



# 2013-028

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

January 31, 2013

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Competitive Bid Law – Conflicts of Interest – Contracts – Municipalities – Officers and Employees – City Council Members – Chambers County

Section 11-43-12 of the Code of Alabama prohibits a city council member from engaging in business contracts with the municipality for which the council member serves.

Section 11-43-12.1(a) authorizes a council member of a Class 7 or 8 municipality to contract with the municipality that council member serves when the council member's business is the only domiciled vendor of that personal property or service within the municipality and the amount to be expended does not exceed \$3000. This provision, however, is inapplicable when the business is located outside of the municipality.

Pursuant to section 11-43-12.1(b) and (c) of the Code of Alabama, the business of a council member of a Class 7 or 8 municipality may contract with the municipality if the council member fully discloses his or her relationship in the business, the council member does not participate in the decision-making process, the municipality uses the Competitive Bid process, and the council member is the lowest responsible bidder.

Dear Mr. Jones:

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

### QUESTIONS

(1) Do sections 11-43-12, 41-16-60, or 11-43-12.1 of the Code of Alabama, or any other provisions of Alabama law or rules of ethics applicable to municipal officers or employees, prohibit the business of a council member, who is an equal shareholder in a corporate business located outside the city, from selling supplies or services to the city?

(2) Under what circumstances can the business of the council member, who is an equal shareholder in a corporate business located outside the city, sell supplies or services to the city?

### FACTS AND ANALYSIS

In your letter of request, you informed this Office that an elected council member is an equal owner of a printing business outside the city limits of Valley. This business is operated as an Alabama corporation and the council member and one other person (who is not related to the council member) are equal shareholders in the company and are the only two employees of the company. At this time, you seek guidance regarding whether, or to what extent, Alabama law prohibits a council member from contracting with the city for which the elected official serves.

Section 41-16-60 of the Code of Alabama no longer contains a prohibition regarding the actions of officers of municipal governing bodies. *See* 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. Although section 11-43-12 of the Code prohibits an alderman, officer, or employee of the municipality from being directly interested in any work, business, or contract paid from the municipal treasury, section 11-43-12.1 of the Code relaxes the restrictions found in section 11-43-12 when such agreements are made in Class 7 and 8 municipalities. ALA. CODE § 11-43-12 (2008); opinion to Honorable

David A. Harrell, Mayor, Town of Gantt, dated August 13, 2003, A.G. No. 2003-216.

Section 11-43-12.1(a) of the Code allows a Class 7 or 8 municipality to legally purchase personal property or personal services from elected municipal officials, employees, or board members of such municipalities if the official or employee is the only domiciled vendor within the municipality and the cost does not exceed \$3000. ALA. CODE § 11-43-12.1 (2008); opinion to the Honorable Rodney Christian, Mayor, Town of Odenville, dated April 21, 2005, A.G. No. 2005-118. Section 11-43-12.1(a) is not applicable to your particular situation because the business that is partially owned by a council member is not domiciled within the city. Opinion to Honorable C. Daniel White, Attorney, Town of Flomaton, dated June 20, 2006, A.G. No. 2006-109.

This Office, however, in interpreting section 11-43-12.1(b) and (c) of the Code, has determined that these particular sections authorized a Class 7 or 8 municipality to legally purchase personal services or personal property under the Competitive Bid Law from any elected official, employee, or board member provided the official, board member, or employee does not participate in the decision-making process and the official, employee, or board member is the lowest responsible bidder. *Id.*

Further, the council member must make a full disclosure of the extent of his or her relationship in the business. *See* opinion to Honorable John D. Whetstone, Attorney, City of Gulf Shores, dated June 11, 2008, A.G. No. 2008-092; opinion to Honorable Dan Warnes, Attorney, City of Guntersville, dated May 23, 2006, A.G. No. 2006-099.

Although your inquiry also questions whether the rules of ethics may be violated by the contemplated actions, this Office does not give opinions regarding the Alabama Ethics Law. Questions regarding ethics should be posed to the Alabama Ethics Commission.

#### CONCLUSION

Section 11-43-12 of the Code prohibits a city council member from engaging in business contracts with the municipality for which the council member serves.

Section 11-43-12.1(a) of the Code would typically act as an exception to the provisions of section 11-43-12 of the Code. Section 11-43-12.1(a) authorizes a council member of a Class 7 or 8 municipality to contract with the

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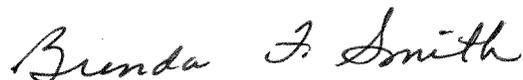
municipality that council member serves when the council member's business is the only domiciled vendor of that personal property or service within the municipality and the amount to be expended does not exceed \$3000. This provision, however, is inapplicable when the business is located outside of the municipality.

Pursuant to section 11-43-12.1(b) and (c) of the Code, the business of a council member of a Class 7 or 8 municipality may contract with the municipality if the council member fully discloses his or her relationship in the business, the council member does not participate in the decision-making process, the municipality uses the Competitive Bid process, and the council member is the lowest responsible bidder.

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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