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March 3, 2011

Honorable Harri Anne Smith
Member, Alabama State Senate
Post Office Box 483
Slocomb, Alabama 36375

Legislators – Double Dipping – Boards of Directors – Regional Planning and Development Commissions – Conflicts of Interest – Act No. 2010-760 – Geneva County

Act 2010-760 does not prohibit a legislator from serving on a Regional Planning and Development Commission Revolving Loan Fund Board ("Loan Fund Board") when the legislator is neither employed nor receives reimbursement for his or her services, assuming that the legislator's family-owned bank does not have contracts with the Loan Fund Board.

The appointment of a legislator to a Regional Planning and Development Commission Revolving Loan Fund Board would not violate conflict-of-interest provisions as long as the legislator does not make decisions regarding a loan for an immediate family member or his or her own personal interests.

Dear Senator Smith:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

Does Act 2010-760 prohibit a legislator from serving on the Southeast Alabama Regional Planning

> and Development Commission Revolving Loan Fund Board?
>
> Is there a possible conflict of interest that is associated with the appointment of a legislator to a Southeast Alabama Regional Planning and Development Commission Revolving Loan Fund Board?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that you seek to be reappointed to the Southeast Alabama Regional Planning and Development Commission Revolving Loan Fund Board for the Geneva County Commission. You described this Loan Fund Board as a small business loan program.

Through our research, we have found that the Loan Fund Board is a subcommittee of the Southeast Alabama Regional Planning and Development Commission ("SEARP&DC"). The authority for this organization is found in section 11-85-50, *et seq.*, of the Code of Alabama. Pursuant to this authority, SEARP&DC is authorized, as follows, to:

> (8) ***Adopt bylaws and issue rules*** and regulations for the conduct of its business.
>
> (9) ***Make and enter into contracts*** and agreements.
>
> . . .
>
> (11) ***Promote*** industrial and ***economic growth*** for the region by means of advertisement, recruitment, or by whatever method deemed appropriate and approved by the commission.
>
> . . .
>
> (14) ***Perform other activities in furtherance of this article*** not inconsistent or contrary to state law.

ALA. CODE § 11-85-56 (2008) (emphasis added).

In 1990, the Legislature passed Act 90-650, which authorized the creation of economic development revolving loan funds. This act has since been codified in sections 41-23-50 and 41-23-51 of the Code of Alabama. This Office was

informed that the Loan Fund Board to which you seek reappointment was established pursuant to this authority.

The SEARP&DC has broad authority that includes the ability to make rules and regulations. In exercising this authority, SEARP&DC has devised an administrative plan to which the Revolving Loan Fund adheres. This administrative plan directly addresses the organizational structure and the issue of conflicts of interests. Specifically, this document states that the county commission of each district represented within the SEARP&DC will appoint a representative to the Loan Fund Board. Southeast Alabama Regional Planning & Development Commission, "Economic Development Administration Revolving Loan Fund Administration Plan," at 19 (rev. Feb. 3, 2009). This section, in discussing conflicts of interest, states as follows:

> An 'Interested Party' of the Southeast Alabama Regional Planning and Development Commission may not receive, directly or indirectly, any personal or financial benefits from disbursement of RLF loans. An 'Interested Party' includes any officer; employee; member of the board; those who advise [a] recipient on business decisions such as consultants, attorneys, or accountants; or the immediate family, significant other, or domestic partner of an Interested Party. Funds cannot be loaned to a former board member or his/her immediate family for a period of at least 2 years since the board member last served on the Board of Directors or Loan Administration Board.

Id. at 20. Although not mentioned within the Revolving Loan Fund Administrative Plan, this Office has been informed that persons serving on the Loan Fund Board do not receive compensation of any kind or reimbursement for expenses.

This Office has also been informed that your family owns and operates a local bank within the region covered by the SEARP&DC. You also own a non-controlling interest within this bank. Pursuant to the administrative plan currently in operation for the Revolving Loan Fund, neither your interest in a bank, nor your family's ownership/operation of a bank in and of itself, would prohibit you from serving on this Loan Fund Board. It is the opinion of this Office that as long as you do not make a determination regarding a loan that involves you, an immediate family member, spouse, or significant other, there is no conflict of interest in your service on the Loan Fund Board as prohibited by the administrative plan for the Loan Fund Board. *See, generally*, ALA. CODE § 13A-10-62 (2006).

You also question whether a possible conflict of interest exists pursuant to the recently enacted Legislative Double Dipping Prohibition Act. Act 2010-760 sets forth the Double Dipping prohibitions. Generally, this act prohibits a person, while serving as a legislator, from being employed with any other branch of state government. *See, generally*, 2010 Ala. Acts No. 2010-760.

In addition to incorporating the definition of an employee, as set forth in sections 36-27-1 and 16-25-1, the act also defines a person as employed under the following conditions:

> (2) A person who is ***personally providing services*** under a personal or professional services contract paid for by the department, agency, board, commission, or educational entity, including the Department of Postsecondary Education or a two-year institution of higher education, except that persons appointed by any court or any district attorney in this State to provide legal services on a temporary, case-by-case, or part time, basis shall not be considered an employee for purposes of this section.
>
> (3) A person who has a ***substantial financial interest by reason of ownership of, control of, or exercise of power over any interest greater than five percent*** of the value of any corporation, partnership, company, joint venture, or other business entity ***that is providing goods or services under any contract*** paid for by the branch, department, agency, board, commission, or educational institution, including the Department of Postsecondary Education or a two-year institution of higher education, except for contracts awarded pursuant to competitive bidding, on sealed bids, to the lowest responsible bidder, and except where the contract service of the business or the business entity with the state branch, department, agency, board, commission, or educational institution consists of acting as a qualified public depository for a public depositor under Chapter 14A of Title 41 of the Code of Alabama 1975. The competitive bidding requirements of this subdivision do not apply during an emergency or disaster situation where the legislator is the single or sole source provider of necessary emergency equipment or services.

2010 Ala. Acts No. 2010-760, sect. 1(b) (emphasis added).

Based on the facts presented, serving as a member of the Loan Fund Board for which no compensation is provided would not qualify as employment pursuant to paragraph (b)(1) of Act 2010-760. Your request does not state whether your family-owned bank has any contracts with SEARP&DC. Assuming that your family-owned bank does not have such contracts, it is the opinion of this Office that serving on the Loan Fund Board would not violate the Double Dipping prohibitions.

CONCLUSION

Act 2010-760 does not prohibit a legislator from serving on a Regional Planning and Development Commission Revolving Loan Fund Board when the legislator is neither employed nor receives reimbursement for his or her services, assuming that the legislator's family-owned bank does not have contracts with the Loan Fund Board.

The appointment of a legislator to a Regional Planning and Development Commission Revolving Loan Fund Board would not violate conflict-of-interest provisions as long as the legislator does not make decisions regarding a loan for an immediate family member or his or her own personal interests.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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