

OFFICE OF THE ATTORNEY GENERAL

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JIMMY EVANS
ATTORNEY GENERAL
STATE OF ALABAMA

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ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 242-7300

Honorable Thomas E. Blair
Chairman
East Brewton Water & Sewer Board
P. O. Box 2010
East Brewton, Alabama 36427

Water and Sewer Boards -
Municipalities - Boards of
Directors - Conflicts of Interest

Public policy prohibits the
Street Superintendent for the
City of East Brewton from serving
as a member of the board of
directors of the East Brewton
Water and Sewer Board if his
duties as Street Superintendent
involve daily interaction with
the Water and Sewer Board.

Dear Mr. Blair:

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

QUESTION

Does the appointment of the Street
Superintendent for the City of East Brewton
to the East Brewton Water and Sewer Board
create a conflict of interest?

FACTS AND ANALYSIS

Your request states that the East Brewton Water and Sewer Board was incorporated under Title 37, Section 394 to 402 of the Code of Alabama. We note that Title 37, § 394, et seq., of the 1940 Code is presently codified at Code of Alabama 1975, § 11-50-230, et seq.

Section 11-50-234 provides, in pertinent part, as follows:

"(a) Each corporation formed under this division shall have a board of directors which shall constitute the governing body of the corporation, which board shall consist of at least three members. All members of the board of directors shall be reimbursed for actual expenses incurred in and about the performance of their duties under this division, and the chairman of said board may, at the discretion of the board of directors, be paid a director's fee in an amount not exceeding \$15.00 each month, and each member of the board of directors other than the chairman may be paid a director's fee in an amount not exceeding \$10.00 each month. Any officer of the municipality shall be eligible for appointment and may serve as a member of the board of directors but shall not receive a fee for his services; provided, that at no time shall the board consist of more than two officers of the municipality.

"The directors of the corporation shall be elected by the governing body of the municipality, and they shall be so elected that they shall hold office for staggered terms. The first term of office of one director shall be two years, of another director shall be four years and of the third director shall be six years as shall be designated at the time of their election, and thereafter the term of office of each director shall be six years.

"The governing body of any municipality which has heretofore or hereafter authorized the creation of a corporation as provided in this division may, at its option, increase the board of directors from three to five members to serve according to all the conditions and terms set forth in this division. . . ." (Emphasis added.)

This section clearly allows officers of the municipality to serve as members of the board of directors. However, it is our opinion that the Street Superintendent is not an officer of the municipality. In prior opinions, this office has held that a person is not an officer and does not hold an office of profit if he does not exercise a part of the sovereign power of the state. Opinion to Honorable Charles A. Nix, City Attorney, City of Lanett, under date of February 10, 1981; 15 Quarterly Report of the Attorney General 350. The Street Superintendent is employed by the city and answers to the mayor and city council and does not exercise a part of the sovereign power of the state. Accordingly, it would appear that since an officer of the municipality may serve as a member of the board of directors of the water and sewer board an employee of the municipality may serve as a member of the board of directors. However, it is our opinion that the service of this particular employee, the Street Superintendent, as a member of the board of directors of the water and sewer board may create a common-law conflict of interest and be against public policy. See opinion to Honorable Larry Gilliland, Mayor, City of Haleyville, under date of August 18, 1986. If the day-to-day duties of the Street Superintendent involve interaction with the water and sewer board, the Street Superintendent should not serve as a member of the board. If the duties of the Street Superintendent are not directly affected by the decisions of the water and sewer board, the Street Superintendent may serve as a member of the board, provided that he does not vote on any matters that directly affect his duties as Street Superintendent.

CONCLUSION

Public policy prohibits the Street Superintendent for the City of East Brewton from serving as a member of the board of directors of the East Brewton Water and Sewer Board if his duties as Street Superintendent involve daily interaction with the water and sewer board.

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I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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