVISORY OPINION NO. 97-44

The Honorable Julian Aplin
Mayor
Town of Malvern
Post Office Box 98
Malvern, Alabama 36349

**Conflict Of Interests/Municipality
Purchasing Property From Mayor.**

A municipality may purchase real property from the Mayor of that municipality when the contract/Option to Buy was entered into prior to the Mayor's election to office.

A municipality may purchase real estate from the Mayor of that municipality when the first Option to Buy was signed prior to the Mayor's election and the second Option to Buy was signed subsequent to the Mayor's election when the second Option to Buy was entered into merely to correct an error in the first Option to Buy, and not to change the terms of the transaction.

Dear Mayor Aplin:

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 the Town of Malvern buy real property from the Mayor of Malvern for a site to construct and locate a water tank for the Town?

FACTS AND ANALYSIS

Julian Aplin was elected as Mayor of the Town of Malvern in the fall of 1996. In May of 1996, Mr. Aplin was approached by Vicky Ellenberg, the Town Clerk of the Town of Malvern and Charles Peters, an engineer at PMA, about purchasing some property that was owned by Mayor Aplin. The Town of Malvern was in the process of obtaining a loan and grant from Rural Development to extend water lines and construct a water tank; however, there was no other available land for the tank site. A verbal agreement was established at this time that Mr. Aplin was to sell the Town of Malvern the land for the tank.

The first Option to Buy was dated September 16, 1996, however, due to an error in the size of the parcel of land, the Option to Buy had to be resigned on December 9, 1996. The problem was caused by a surveyor's error, and the second Option to Buy accurately reflected the initial terms contemplated by the parties.

The first Option to Buy was signed prior to Mayor Aplin's election and was signed on behalf of the Town of Malvern by Eddie Good, the former Mayor.

The second Option to Buy, dated December 9, 1996, was signed by Mr. Aplin as Mayor; however, the purchase price in the second Option to Buy had not changed from the purchase price contained in the first Option to Buy.

The Alabama Ethics Law, Code of Alabama, 1975, 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 36-25-1(25) states:

"(25) 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) states:

"(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) 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 36-25-9(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."

The Alabama Ethics Law prohibits public officials or public employees from using their position in any manner that might provide a personal gain to themselves, a family member, or a business with which they are associated.

In the past, the Alabama Ethics Commission in similar situations has rendered Advisory Opinion Nos. 96-61 and 96-62 which have stated that a public official may not sell real property

to the entity he serves, unless the transaction is done through the process of eminent domain or condemnation.

In the opinion presently pending before the Commission, the facts are different, in that, the original negotiations took place prior to the Mayor being elected to office and any action on his part after his election was merely ministerial in nature.

Based on the above law and the facts as provided, the Mayor of the Town of Malvern may sell real property to the Town of Malvern when the first Option to Buy was negotiated and entered into prior to his election as Mayor and the second Option to Buy, which was entered into after his election, did not change the purchase price, but merely served to correct the legal description.

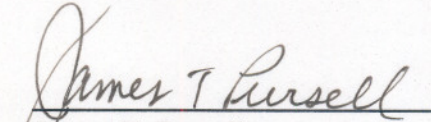
CONCLUSION

A municipality may purchase real property from the Mayor of that municipality when the contract/Option to Buy was entered into prior to the Mayor's election to office.

A municipality may purchase real estate from the Mayor of that municipality when the first Option to Buy was signed prior to the Mayor's election and the second Option to Buy was signed subsequent to the Mayor's election when the second Option to Buy was entered into merely to correct an error in the first Option to Buy, and not to change the terms of the transaction.

AUTHORITY

By 3-0 vote of the Alabama Ethics Commission on June 11, 1997.


James T. Pursell
Chair
Alabama Ethics Commission