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October 21, 1997

## ADVISORY OPINION NO. 97-93

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Huntsville, Alabama 35801

**Conflict Of Interests/Municipal Building  
Inspector Obtaining Outside Employment As  
Real Estate Appraiser.**

A Municipal Building Inspector, who has outside employment as a Residential Real Estate Appraiser, may not inspect property located in his district that was constructed either by a business or individual for whom he does or has done residential real estate appraisals.

A Municipal Building Inspector may not inspect property on which he himself has done the real estate appraisal.

A Municipal Building Inspector may perform real estate appraisals on construction by contractors who do not build in the district that he inspects.

A Municipal Building Inspector may not make use of any Municipal equipment, facilities, time, materials, human labor, or other public property under his discretion or control to assist him in either obtaining the appraisal work or in performing the appraisal work.

A Municipal Building Inspector, who also has employment as a Residential Real Estate Appraiser, must do the real estate appraisal work on his own time whether it be after hours, annual leave, or weekends.

Dear Mr. Royer:

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 a Municipal Building Inspector, who has outside employment as a Residential Real Estate Appraiser, inspect property located in his district that was constructed either by a business or individual for whom he does or has done residential real estate appraisals?
2. May a Municipal Building Inspector continue to do real estate appraisals for businesses and individuals doing construction work in his district?

#### **FACTS AND ANALYSIS**

George W. Royer, Jr. represents Jerry Pearson. Mr. Pearson is employed by the City of Huntsville, Alabama, as a Building Inspector. Mr. Pearson's duties as Building Inspector involve the inspection of new residential and commercial construction to determine whether applicable City of Huntsville Building Codes have been complied with in connection with the construction. Under the Huntsville City Code, the construction must be approved by a City Building Inspector before a Certificate of Occupancy will be issued by the City.

Mr. Pearson is also a Licensed Real Estate Appraiser. Mr. Pearson only appraises residential real estate. Mr. Pearson currently has an association with a Real Estate Appraisal Firm known as The Appraisal Group in Huntsville, Alabama. Mr. Pearson's relationship with The Appraisal Group is that of an Independent Contractor. The real estate appraisals performed by Mr. Pearson are issued in the name of The Appraisal Group. Mr. Pearson receives one-half of all appraisal fees received by The Appraisal Group from any appraisals performed by him.

Although Mr. Pearson is a licensed Appraiser, he is not yet a Certified Appraiser. He is currently completing a two-year apprenticeship to become a Certified Appraiser. At the end of his two-year apprenticeship, Mr. Pearson will be eligible to be certified (as opposed to only licensed) as a Residential Real Estate Appraiser. When he is certified as a Residential Real Estate Appraiser, he will then be able to issue and sign appraisals himself.

All appraisals which Mr. Pearson performs, are done on his own time. Mr. Pearson does appraisals after hours in the evenings and on weekends. He does no appraisals during normal business hours, except when taking approved leave time available to him in his employment with the City of Huntsville.

The City of Huntsville is divided into three building inspection districts. The City of Huntsville has three Building Inspectors. Each of the Building Inspectors generally only inspects (except as hereafter discussed) construction which is performed in his own district. There are occasions where Building Inspectors will request other Inspectors, from out of their district, to inspect construction which would ordinarily be inspected by the Inspector in whose district the construction has been performed. This situation arises in instances where, for example, a relative of the Building Inspector has performed some construction work on a particular project. To avoid a conflict of interests or the appearance of a conflict of interests in such situations, the Building Inspector will request an out-of-district Inspector to inspect the construction.

Mr. Pearson is not performing appraisals on any construction built by contractors who perform residential construction inside his district. He is not performing any such appraisals regardless of whether the appraisal would be on residential construction located within or without his district. The great majority of the appraisals being conducted by Mr. Pearson currently involve old construction upon which no building inspection is required (i.e., appraisals on property upon which second mortgages are being obtained or situations in which houses are being re-sold by their owner).

Mr. Pearson's Supervisor at the City of Huntsville has instructed Mr. Pearson that, for him to be able to continue to perform real estate appraisals, it will be necessary to obtain an opinion from the State Ethics Commission permitting him to do so. Accordingly, Mr. Pearson requests an opinion of the State Ethics Commission as to whether, based upon the above facts, he may perform real estate appraisals in the following situations:

**Situation One:** Mr. Pearson will continue to perform no appraisals on new construction (including rehabilitation or renovation work) within his district.

**Situation Two:** Mr. Pearson will perform appraisals on pre-existing residences within his district. As stated above, such appraisals will be performed in

circumstances involving a refinance or resale of an existing residence in situations where no building inspection would be involved.

**Situation Three:** Mr. Pearson would perform appraisals on construction by contractors who do no building within his district. In other words, Mr. Pearson would perform appraisals on new construction in the two other districts in the City of Huntsville and outside the City of Huntsville for building contractors who do not perform any construction, residential or commercial, within his district.

**Situation Four:** There might be a limited number of instances in the future where some building contractors, who perform construction outside of Mr. Pearson's district, build a house inside of Mr. Pearson's district. In these instances, Mr. Pearson would continue to perform appraisals on new construction outside of his district by that contractor, but would not inspect the new construction by the contractor within his district. In these circumstances, Mr. Pearson would request an out-of-district Inspector to inspect that new construction. Again, it is envisioned that this latter instance would involve only isolated instances of new construction within Mr. Pearson's district where the majority of the building contractor's construction was performed out-of-district. In the event that any such contractor began performing substantial construction inside Mr. Pearson's district, Mr. Pearson would cease all appraisal work on construction work performed by that contractor.

**Situation Five:** All appraisals which Mr. Pearson will perform will be done on his own time. Mr. Pearson will do no appraisals during normal City of Huntsville business hours, except when taking approved leave time. Mr. Pearson will not utilize his City of Huntsville vehicle during the course of making appraisals, nor will he make appraisals while wearing his City of Huntsville uniform.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(24) states:

"(24) 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) states:

"(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) 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 36-25-5(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 36-25-5(e) states:

"(e) No public official or public employee shall, other than in the ordinary course of business, **solicit a thing of value** from a subordinate or person or business with whom **he or she directly inspects, regulates, or supervises** in his or her official capacity." (Emphasis added)

While the Office of Building Inspector and the outside employment of residential real estate appraiser are not closely related, a potential conflict of interests exists for a Building Inspector to inspect residential property within his district when the construction was performed by a business or individual whom the Inspector does appraisal work for in his outside time. The conflict becomes more acute when the Building Inspector is asked to inspect property on which he himself has done the real estate appraisal.

In the facts as provided to the Commission, the Building Inspector recognizes the potential pitfalls and has taken appropriate action to avoid these potential conflicts.

To continue to avoid potential conflicts in the future, the Building Inspector/Residential Real Estate Appraiser must follow the appropriate guidelines:

1. As a Building Inspector, he may not inspect property in his district that was constructed either by a business or individual for whom he does or has done residential real estate appraisals.
2. He may not inspect property on which he himself has done the real estate appraisal.
3. He may do real estate appraisals for businesses and individuals not doing construction work in his district.
4. In addition, he may not make use of any City of Huntsville equipment, facilities, time, materials, human labor, or other public property under his discretion or control to assist him in either obtaining the appraisal work or in performing the appraisal work.
5. Further, all appraisal work must be done on his own time, whether it be after hours, annual leave, etc.

**CONCLUSION**

A Municipal Building Inspector, who has outside employment as a Residential Real Estate Appraiser, may not inspect property located in his district that was constructed either by a business or individual for whom he does or has done residential real estate appraisals.

A Municipal Building Inspector may not inspect property on which he himself has done the real estate appraisal.

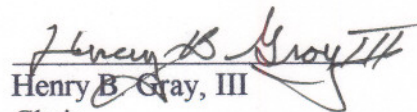
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A Municipal Building Inspector may not make use of any Municipal equipment, facilities, time, materials, human labor, or other public property under his discretion or control to assist him in either obtaining the appraisal work or in performing the appraisal work.

A Municipal Building Inspector, who also has employment as a Residential Real Estate Appraiser, must do the real estate appraisal work on his own time whether it be after hours, annual leave, or weekends.

**AUTHORITY**

By 3-0 vote of the Alabama Ethics Commission on October 21, 1997.

  
Henry B. Gray, III  
Chair  
Alabama Ethics Commission