



COMMISSIONERS

Raymond L. Bell, Jr., Esq., Chairman
Linda L. Green, Vice-Chairman
Nancy Edwards Eldridge
John H. Cooper, Esq.
Cameron McDonald Vowell, Ph.D.

**STATE OF ALABAMA
ETHICS COMMISSION**

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
WEB SITE www.ethics.alalinc.net

February 2, 2005

ADVISORY OPINION NO. 2005-01

The Honorable Richie Sparkman
The Honorable Bruce Sparkman
Members, Trinity Town Council
104 Seneca Springs Drive
Trinity, Alabama 35673

Conflict Of Interest/Members Of Town Council, Who Are Also Members Of A Limited Liability Corporation, Developing A Planned Unit Development Within The Town's Limits

Members of the Trinity Town Council, who are also members of a limited liability corporation, may develop a planned unit development within the town's limits; provided, that they do not use their official positions to influence any dealings between the town and their LLC; that they do not vote, attempt to influence or otherwise participate in any town council matters relating to the development; that they do not appear on behalf of the LLC before the town council or other town entity; and further, that they do not use any confidential information obtained in the course of their service on the town council to assist their LLC in any manner.

Dear Councilmen Sparkman:

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 two members of the Trinity Town Council develop a planned unit development within the Town of Trinity without violating the Alabama Ethics Law?
- 2) If the council members adhere to their proposed ethical compliance plan, will this be sufficient to keep them in total compliance with the Alabama Ethics Law?

FACTS AND ANALYSIS

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

Bruce Sparkman and Richie Sparkman are father and son, and both are members of the Trinity Town Council. Both were elected for a first term in 2000. Both were re-elected for a second term in 2004. Bruce is a 52-year-old Assistant Principal at West Morgan High School. Bruce also serves as the Mayor Pro-Tem. Richie is a 27-year-old attorney who practices in Decatur. Richie also serves as the Council-appointed member of the Planning Commission. The Trinity Town Council has six members, including the Mayor.

The Sparkmans are proposing to develop a 184-acre planned unit development (PUD) within the city limits of the Town of Trinity. The only other partner to this development would be Willard Hill, a Rogersville developer who owns the land. The three would likely form some type of limited liability corporation and divide ownership accordingly. The development would be adjacent to the newly built West Morgan Elementary School. The development would also likely consist of a variety of residential, commercial and light industrial uses.

The Sparkmans have generated an Ethical Compliance Plan (ECP), which they suggest, if adhered to, would allow them to develop the PUD without violating Alabama's Ethics Law. They now wish to submit that ECP to the Alabama State Ethics Commission for review. A copy of this plan is attached. In substance, their ECP states that:

- (1) they will publicly announce their participation in this development during a Council meeting;
- (2) they will confirm that their announcement is placed on the minutes and in the local newspaper;

- (3) Richie will resign his position with the Planning Commission;
- (4) they will not personally appear before any official town body regarding their development;
- (5) they will not vote on any matter specifically related to their development;
- (6) they will not participate in any official discussion the Council has regarding their development; and,
- (7) they will request this ethics opinion.

The ECP is attached as Exhibit A to this opinion.

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) 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 36-25-2(b) 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 36-25-5(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."

As a general rule, the Ethics Commission does not approve policies or plans submitted by individuals or other entities. However, the Sparkmans appear to be extremely sensitive to the dictates of the Alabama Ethics Law, and they are taking reasonable steps to ensure their compliance with the law.

Based on the facts as provided and the above law, members of the Trinity Town Council, who are also members of a limited liability corporation, may develop a planned unit development within the town's limits; provided,

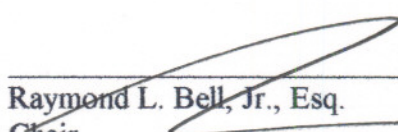
- 1) that they do not use their official positions to influence any dealings between the town and their LLC;
- 2) that they do not vote, attempt to influence or otherwise participate in any town council matters relating to the development;
- 3) that they do not appear on behalf of the LLC before the town council or other town entity; and further,
- 4) that they do not use any confidential information obtained in the course of their service on the town council to assist their LLC in any manner.

CONCLUSION

Members of the Trinity Town Council, who are also members of a limited liability corporation, may develop a planned unit development within the town's limits; provided, that they do not use their official positions to influence any dealings between the town and their LLC; that they do not vote, attempt to influence or otherwise participate in any town council matters relating to the development; that they do not appear on behalf of the LLC before the town council or other town entity; and further, that they do not use any confidential information obtained in the course of their service on the town council to assist their LLC in any manner.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on February 2, 2005.


Raymond L. Bell, Jr., Esq.
Chair
Alabama Ethics Commission

Attachment

ETHICAL COMPLIANCE PLAN

1. The Sparkmans will make a public announcement in a regular scheduled Council meeting stating:
 - (i) they will be developing an approximately 184-acre planned unit development within the city limits of Trinity adjacent to the new West Morgan Elementary School
 - (ii) the requirements of this Ethical Compliance Plan and their intent to act in complete accordance therewith
2. The Sparkmans will confirm that these announcements are placed in the Council minutes and the local newspaper.
3. Richie Sparkman will resign his position as the Council appointed member of the Planning Commission.
4. The Sparkmans will not personally appear as representatives of their development before the Town Council, Planning Commission, or Zoning Board. Appearances before official bodies will be handled by a third party.
5. The Sparkmans will not vote on any matter specifically related to their development which "does not affect all citizens generally."
6. The Sparkmans will remove themselves from and not participate in any official discussion the Council has regarding their development.
7. The Sparkmans will request an ethics opinion from the Alabama State Ethics Commission regarding the legality and propriety of their proposed development.