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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable William D. Latham
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Water and Gas Board – Employees, Employers, Employment – Contracts – Conflicts of Interest – Leases – Chilton County

The Water Works and Gas Board of the Town of Maplesville may lease equipment from an employee without violating sections 11-43-12, 41-16-60, or 13A-10-62 of the Code of Alabama.

Dear Mr. Latham:

This opinion of the Attorney General is issued in response to your request on behalf of the Water Works and Gas Board of the Town of Maplesville.

QUESTION

May the Water Works and Gas Board of the Town of Maplesville ("Board") rent a piece of equipment from an employee of the Board?

FACTS AND ANALYSIS

According to your request, the Water Works and Gas Board of the Town of Maplesville is incorporated pursuant to section 11-50-310, *et seq.*, of the Code of Alabama. ALA. CODE § 11-50-310 to § 11-50-324 (2008, Supp. 2012). As such, the Board is a public corporation, separate and distinct from the Town of Maplesville ("Town"). Opinion to Honorable Robert Davis, Mayor, Town of Cedar Bluff, dated May 10, 2005, A.G. No. 2005-126, *citing Water Works & Sewer Bd. of the City of Selma v. Randolph*, 833 So. 2d 604, 607 (Ala. 2002).

The Board has determined that it has need for the use of a piece of machinery, the purchase of which is cost prohibitive. The Board has also learned that an employee of the Board owns machinery of the type needed by the Board and that the employee is willing to rent the item to the Board. The employee is not a member of the Board, nor is the employee involved in the decision, on behalf of the Board, to lease the equipment. The proposed cost of the rental is comparable to that of other potential sources and is well below the relevant threshold to require competitive bidding.

Various provisions of the Code of Alabama have potential relevance to your inquiry. Section 11-43-12 of the Code prohibits an officer or employee from being directly or indirectly interested in any work, business, or contract that is paid from the municipal treasury. ALA. CODE § 11-43-12 (2008). This Office has previously interpreted section 11-43-12 of the Code as prohibiting municipal employees from having any financial interest, whatsoever, in the contracts or business of the city. See, e.g., the following opinions:

- Honorable Thomas Bentley, III, Acting City Attorney, City of Birmingham, dated November 1, 2012, A.G. No. 2013-010 (municipal employee prohibited from receiving benefit of grant funds administered by city);

- Honorable Charles E. Osborne, Mayor, City of Talladega, dated April 5, 2002, A.G. No. 2002-202 (municipal judge, as city employee, prohibited from leasing property to city);

- Honorable Jimmy S. Calton, Sr., Attorney, City of Eufaula, dated July 10, 2000, A.G. No. 2000-191 (city employee prohibited from performing part-time work for separately incorporated parks department where city contributed to the general fund of the parks department).

Because, however, the Board, as a public corporation, is separate and distinct from the Town, section 11-43-12 of the Code is inapplicable. *Davis* at 2. Accordingly, section 11-43-12 of the Code does not prohibit the Board from renting equipment from one of its employees.

Section 41-16-60 of the Code once operated as a "flat prohibition against a public official being financially interested in a contract with the public body with which he is associated and whether the public official recused himself from the public body's action with respect to such contract is irrelevant." Opinion to Mr. William W. Dillard, Jr., Chief Examiner, Department of Examiners of Public Accounts, dated April 12, 1978, 171 Ala. Op. Att'y Gen. 11, 1978 WL 17711.

In 2011, however, the Legislature amended section 41-16-60 of the Code, eliminating the reference to "waterworks boards, sewer boards, gas boards and

other like utility boards and commissions." 2011 Ala. Acts 2011-583, 1279. Accordingly, section 41-16-60 of the Code is no longer applicable. Moreover, as previously written, section 41-16-60 of the Code applied to "members and officers," as opposed to a mere employee, leaving any prior applicability doubtful.

Finally, section 13A-10-62 of the Code criminalizes the failure of a public official to disclose a conflict of interest in a transaction in which he or she exercises any substantial discretionary function. ALA. CODE § 13A-10-62 (2006). According to your request, the employee in question is not a member of the Board, nor is the employee involved in the decision, on behalf of the Board, to lease the equipment. Therefore, section 13A-10-62 of the Code is also inapplicable.

In addition to the previously discussed statutes, the facts in your request may invoke various provisions of Alabama's Ethics Law. ALA. CODE §§ 36-25-1 to 36-25-30 (2001, Supp. 2012). This Office does not give opinions on the Ethics Law. Opinion to Honorable Andrew Bennett, Assistant Tax Assessor, Jefferson County (Bessemer Division), dated April 27, 2012, A.G. No. 2012-055. Accordingly, you should seek additional guidance from the Alabama Ethics Commission on this issue.

CONCLUSION

The Water Works and Gas Board of the Town of Maplesville may lease equipment from an employee without violating sections 11-43-12, 41-16-60, or 13A-10-62 of the Code of Alabama.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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