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June 4, 2008

ADVISORY OPINION NO. 2008-09

Nayyer Mahdi
Grants Administrator
Mobile County Commission
205 Government Street
Mobile, Alabama 36644

Conflict Of Interest/Grants Administrator
For The Mobile County Commission
Serving On The Board Of Directors For A
Non-Profit Organization Who From Time
To Time Makes Applications For Assistance
From The Mobile County Commission

The Grants Administrator for the Mobile County Commission may serve on the board of directors of a non-profit organization who, from time to time makes applications for assistance from the Mobile County Commission. However, he may not vote, attempt to influence or in any manner participate in that non-profit organization's applications for grants from the Mobile County Commission, including but not limited to reviewing recommendations and making a final determination with respect to the application.

Dear Mr. Mahdi:

The Alabama Ethics Commission is in receipt of your request for an Advisory Opinion, and this opinion is issued pursuant to that request.

QUESTION PRESENTED

May the Grants Administrator for the Mobile County Commission serve on the board of directors for a non-profit organization who from time to time makes applications for assistance from the Mobile County Commission?

FACTS AND ANALYSIS

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

Nayer Mahdi serves as Grants Administrator for the Mobile County Commission. Among other things, he supervises an employee who evaluates applications for financial assistance made by various non-profit organizations. He also makes recommendations as to whether these applications should be granted and, if so, the amount of assistance to be provided. Mr. Mahdi serves on a committee that reviews the employee's recommendations and makes a final determination with respect to each application.

Although it has not done so in recent years, a particular non-profit organization has from time to time made applications for assistance. Mr. Mahdi has been asked to serve on the organization's board of directors, and he would like to accept.

He is concerned as to the potential conflicts of interest and seeks advice on the matter.

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(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 36-25-1(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 36-25-5(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 36-25-9(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 fact that a conflict of interest exists does not mean the Ethics Law has been violated. To resolve a conflict of interest, the individual involved must merely remove himself or herself from the situation.

The revolving door provisions, however, allow for no exceptions.

On May 7, 2003, the Commission rendered Advisory Opinion No. 2003-25, which dealt with the Mayor and City Council members of the City of Saraland voting to appropriate funds for entering into contracts with organizations on whose board of directors they sat. These organizations included the Red Cross, United Way, Friends of the Animal Shelter, etc., i.e., various non-profit organizations.

The opinion stated that:

“The Mayor and/or members of the Saraland City Council may not vote, attempt to influence or otherwise participate in any votes to appropriate funds to, or contract with, organizations on whose Boards of Directors they sit, as these organizations are businesses with which they are associated.”

The opinion went on to state that:

“Service on the board of directors (regardless of whether or not compensation is received) makes that organization a business with which the person is associated.”

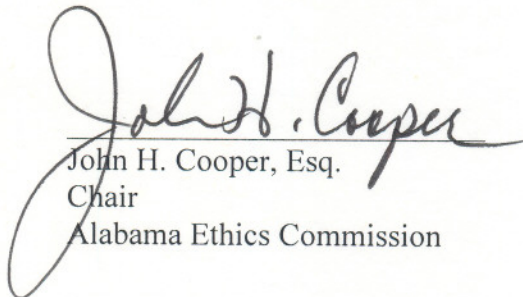
Based on the facts as provided and the above law, the Grants Administrator for the Mobile County Commission may serve on the board of directors of a non-profit organization who, from time to time makes applications for assistance from the Mobile County Commission. However, he may not vote, attempt to influence or in any manner participate in that non-profit organization's applications for grants from the Mobile County Commission, including but not limited to reviewing recommendations and making a final determination with respect to the application.

CONCLUSION

The Grants Administrator for the Mobile County Commission may serve on the board of directors of a non-profit organization who, from time to time makes applications for assistance from the Mobile County Commission. However, he may not vote, attempt to influence or in any manner participate in that non-profit organization's applications for grants from the Mobile County Commission, including but not limited to reviewing recommendations and making a final determination with respect to the application.

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on June 4, 2008.



John H. Cooper, Esq.
Chair
Alabama Ethics Commission