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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable James E. Turnbach
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Education, Boards of – Contracts – Competitive Bid Law – Public Works Law – Conflicts of Interest – Etowah County

Pursuant to section 41-16-60 of the Code of Alabama, a member of a city or county board of education may contract with the board of education for personal property or personal services if: (1) the contemplated contract was in existence before a person was elected or appointed to the board, or (2) the individual does not participate in the deliberation or vote on the proposed contract. Section 41-16-60 is not applicable to contracts subject to the Public Works Law.

Members of city and county boards of education may be subject to the Ethics Law and should submit these questions directly to the Ethics Commission.

Dear Mr. Turnbach:

This opinion of the Attorney General is issued in response to your request on behalf of the Etowah County Board of Education.

QUESTION

May a member of a county board of education rely upon the newly amended section 41-16-60 of the Code of Alabama with respect to conflicts of interest

> and assume that section 16-13B-10 of the Code is not current and not to be relied upon?

FACTS AND ANALYSIS

Section 41-16-60 of the Code was amended by Act 2011-583, which became effective on June 9, 2011. Section 41-16-60 of the Code, as amended, states as follows:

> Members and officers of the city and county boards of education, the district boards of education of independent school districts, may be financially interested in or have any personal beneficial interest, either directly or indirectly, in the purchase of or contract for ***any personal property or contractual service*** under either of the following conditions:
>
> (1) The contract or agreement under which the financial interest arises was created prior to the election or appointment of the individual to the position he or she holds.
>
> (2) The individual holding the position does not participate in, by discussion or by vote, the decision-making process which creates the financial or personal beneficial interest.

ALA. CODE § 41-16-60 (Supp. 2011) (emphasis added).

In a recent opinion explaining the amendment to section 41-16-60 of the Code, this Office stated as follows:

> Although this statute previously acted as a bar to prevent members and officers of municipal governing bodies, as well as other city and county instrumentalities, from having any financial interest in the purchase of or contract for any personal property or contractual service, such prohibition no longer exists. Instead, this statute now specifically allows various members and officers of city and county boards of education to contract for personal services when either: (1) the contemplated contract was in existence before a

> person was elected or appointed to a particular position, or (2) the individual does not participate in the deliberation or vote associated with the proposed contract. The amendment, besides deleting any reference to a personal contractual prohibition to certain persons within municipal and county government, also deleted the penalty provision associated with this statute.

Opinion to Honorable Charles P. Gaines, Attorney, The Public Park Authority of the Cities of Lincoln and Talladega, dated July 25, 2011, A. G. No. 2011-081, at 4.

Based upon the plain language of section 41-16-60, as amended, a member of a city board of education may be interested in a contract for any personal property or contractual service with the board of education if the contract was in existence before the board member was elected or appointed to the board or if the board member does not participate in the deliberation, vote, or decision-making process associated with the award of the contract.

In 2009, the Legislature adopted an act to remove the city and county boards of education from the competitive bid laws in title 41 of the Code and provided substantially the same provisions in title 16 of the Code. 2009 Ala. Acts No. 2009-760, 2294. The 2009 act included a conflict-of-interest provision similar to the conflict-of-interest provision originally set forth in section 41-16-60 of the Code, and it is codified in section 16-13B-10 of the Code.

Section 16-13B-10 became effective on August 1, 2009, and states as follows:

> (a) No member or officer of the city and county boards of education 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 this chapter.
>
> (b) Any violation of this section shall be deemed a misdemeanor, and any person who violates this section, upon conviction, shall be imprisoned for not more than 12 months or fined not more than five hundred dollars ($500), or both. Upon conviction

> thereof, any person who willfully makes any purchase or awards any contract in violation of this chapter shall be removed from office.

ALA. CODE § 16-13B-10 (Supp. 2011).

Section 16-13B-10 was not amended or specifically repealed by Act 2011-583 when the amendment was made to section 41-16-60 of the Code to remove the conflict of interest applicable to city and county boards of education. The implied repeal of a statute by another statute is not favored by the courts and will be found only when the two statutes are so repugnant to, or in such conflict with, one another that it is obvious that the Legislature intended to repeal the first statute. *Anniston Urologic Assocs., P.C. v. Kline*, 689 So. 2d 54, 59 (Ala. 1997); *Hurley v. Marshall County Comm'n*, 614 So. 2d 427, 430 (Ala. 1993); *Merrell v. City of Huntsville*, 460 So. 2d 1248, 1251 (Ala. 1984); *Ex parte Jones*, 212 Ala. 259, 261, 102 So. 234, 235 (1924).

Furthermore, in cases of conflicting statutes on the same subject, the latest expression of the Legislature is the law. *Baldwin County v. Jenkins*, 494 So. 2d 584, 588 (Ala. 1986); *Soles v. State*, 820 So. 2d 163, 165 (Ala. Crim. App. 2001); *Ex parte CSX Transp., Inc.*, 533 So. 2d 613, 617 (Ala. Civ. App. 1987).

The latest expression of the Legislature is found in section 41-16-60 of the Code, and it states that a conflict does not exist by a member of a city or county board of education if the contract was in existence before a person was elected or appointed to a particular position, or the individual does not participate in the deliberation or vote associated with the proposed contract. This language directly conflicts with the provisions of section 16-13B-10 of the Code. Thus, it is the opinion of this Office that the Legislature intended to repeal the provisions of section 16-13B-10 of the Code when it adopted section 41-16-60 of the Code in 2011.

Based upon this interpretation, a member of a city or county board of education may contract with the board of education for personal property or personal services if: (1) the contemplated contract was in existence before a person was elected or appointed to the board or (2) the individual does not participate in the deliberation or vote on the proposed contract.

It should be noted that section 41-16-60 applies to contracts for personal property and services. Your question does not indicate whether the proposed contract is under the Competitive Bid Law or the Public Works Law. The Public Works Law does not contain a similar conflict-of-interest provision, and this Office is not aware of any other conflict-of-interest provision applicable

specifically to school board members. Board members may, however, be subject to the Ethics Law with respect to their participation in the awarding of any contract. Any questions related to the application of the Ethics Law should be submitted directly to the Ethics Commission because the Attorney General does not give opinions on the Ethics Law.

CONCLUSION

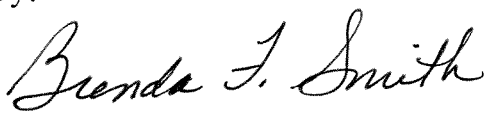
Pursuant to section 41-16-60 of the Code, a member of a city or county board of education may contract with the board of education for personal property or personal services if: (1) the contemplated contract was in existence before a person was elected or appointed to the board or (2) the individual does not participate in the deliberation or vote on the proposed contract. Section 41-16-60 is not applicable to contracts subject to the Public Works Law.

Members of city and county boards of education may be subject to the Ethics Law and should submit these questions directly 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
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