

# OFFICE OF THE ATTORNEY GENERAL

83-00176



CHARLES A. GRADDICK  
ATTORNEY GENERAL  
STATE OF ALABAMA

FEB 4 1983

ADMINISTRATIVE BUILDING  
64 NORTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (205) 834-5150

JAMES R. SOLOMON, JR.  
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ADMINISTRATIVE ASSISTANT

Honorable Lawrence Dumas, Jr.  
City Attorney  
City of Mountain Brook  
Cabaniss, Johnston, Gardner,  
Dumas & O'Neal  
1900 First National-Southern Bldg.  
Birmingham, AL 35203

Municipalities -- City Managers --  
Office of Profit

President of City Council is  
prohibited, under terms of  
Code of Alabama 1975, §§ 43-11-12,  
43-11-53 and 43-11-161 from  
serving as Acting City Manager.

Dear Mr. Dumas:

The opinion request of the City of Mountain Brook has been received in the Office of the Attorney General. Your request presents the following fact situation:

At the regular meeting of the City Council on January 10, 1983, by resolution, it designated Fred E. Vann as acting City Manager. Daniel E. Watkins, the City Manager, is incapacitated by illness. The resolution does not become effective until January 15. Mr. Vann is President of the City Council. Section 2-7 of the Mountain Brook City Code (Ordinance No. 547, Section 3) provides that councilmen shall receive no salary for performance of the duties

Honorable Lawrence Dumas, Jr.  
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of their office, and the councilmen  
receive no pay.

Your request cites for our consideration Constitution of Alabama 1901 § 280, Code of Alabama 1975 §§ 36-2-1(b), 11-43-12, and 11-43-53. You ask whether any of these provisions would prohibit the President of the City Council from serving as Acting City Manager at a salary of \$3,000 per month. It is noted that Mr. Vann receives no compensation as President of the Council.

Code of Alabama 1975, §§ 11-43-12 and 11-43-53 provide that no member of a city council shall be directly or indirectly interested in any work, business or contract, the expense, price or consideration of which is paid from the treasury. Furthermore, this office has held that under Code of Alabama 1975, § 11-43-161 no officer of a municipality may hold another salaried position in the municipality. 53 Quarterly Report Attorney General 67, copy enclosed. The code provision under which this opinion was written remains substantially unchanged.

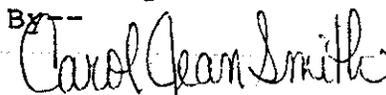
Therefore, it is the opinion of this office that under the provisions of Code of Alabama 1975, § 11-43-12, 11-43-53 and 11-43-161 the President of the City Council is prohibited from serving as Acting City Manager of the municipality at a salary of \$3,000 per month.

Because the provisions of Section 11-43-12, 11-43-53 and 11-43-161 are clearly determinative of the question presented, it appears to be unnecessary to consider other cited provisions. If, however, we may be of further assistance, please do not hesitate to contact us.

Sincerely yours,

CHARLES A. GRADDICK  
Attorney General

By--



CAROL JEAN SMITH  
Assistant Attorney General

CJS:es

Enclosures

office where it is published for fifty-two consecutive weeks. Provided, that if there is no newspaper printing plant in the county where the advertisement is published, the printing may be done in another county in the State of Alabama."

From the information furnished in your request, it appears that The Montgomery Examiner fully meets the requirements of the above quoted statutory provision. Therefore, I am of the opinion that The Montgomery Examiner is an authorized publication for legal advertisements and notices which are to be published in Montgomery County, Alabama.

Yours very truly,

A. A. CARMICHAEL,  
Attorney General.

November 10, 1948.

Hon. Thomas G. Etheredge,  
Mayor, Town Creek,  
Lawrence County,  
Town Creek, Alabama.

Officers and Offices—Municipalities—Bonds.

1. A mayor of a town may not hold any other salaried position in the town.
2. A town clerk must give bond.

Opinion by Assistant Attorney General Parker.

Dear Sir:

Your request for an official opinion, bearing date of September 24, 1948, is as follows:

"I was elected Mayor of Town Creek, Ala. September 20, 1948. A five member board of aldermen was elected at the same time.

"This is a small town with a population of about 800. We have a city water system of 130 meters. A city clerk is employed for 14 days per month at \$100.00 @. Is it permissible for the Mayor to do the work of the city clerk and receive pay, if the board of aldermen approve? The salary of the Mayor is \$30 to \$40 a month.

"Is it not desirable for the city clerk or person handling the town finances to make bond?"

In my opinion, Title 37, Section 452, Code of Alabama 1940, would prohibit a mayor of a town from holding the position of town clerk or any other salaried position in the town. Section 452, supra, is, in pertinent part, as follows:

"Mayor and alderman accepting employment from public service corporation vacates office. . . . And any mayor or alderman, or other member of the governing body of any municipality who shall have any private or personal financial dealings with, for or on account of the municipality, except such as are imposed by his official position, or who shall render any service or do any work or supply any commodity, for financial compensation, payable out of the funds of the municipality, shall be guilty of a misdemeanor, and the doing of such act shall constitute grounds for impeachment of such person."

See, also, Quarterly Report of Attorney General, Vol. 21, page 154.

In answer to your second question, the town clerk must give bond as outlined in Title 37, Section 425, Code of Alabama 1940, which is as follows:

"Additional duties; bond—The clerk, in addition to these enumerated duties, shall perform any and all duties that may be required of him, by ordinance or resolution. He shall give bond with sureties, to be approved by the mayor, in such sum as the council may prescribe."

Yours very truly,

A. A. CARMICHAEL,  
Attorney General

November 10, 1948.

Hon. A. R. Meadows,  
State Superintendent of Education,  
State of Alabama,  
CAPITOL.

Constitutionality—Schools—State Department of Education—  
City Boards of Education—Teachers.

1. United States Supreme Court's decision in the *Vashti McCollum* Case does not outlaw elective non-sectarian instruction from King James Bible in public schools of Alabama, provided such instruction is from an historical, narrative, biographical or literary standpoint, and without reference to any religious sect, society, denomination or mode of worship.

2. A local board of education offering such instruction by outside teachers lawfully may accept donations and gifts to finance the costs, in whole or in part, of such instruction.

Opinion by

Dear Sir:

Your request for an opinion is as follows:

"On October 11, 1948, in the affirmative of public schools of Alabama, Vol. XVII, ex rel. VASHTI McCOLLUM SCHOOL DISTRICT No. 1, Champaign School System of Birmingham for non-sectarian Bible in religious education literature with no emphasis is requested on the text."

"1. Is it legal for non-sectarian Bible historical, narrative, biographical course is approved as a course of Education and is it legal?"

"2. If the answer is yes of education accept gifts of such courses from such sources?"

"3. If the answer is yes version of the Bible acceptable?"

In the 1939 opinion of the Report of Attorney General of courses in Bible and religion schools of Alabama, provided no sect, creed or denomination, religion from an historical, narrative. It was further held that, before for such courses, the same must course list by the State Department by a certificated teacher.

Those conclusions were presented is whether they are