



# 2013-010

STATE OF ALABAMA  
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Honorable Thomas Bentley, III  
Acting City Attorney, City of Birmingham  
Department of Law  
710 North 20th Street  
Room 600 City Hall  
Birmingham, Alabama 35203-2290

Municipalities – Employees, Employers,  
Employment – Federal Funds – Grants –  
Community Development Block Grants –  
Jefferson County

Section 11-43-12 of the Code of Alabama prohibits the receipt of federal grant funds by a municipal employee when the grant program is administered by the municipality for which the employee works.

Dear Mr. Bentley:

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

QUESTION

Does section 11-43-12 of the Code of Alabama prohibit the granting of disaster assistance to Birmingham employees from a publicly available program administered by the City of Birmingham and funded by HUD/Community Development Block Grants when such city employees are otherwise qualified to receive disaster assistance and are not involved in the decision making for the granting of these funds?

FACTS AND ANALYSIS

Your letter states the following facts:

The Community Development Department for the City of Birmingham (Community Development) is administering a Disaster Relief Assistance Program (“Program”) for the benefit of tornado victims whose insurance or access to FEMA or state funds was insufficient to complete the repair or rebuilding of their primary residences. The Program is funded through the use of Community Development Block Grant (“CDBG”) funds, and the funds are being made available in the form of grants and loans to eligible parties. The issue is whether the provision of a grant or a loan to a city employee and the acceptance of said grant or loan by the city employee under these circumstances qualifies as being “directly or indirectly interested in any work, business or contract” that is prohibited by section 11-43-12 of the Code of Alabama.

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

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.

ALA. CODE § 11-43-12(a) (2008).

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000). Section 11-43-12 of the Code states that a municipal employee may not be directly or indirectly *interested* in the work, business, or contract [of the municipality], the expense, price, or consideration of which is paid from the treasury.

The term “interested” is defined in Black’s Law Dictionary as an “advantage or profit of a financial interest.” BLACK’S LAW DICTIONARY 885 (9<sup>th</sup> ed. 2009). Accordingly, the question becomes whether the employees who are

qualified to participate in this program will receive an advantage of a financial nature, a profit, or a benefit from the program.

This Office has previously issued opinions that contemplated similar issues regarding elected officials. These opinions determined that elected officials were prohibited from participating in a Community Development Block Grant program. In an opinion to Honorable Verna L. Watford, the Town of Madrid ("Town") received CDBG funds for the rehabilitation of substandard housing units that existed in certain sections within that Town. Opinion to Verna L. Watford, Mayor, Town of Madrid, dated March 14, 1986, A.G. No. 86-00189. Although an elected official within the Town met the income requirements and lived in substandard housing that also met the rehabilitation criteria, this Office determined that the official could not participate in the Community Development Block Grant program.

In reaching this conclusion, this Office, citing an opinion issued to Honorable James R. Garner, Mayor, City of Piedmont, dated January 7, 1982, A.G. No. 82-00136, stated the following:

Code of Alabama 1975, Section 11-43-12 prohibits a municipal officer from being directly or indirectly interested in a contract, work or business, the cost or price of which is paid from the municipal treasury. Code of Alabama 1975, Section 11-43-53(a) is very similar to that provision and states:

No member of any city or town council shall, during the term for which he has been elected, be appointed to any municipal office which shall be created or the emoluments of which shall be increased during the term for which he shall have been elected; nor shall he be interested, directly or indirectly in any contract or job for work or material, or the profits thereof or services to be performed for the corporation, except as provided in this title.

The Attorney General is of the opinion that each of the above discussed provisions would be violated if the councilman received the benefits of the Community Development Block Grant. *Although the funds for this program come totally or in great part from the federal government, they are channeled through the municipal treasury and paid from there. Furthermore, the council member who receives the benefits from this grant would certainly have a direct*

*benefit* from this work or service. Therefore, it is the opinion of the Attorney General that the home of the city councilman in question cannot be included in the Community Development Block Grant Program for the City of Piedmont.

*Watford* at 2-3 (emphasis added).

Although both the *Watford* and *Garner* opinions determined that elected officials were ineligible to participate in CDBG programs, the conclusion drawn in those opinions was not premised on the fact that elected officials are involved in the decision-making process of the municipality. Instead, the conclusions were based on a plain reading of the applicable statutory authority.

Section 11-43-12 of the Code is applicable to elected officials, officers, and employees of a municipality. Accordingly, just as the elected official in the *Watford* opinion was determined to have received a benefit, in like manner an employee in the factual situation you propose would also receive a benefit. Based on the foregoing, it is the opinion of this Office that section 11-43-12 prohibits a municipal employee from participating in a Community Development Block Grant program that is administered through the municipality.

#### CONCLUSION

Section 11-43-12 of the Code of Alabama prohibits municipal employees, who are otherwise qualified, from participating in a Community Development Block Grant program that is administered by the municipality for which the employee works.

I hope this opinion answers your question. 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