

STATE OF ALABAMA  
ETHICS COMMISSION



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February 5, 1997

**ADVISORY OPINION NO. 97- 10**

Hoyt L. Baugh, Jr.  
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Public Official/Mayor Of One  
Municipality Serving As Municipal  
Court Judge For Another  
Municipality.

The Ethics Law does not prohibit the  
Mayor of one Municipality from  
serving as a part-time Municipal  
Court Judge in another Municipality.

Dear Mr. Baugh:

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 an individual be hired to fill the position of Municipal Court Judge in one Municipality and serve as Mayor of another town?

**FACTS AND ANALYSIS**

Hoyt L. Baugh, Jr. is an attorney licensed to practice law in Rainsville, Alabama. He was recently sworn in as the Mayor of the Town of Fyffe, Alabama.

There is some indication that he may be requested to accept appointment to a Municipal Judgeship in the City of Rainsville and is concerned as to whether or not he may serve as a Municipal Court Judge for the City of Rainsville while he serves as Mayor of the Town of Fyffe.

On December 14, 1994, the Alabama Ethics Commission issued Advisory Opinion No. 94-68 which held that "*A practicing attorney, while serving as a part-time Municipal Judge, may stand for election, and if elected, may simultaneously serve in the Alabama Legislature.*"

Also, in 1994, Damon E. Warren filed a quo warranto action in the Circuit Court for the Fifteenth Judicial Circuit located in Montgomery, Alabama against Dean Buttram, a member of the Alabama Ethics Commission, styled State of Alabama, ex rel. Damon E. Warren v. Dean Buttram, case #CV-94-1382-PR.

The quo warranto proceeding alleged that due to the fact Dean Buttram was serving as a Municipal Court Judge in the Town of Centre, Alabama, he could not serve as a member of the Alabama Ethics Commission, as he would be holding two offices of public trust.

In his findings, the Honorable Charles Price, Circuit Court Judge for the Fifteenth Judicial Circuit referred to the Judicial Article of the *Constitution of Alabama 1901*, Amendment No. 328 which governs the activities of all judges in Alabama. Section 6.08B states that "*No judge, except a judge of probate court, shall seek or accept any non-judicial elective office or hold any office of public trust, excepting service in the military services of the State or federal government.*" In his order, Judge Price further stated that Section 6.065 of the Judicial Article sets out an exception to Section 6.08B that relates solely to Municipal Court Judges. In his order he states "*Activities of Municipal Judges are governed by a different section of the Judicial Article, i.e., Section 6.065.*" Not only are there no prohibitions in Section 6.065 against a Municipal Judge occupying another office of public trust, but Section 6.065 expressly provides that "***The prohibited activities of Section 6.08A and B shall not be applicable to a Judge of a Municipal Court.***" Judge Price went on to hold that "***Because of this expressed Constitutional exception, a Municipal Judge may hold more than one office of public trust. Therefore, since the defendant as a Municipal Court Judge is not prohibited from holding another office of public trust, he is entitled to hold the office of Ethics Commissioner.***"

Judge Prices' holding was affirmed by the Alabama Supreme Court during the October term of 1994 - 1995.

In addition to the exceptions relating to Municipal Court Judges contained in *The Alabama Constitution*, the Alabama Ethics Law further excludes from the definition of a "*public official*" a part-time Municipal Court Judge.

The Alabama Ethics Law, Code of Alabama, 1975, 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 36-25-3(a) states:

*"(a) There is hereby created a State Ethics Commission composed of five members, each of whom shall be a fair, equitable citizen of this state and of high moral character and ability. The following persons shall not be eligible to be appointed as members: (1) a public official; (2) a candidate; (3) a registered lobbyist and his or her principal; or (4) a former employee of the commission. For purposes of this section, a public official shall not be deemed to include a part-time municipal judge . . ."*

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."*

Based on the facts as provided and the above law, the Ethics Law would not prohibit a licensed attorney from serving as a Municipal Court Judge in one jurisdiction while holding the office of Mayor in another jurisdiction.

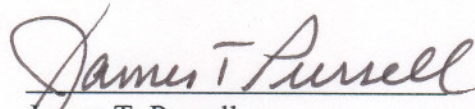
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**CONCLUSION**

The Ethics Law does not prohibit the Mayor of one Municipality from serving as a part-time Municipal Court Judge in another Municipality.

**AUTHORITY**

By 4 - 0 vote of the Alabama Ethics Commission on February 5, 1997.

  
James T. Pursell  
Chair  
Alabama Ethics Commission