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Honorable T. Boice Turner, Jr.
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Housing Authorities – Conflicts of Interest – Boards – Calhoun County

A member of the board of commissioners of a housing authority, whose spouse is employed by the financial services company that provides investment advice to the housing authority, does not have a conflict of interest as prohibited by section 24-1-26 of the Code of Alabama. Questions relating to the Ethics Law should be submitted to the Ethics Commission.

Dear Mr. Turner:

This opinion of the Attorney General is issued in response to your request on behalf of the Anniston Housing Authority.

QUESTION

Under the given facts, is the board member's continued service on the Anniston Housing Authority proper? If not, what steps must be taken to ensure compliance with section 24-1-26 of the Code and any other statutory or ethical guidelines?

FACTS AND ANALYSIS

Your request states that, since November 2004, a particular financial services company has managed investments for the Anniston Housing Authority ("Housing Authority"). In 2006, a member of the Board of Commissioners for the Anniston Housing Authority married a financial planner employed by the financial services company that manages the investments for the Housing Authority. You further state that the financial planner does not personally manage the Housing Authority's account; however, he does, at times, give advice on its investments. Upon realizing the potential conflict, the commissioner brought this matter to the attention of the counsel for the Housing Authority.

Municipal housing authorities are established pursuant to the provisions of sections 24-1-20 through 24-1-45 of the Code of Alabama. ALA. Code §§ 24-1-20 to 24-1-45 (2007). Section 24-1-26 of the Code relates to specific conflicts of interest for commissioners or employees and states as follows:

> No commissioner or employee of an authority shall acquire any interest, direct or indirect, in ***any housing project*** or ***in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project.*** If any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority, and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office. ***However, no provision of this section shall be deemed to prohibit any bank, otherwise qualified, an officer, stockholder or employee of which is a commissioner of a local housing authority, from serving such housing authority as a depository bank or fiscal agent.*** Nothing contained in this section shall prevent commissioners of housing

> authorities of cities or towns of less than 2,500 population, according to the last or any subsequent decennial census of the United States, from entering into contracts to supply materials or services to be furnished or used in connection with said housing project, provided such contract is entered into as the result of a competitive bid submitted on an invitation advertised for not less than three days.

ALA. CODE § 24-1-26 (2007) (emphasis added).

This section prohibits a member or employee of a housing authority from having any interest, direct or indirect, in any housing authority property or project or in any contract providing services to a property or project of the housing authority. Housing authorities, which are defined as "housing projects," are authorized to acquire real and personal property for the purpose of providing dwelling accommodations to low-income persons. ALA. Code § 24-1-22 (2007).

This prohibition does not appear to apply to the facts presented because the board member is not interested in a housing project as that term is used in the Code. Section 24-1-26 further provides that if the board member is an officer, stockholder, or employee of a bank that serves as the depository bank or fiscal agent for the housing authority, the board member does not violate this conflict-of-interest prohibition. You state, specifically, that the board member's spouse is employed by the financial services company that provides financial and investment advice to the Housing Authority.

The financial services company might be considered a fiscal agent for the Housing Authority, but in any event, this is not a situation where the board member is interested in a housing authority "project." Based upon the forgoing, it is the opinion of this Office that the board member, whose spouse is employed by the financial services company that provides investment advice to the Housing Authority, does not have a conflict of interest as prohibited by section 24-1-26 of the Code.

There may be provisions of the Alabama Ethics Law that are applicable to this question. Any questions relating to the applicability of the Ethics Law should be submitted directly to the Alabama Ethics Commission.

CONCLUSION

A member of the board of commissioners of a housing authority, whose spouse is employed by the financial services company that provides investment advice to the housing authority, does not have a conflict of interest as prohibited by section 24-1-26 of the Code. Questions relating to the Ethics Law should be submitted to the Ethics Commission.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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