

OFFICE OF THE
ATTORNEY GENERAL

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STATE OF ALABAMA

FEB 17 1989

89-00174

BEFORE RELYING ON THIS
OPINION, SEE AMENDMENT
TO CODE SECTION 41-16-60,
WHICH IS EFFECTIVE 6/9/2011.

Hon. John D. Harrison
Mayor, City of Luverne
P. O. Drawer 271
Luverne, Alabama 36049

Municipalities - Banks and
Banking - Mayors - Conflict of
Interest - Officers and Offices

Mayor or other member of municipal governing body prohibited by Code of Alabama 1975, §§ 11-43-54 and/or 41-16-60, from voting, by virtue of special financial interest, on question of placing funds of municipality in bank in which he or she owns less than a majority interest of stock, or for which he or she serves as officer or director.

Mayor or other member of municipal governing body not prohibited by Code of Alabama 1975, §§ 41-16-60, 11-43-12, 11-43-12.1, and/or 11-43-53 from serving as officer or director of bank and also serving as member of municipal governing body, where funds of municipality are in fact deposited in such bank, so long as he or she does not own a majority interest of the stock of such bank.

Dear Mayor Harrison:

The following is issued in response to your request for an opinion from the Attorney General.

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QUESTION

Is there any legal restriction that would prevent municipal funds from being deposited in a bank by a municipality, where the mayor or some other member of the governing body of the municipality owns stock in such bank, or serves such bank as an officer or member of its board of directors?

FACTS AND ANALYSIS

Several sections of the Code touch on the issues presented by your question. Code of Alabama 1975, §41-16-60, deals with conflicts of interests of members or officers of local governing bodies or instrumentalities of counties and municipalities. It provides:

"No member or officer of . . . the governing bodies of the municipalities of the state . . . shall be financially interested or have any personal beneficial interest, either directly or indirectly, in the purchase of or contract for any personal property or contractual service, nor shall any person willfully make any purchase or award any contract in violation of the provisions of this article."

Code of Alabama 1975, §11-43-12, provides:

"(a) No alderman or officer or employee of the municipality shall be directly or indirectly interested in any work, business or contract, the expense, price or consideration of which is paid from the treasury, nor shall any member of the council or officer of the municipality be surety for any person having a contract, work or business with such municipality for the performance of which a surety may be required.

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"(b) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not less than \$50.00 nor more than \$1,000.00, and may also be sentenced to hard labor for the county for not more than six months."

Code of Alabama 1975, §11-43-12.1, provides:

"(a) Notwithstanding any statute or law to the contrary, any municipality in Class 7 or 8, may legally purchase from any of the elected officials of such municipality any personal service or personal property, provided the elected official is the only domiciled vendor of the personal service or personal property within the municipality and such elected official may legally sell such personal service or personal property to the municipality. The cost or value of such personal service or personal property authorized to be obtained or purchased under this section shall in no event exceed the sum of \$2,000.00. The elected official, if he proposes to sell to the municipality, shall not participate in the decision-making process determining the purchase of such personal service or personal property but shall make any disclosure required by the provisions of the Code of Ethics for public officials, found in Chapter 25 of Title 36. The governing body of such municipality shall determine and find that the elected official, from whom the purchase is to be made is the sole vendor domiciled in the municipality and that the selling price of such service or property is lower than could be obtained from a vendor domiciled outside the municipality, and, in making

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such determination, consideration may be given to the quality of service or property proposed to be supplied, conformity with specification, purposes for which required, terms of delivery, transportation charges, and the date of delivery.

"(b) Notwithstanding any statute or law to the contrary any municipality, in Class 7 or 8, may legally purchase from any of the elected officials of such municipality any personal service or personal property under the Competitive Bid Law procedures established by Article 3, Chapter 16, Title 41, and such elected official may legally sell such personal service or personal property to such municipality under the procedures of said statutes. The elected official, if he proposes to bid, shall not participate in the decision-making process determining the need for or the purchase of such personal service or personal property, or in the determination of the successful bidder, and the governing body shall affirmatively find that the elected official, from whom the purchase is to be made, is the lowest responsible bidder as required by said statutes. It shall be the duty and responsibility of the municipality to file a copy of any contract awarded to any of its elected officials with the State Ethics Commission and all awards shall be as a result of original bid takings.

"It is the intention of the legislature by the adoption of this section to specifically remove any statute or legal prohibitions against municipalities, in the Classes 7 and 8, dealing with their elected officials in the purchase of personal services or personal property.

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"(c) In the event an elected official offers to sell or submit a bid to the municipality, for the sale of personal property or a contract for furnishing personal services, the said official shall make full disclosure of his ownership or extent of ownership in the business organization with which he is associated. In the event the business organization is a partnership, the names and addresses and percentage of ownership of the partners shall be disclosed and, in the event the business organization is a corporation, the names and addresses and percentage of ownership of all stockholders shall be disclosed. The disclosure requirement hereunder, shall be made, under oath of the elected official, in the original submission to the municipality and in like manner in any contract or agreement entered into with the municipality."

Code of Alabama 1975, §11-43-53(a), provides:

"No member of any city or town council shall, . . . be interested, directly or indirectly, in any contract or job for work or material, or the profits thereof or services to be performed for the corporation, except as provided in this title."

Code of Alabama 1975, §11-43-54, provides:

"No councilman shall be entitled to vote on any question in which he, his employer or employee has a special financial interest at the time of voting or was so interested at the time of his election. For violating this section or §11-43-53, a council may be removed."

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This office has previously determined that there is no conflict of interest present under the above-cited statutes if a corporation in which a municipal officer owns less than a majority of the stock does business with a municipality. See Opinions of the Attorney General to the Honorable Charles R. Paul of Geneva dated June 16, 1981, and to the Honorable Frank Manderson, Mayor of the City of Northport dated March 18, 1980. However, we have also determined that a council member is prohibited by §11-43-54 from voting on any question in which he has a special financial interest. See Opinion of the Attorney General to the Honorable Guy F. Gunter, III, City Attorney, City of Opelika, dated January 5, 1988.

Under the facts you have presented to us, it is clear that, as Mayor, you are prohibited from voting as a member of the governing body of the City of Luverne (a Class 8 city) to place city funds in any bank in which you own stock, or on whose board of directors you serve, or for which you serve as an officer.

Code of Alabama 1975, §§41-16-60, 11-43-12 and 11-43-53, would prohibit a mayor or other member of municipal governing body from serving as an officer or director of bank and also serving as member of a municipal governing body, where funds of the municipality are in fact deposited in such bank, if such mayor or member of the municipal governing body owns a majority interest of the stock of such bank. See Opinion of the Attorney General to the Honorable Henry F. Lee, III, dated December 15, 1985. Under the facts you have presented to us, you would not be prohibited from serving as mayor and serving as an officer or director of and/or owning stock in a bank in which city funds were deposited, since your stock ownership is less than a majority interest.

CONCLUSION

We are of the opinion that Code of Alabama 1975, §§11-43-54 and 41-16-60, would prohibit a mayor or other member of a municipal governing body from voting on a question of whether city funds will be deposited in a bank in which he or she owns stock, and on whose board of directors he or she serves, or for which he or she serves as an officer. On the other hand, Code of Alabama 1975, §§41-16-60, 11-43-12 and 11-43-53, would not prohibit a mayor or member of a municipal governing body from

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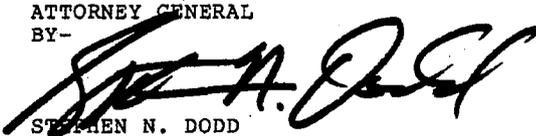
-serving both as a member of such governing body and as a stockholder, officer, or member of the board of directors of a bank in which city funds are deposited, provided his stock ownership was less than a majority interest.

As the Court in City of Montgomery v. Brendle Fire Equip., Inc., noted "no man can serve two masters with equal fidelity when rival interests come into existence." 279 So.2d 480, 486 (1973). Thus, an individual owning more than a majority interest of stock in a bank and choosing to serve as a member of a municipal governing body must, in order to comply with §41-16-60, be willing to step down from such municipal governing body, or relinquish ownership of his or her stock in such bank when and if funds of the municipality are deposited in that bank.

I hope your question has been adequately answered.

Sincerely,

DON SIEGELMAN
ATTORNEY GENERAL
BY-



STEPHEN N. DODD
Assistant Attorney General

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