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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

October 4, 2000

ADVISORY OPINION NO. 2000-54

Tim Smith
Owner, Smith's Awards & Signs/
Candidate, County School Board
1654 Bear Creek Road
Brent, Alabama 35034

Conflict Of Interests/Business Owner, Who Is Candidate For County School Board, Doing Business With School Board If Elected.

A business owned by a candidate for the Bibb County Board of Education may do business with the County Board of Education if the candidate is elected; provided, that all competitive bid laws are strictly adhered to; that no confidential information obtained in the course of his service as a member of the School Board be used to influence the bid process; and, that the School Board Member not otherwise use or attempt to use his position on the School Board to obtain business for his company.

Should the purchases made by the School System be outside the competitive bid laws, the School Board Member may sell products to the School System at invoice price and may not make a profit from the sale.

A business owner, who is also a member of the Bibb County Board of Education, may not use his position to encourage or influence individual teachers, principals, clubs or organizations within the School System to make purchases from his business. Should the individual teachers, principals, clubs or organizations within the School System desire to make purchases from his business, the products must be sold at the Board Member's invoice price and his business may not make a profit from the sale.

In addition, any contracts entered into by the member of the Bibb County Board of Education, which are paid in whole or in part by state, county or municipal funds, must be filed with the Ethics Commission within ten days after the contract has been entered into.

Dear Mr. Smith:

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

May a candidate for the Bibb County Board of Education, if elected, sell products to individual teachers, principals, clubs and organizations within the school system? And, may he bid on purchases made by the School Board or System?

FACTS AND ANALYSIS

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

Tim Smith is the owner of Smith's Awards & Signs in Brent, Alabama. He is a candidate

for a position on the Bibb County Board of Education. The election is to be held November 6, 2000.

Mr. Smith states that products are purchased by individual teachers, principals, clubs and organizations within the School System, and none of the purchases are Board approved. If he is successful in the election, he is seeking guidance as to what prohibitions would exist under the Alabama Ethics Law in his selling products to individual teachers, principals, clubs and organizations within the school system and/or bidding on purchases made by the School Board or System.

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 36-25-8 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."

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."

Section 36-25-11 states:

"Unless exempt pursuant to Alabama competitive bid laws or otherwise permitted by law, no public official or public employee, or a member of the household of the public employee or the public official, and no business with which the person is associated shall enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county, or municipal funds unless the contract has been awarded through a process of competitive bidding and a copy of the contract is filed with the commission. All such contract awards shall be made as a result of original bid takings, and no awards from negotiations after bidding shall be allowed. A copy of each contract, regardless of the amount, entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the commission within 10 days after the contract has been entered into."

On April 30, 1997, the Commission issued the Reconsideration of Advisory Opinion No. 95-107. That opinion held that:

"A business owned by a member of the Board of Education may do business with the Cullman City School System; provided, all competitive bid laws are strictly adhered to; that no confidential information obtained in the course of his service as a School Board Member be used to influence the bid process; and that the School Board Member not otherwise use or attempt to use his position on the School Board to obtain business for his office supply company."

Should the purchases made by the School Board System be outside the competitive bid laws, the School Board Member may sell school supplies to the School System at invoice price and may not make a profit off the sale.

An office supply company owned by a member of the School Board may respond to bid requests sent by the School; provided, all competitive bid laws are strictly adhered to; and that the Board Member not use his position to influence or attempt to influence the outcome of the bid or contract compliance process; and provided further, that a copy of the contract is filed with the Ethics Commission within 10 days after the contract has been entered into.”

The facts before the Commission are identical to those in Advisory Opinion No. 95-107, as Reconsidered.

Based on the above law and the facts as provided, a business owned by a candidate for the Bibb County Board of Education, if he is elected, may do business with the School Board; provided, that all competitive bid laws are strictly adhered to. Should the items fall outside the bid law, they may be sold to the School System at cost and the Board Member or the Board Member’s business may not make a profit from the transaction.

In addition, the business owned by the Board Member may sell products to individual teachers, principals, clubs and organizations within the School System at cost and his business may not profit from the transactions.

Further, the member of the School Board may not solicit or otherwise encourage individual teachers, principals, clubs or organizations within the School System to do business with his company.

Finally, any contracts entered into by the member of the Bibb County Board of Education, which are paid in whole or in part by state, county or municipal funds, must be filed with the Ethics Commission within ten days after the contract has been entered into.

CONCLUSION

A business owned by a candidate for the Bibb County Board of Education may do business with the County Board of Education if the candidate is elected; provided, that all competitive bid laws are strictly adhered to; that no confidential information obtained in the course of his service as a member of the School Board be used to influence the bid process; and,

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that the School Board Member not otherwise use or attempt to use his position on the School Board to obtain business for his company.

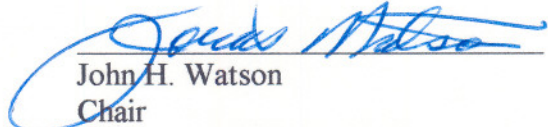
Should the purchases made by the School System be outside the competitive bid laws, the School Board Member may sell products to the School System at invoice price and may not make a profit from the sale.

A business owner, who is also a member of the Bibb County Board of Education, may not use his position to encourage or influence individual teachers, principals, clubs or organizations within the School System to make purchases from his business. Should the individual teachers, principals, clubs or organizations within the School System desire to make purchases from his business, the products must be sold at the Board Member's invoice price and his business may not make a profit from the sale.

In addition, any contracts entered into by the member of the Bibb County Board of Education, which are paid in whole or in part by state, county or municipal funds, must be filed with the Ethics Commission within ten days after the contract has been entered into.

AUTHORITY

By 3-0 vote of the Alabama Ethics Commission on October 4, 2000.


John H. Watson
Chair
Alabama Ethics Commission