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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Oscar Crawley
Mayor, City of Lanett
Post Office Box 290
Lanett, Alabama 36863

Municipalities – Employees, Employers, Employment – Conflicts of Interest – Competitive Bid Law – Chambers County

Section 11-43-12 of the Code of Alabama does not prohibit a city employee from holding the position of president of the humane society that provides contractual services to the City of Lanett, so long as the employee receives no compensation from the humane society.

Dear Mayor Crawley:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Lanett.

QUESTIONS

(1) Does section 11-43-12 of the Code of Alabama prohibit a city employee from serving as the uncompensated president of the humane society, which contracts with the city to provide animal control services?

(2) If the prohibition set forth in section 11-43-12 of the Code applies, does the exclusion for class 7 and 8 municipalities set forth in section 11-43-12.1 of the Code apply to these facts?

FACTS AND ANALYSIS

According to your request, the City of Lanett is a class 7 municipality. The city contracts with the Chattahoochee Humane Society for the provision of

certain services related to animal control for which the city pays $30,000 per year. A city employee has recently been selected president of the organization and will serve as the organization's agent and representative in all matters dealing with the city, including contract negotiations, pricing, and disputes. The employee does not make policy decisions for the city. Further, the employee serves the Chattahoochee Humane Society on a volunteer basis and receives no financial compensation for his or her services.

Section 11-43-12 of the Code of Alabama states as follows:

> (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.
>
> (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.

ALA. CODE § 11-43-12 (2008).

This Office has previously determined that section 11-43-12 of the Code does not prohibit a mayor or members of the city council, all serving as volunteer firemen, from voting on matters related to the volunteer fire department, including budgets, spending, and fire-call compensation, so long as they do not receive compensation for their services from the fire department. Opinion to Honorable Joe C. Brantley, Mayor, Town of Flomaton, dated August 4, 1997, A.G. No. 97-00248. Because the city employee receives no compensation from the Chattahoochee Humane Society, it is the opinion of this Office that section 11-43-12 of the Code does not prohibit the employee from also serving as president of the humane society that contractually provides animal control services to the city.

From additional information provided, it is the impression of this Office that the employee's duties for the city are ministerial in nature. Nonetheless, to avoid the appearance of impropriety, any of the employees' official duties for the city that involve the Chattahoochee Humane Society should be delegated to another employee. *See, generally*, opinion to Honorable Jeffrey C. Smith,

Attorney, Town of Brookwood, dated March 29, 2002, A.G. No. 2002-192 (any appearance of impropriety must be avoided).

Because the answer to your first question is in the negative, your remaining question regarding the application of section 11-43-12.1 of the Code is moot. You should, however, also submit the relevant facts to the Alabama Ethics Commission to determine the applicability, if any, of the State Ethics Law.

CONCLUSION

Section 11-43-12 of the Code of Alabama does not prohibit a city employee from holding the position of president of the humane society that provides contractual services to the City of Lanett, so long as the employee receives no compensation from the humane society.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:

Brenda F. Smith

BRENDA F. SMITH
Chief, Opinions Division

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