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March 31, 2004



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ADVISORY OPINION NO. 2003-56

Mr. Gary W. Boyd
Director of Land Divestment
Jefferson County Tax Collector's Office
5925 Shoal Creek Road
Ashville, Alabama 35953

Conflict Of Interest/Company In Which The Director Of Land Divestment For The Jefferson County Tax Collector's Office Has An Interest, Purchasing Jefferson County Tax Certificates From The Jefferson County Tax Sale

A company in which the Director of Land Divestment for the Jefferson County Tax Collector's Office has an interest, may not purchase Jefferson County tax certificates from the Jefferson County tax sale, as they would be redeemable through the office in which he works and the division that he directs.

Conflict Of Interest/Company In Which The Director Of Land Divestment For The Jefferson County Tax Collector's Office Has An Interest, Purchasing Jefferson County Tax Certificates From The State Of Alabama

A company in which the Director of Land Divestment for the Jefferson County Tax Collector's Office has an interest, may not purchase Jefferson County tax certificates from the State of Alabama, as they would be redeemable through the office in which he works and the division that he directs.

Conflict Of Interest/Company In Which The Director Of Land Divestment For The Jefferson County Tax Collector's Office Has An Interest, Purchasing Jefferson County Tax Deeds Directly From The State Of Alabama

A company in which the Director of Land Divestment for the Jefferson County Tax Collector's Office has an interest, may not purchase Jefferson County tax deeds directly from the State of Alabama, as the tax deeds are originally tax certificates which are redeemable through the office in which he works and the division that he directs.

Conflict Of Interest/Company In Which The Director Of Land Divestment For The Jefferson County Tax Collector's Office Has An Interest, Managing Tax Certificates

A company in which the Director of Land Divestment for the Jefferson County Tax Collector's Office has an interest, may not manage tax certificates, as tax certificates are redeemable through the office in which he works and the division that he directs.

Conflict Of Interest/Company In Which The Director Of Land Divestment For The Jefferson County Tax Collector's Office Has An Interest, Managing Tax Deeds

A company in which the Director of Land Divestment for the Jefferson County Tax Collector's Office has an interest, may not manage tax deeds, as the tax deeds are originally tax certificates which are redeemable through the office in which he works and the division that he directs.

Dear Mr. Boyd:

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) Can Mr. Boyd or a company in which he has an interest, purchase Jefferson County Tax Certificates from the Jefferson County tax sale without an ethical violation?
- 2) Can Mr. Boyd or a company in which he has an interest, purchase Jefferson County Tax Certificates directly from the State without an ethical violation?
- 3) Can Mr. Boyd or a company in which he has an interest, purchase Jefferson County tax deeds directly from the State without an ethical violation?
- 4) Can Mr. Boyd or a company in which he has an interest, be involved in the management of Jefferson County tax certificates and records (owned by another party) without an ethical violation?
- 5) Can Mr. Boyd or a company in which he has an interest, be involved in the management of Jefferson County tax deeds and records (owned by another party) without an ethical violation?

FACTS AND ANALYSIS

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

Gary W. Boyd is currently an employee with the Jefferson County Tax Collector's Office in Birmingham, where he has been employed for 19 years. His title is Director of Land Divestment. His responsibilities include overseeing the Land Redemptions area and involve the sales and redemption of tax certificates in the Birmingham Division of Jefferson County.

Mr. Boyd states that property taxes are due on October 1 of each year and become delinquent after January 1 of the following year. If taxes have not been paid by mid-May, a tax certificate is offered at public auction to the highest bidder. If the certificate is not purchased at the local tax sale, it is, by default, sold to the State of Alabama.

Mr. Boyd sets out two categories:

SOLD AT TAX SALE - If the certificate is sold at the local tax sale, the buyer "owns" that certificate until the time that (1) the parcel is redeemed (paid) through the tax collector's office or (2) three years pass from the day of the local tax sale, and a tax deed is issued. Tax deeds are only redeemable directly through the tax deed holder. The county tax collection official maintains no jurisdiction over the redemption of a tax deed.

SOLD TO STATE - If the certificate is offered at the county sale and is not purchased by a bidder there, it is automatically Sold to State. At this point, the tax collector has no jurisdiction in the State's treatment of this certificate. The State of Alabama owns the tax certificate until the time that (1) the property is redeemed (through the county office) or (2) the State "assigns" their interest to a third party. Buyers may purchase the State's interest and effectively join the process as if they had purchased the parcel at the local county sale. If the parcel to be purchased from the State has already passed the three-year date, the State issues a tax deed instead of a certificate. The same is also true here—tax deeds are only redeemable directly through the tax deed holder. The county tax collection official maintains no jurisdiction over the redemption of a tax deed.

Mr. Boyd states that, although his office is notified of tax deeds sales and ultimately receives the county's portion of the proceeds from the State, tax deeds are not redeemable through his office. However, tax deeds are, at one point, tax certificates which are redeemable through his office. He states that there is no dealing back with his office, once a tax deed purchase has been transacted. He also states, that on October 1 of any given year, property taxes on approximately 280,000 real estate parcels become due in Jefferson County. By the following mid-May, all but about 4,000 will have been paid. Any parcel may be paid up until the day of the tax sale, so he states that he would not know exactly what was going to be offered at the sale until the actual date of the sale. He states that, beginning in March of each year, the list is made known to the general public. He states that he would have no knowledge of what was going to be available beyond what was available to the public.

Periodically, investors will have need for someone to do the administrative work of managing tax certificates. This might involve things such as (1) making sure the subsequent taxes get paid as they come due, (2) assuming the certificate goes unredeemed, securing a tax deed at the earliest possible point in time, (3) seeing that the tax deed gets recorded, etc. These would be some examples of what would be involved in the management of tax certificates. Tax certificates are redeemable through the office in which Mr. Boyd works and supervises. In the case of a redemption of a certificate, the investor, upon submission of his or her original certificate and receipts, would get his or her money back, plus 12% interest.

Once a certificate turns into a deed, different needs arise. Subsequent taxes still must be paid as they come due. A "manager" of these deeds would need to work with an attorney to pursue possession and then quiet title at the appropriate time. They would also need to be able to accommodate a redemption of the deed (by issuing a Quit Claim Deed) in the event a redemption was desired. A redemption of a tax deed occurs purely between the owner and the investor. Mr. Boyd states that his office is not involved in any potential redemption transaction once the tax deed has been issued, although the process originally went through his office when the tax deed was a tax certificate.

Mr. Boyd states that he has the opportunity to become involved in the "buyer" side of the tax certificate investment business, but he does not wish to jeopardize his current employment with Jefferson County. He, therefore, requests this opinion.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(23) defines a public employee as:

"(23) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income."

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 36-25-5(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 36-25-1(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 36-25-2(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."

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."

While the Ethics Law recognizes that public employees and public officials should not be denied the opportunity to have outside financial interests, those interests are limited if a conflict of interest exists.

In the facts before the Commission, the outside employment contemplated by Mr. Boyd is something that is directly regulated by his primary employer. In addition, he serves in a supervisory capacity with that employer.

Based on the above law and the facts as provided, a company in which the Director of Land Divestment for the Jefferson County Tax Collector's Office has an interest, may not purchase Jefferson County tax certificates from the Jefferson County tax sale, as they would be redeemable through the office in which he works and the division that he directs.

Additionally, a company in which the Director of Land Divestment for the Jefferson County Tax Collector's Office has an interest, may not purchase Jefferson County tax certificates from the State of Alabama, as they would be redeemable through the office in which he works and the division that he directs.

Further, a company in which the Director of Land Divestment for the Jefferson County Tax Collector's Office has an interest, may not purchase Jefferson County tax deeds directly from the State of Alabama, as the tax deeds are originally tax certificates which are redeemable through the office in which he works and the division that he directs.

Also, a company in which the Director of Land Divestment for the Jefferson County Tax Collector's Office has an interest, may not manage tax certificates, as tax certificates are redeemable through the office in which he works and the division that he directs.

Finally, a company in which the Director of Land Divestment for the Jefferson County Tax Collector's Office has an interest, may not manage tax deeds, as the tax deeds are originally tax certificates which are redeemable through the office in which he works and the division that he directs.

CONCLUSION

A company in which the Director of Land Divestment for the Jefferson County Tax Collector's Office has an interest, may not purchase Jefferson County tax certificates from the Jefferson County tax sale, as they would be redeemable through the office in which he works and the division that he directs.

A company in which the Director of Land Divestment for the Jefferson County Tax Collector's Office has an interest, may not purchase Jefferson County tax certificates from the State of Alabama, as they would be redeemable through the office in which he works and the division that he directs.

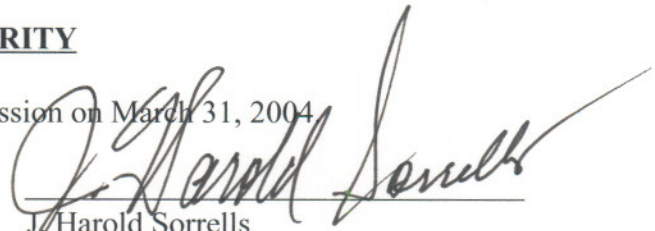
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A company in which the Director of Land Divestment for the Jefferson County Tax Collector's Office has an interest, may not manage tax certificates, as tax certificates are redeemable through the office in which he works and the division that he directs.

A company in which the Director of Land Divestment for the Jefferson County Tax Collector's Office has an interest, may not manage tax deeds, as the tax deeds are originally tax certificates which are redeemable through the office in which he works and the division that he directs.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on March 31, 2004


J. Harold Sorrells
Chair
Alabama Ethics Commission