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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

March 1, 2005

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable John F. Porter, III
Attorney, Jackson County Commission
Northside Courthouse Square
123 East Laurel Street
Scottsboro, Alabama 35768

County Commissions - Parks and
Recreation - County Employees -
Conflicts of Interest

Under the facts stated in the request, the manager of a park controlled by the Jackson County Park Board is not prohibited from serving on the Jackson County Commission, unless prohibited from doing so by the rules and regulations or terms of his or her employment.

Questions regarding the application or violation of the State Ethics Law must be presented to the State Ethics Commission.

Dear Mr. Porter:

This opinion of the Attorney General is issued in response to your request on behalf of the Jackson County Commission.

QUESTION

Is the manager of a public park under the Jackson County Park Board eligible to hold a seat on the Jackson County Commission?

FACTS AND ANALYSIS

The following facts are set out in your request:

In 1954, the Jackson County Commission (formerly the Jackson County Board of Revenue) created the Jackson County Park Board to manage properties donated to Jackson County by the Tennessee Valley Authority to be used as a public park. The initial board of directors was appointed in 1954 and successors have been appointed thereafter as terms expire. The board currently consists of seven members that meet regularly to take action regarding the park. The park board receives no appropriations from the county for its operations and all employees, including the park manager, are paid from revenue generated by park operations. The county provides insurance for park facilities and is the guarantor on a facility's improvement loan to the park board from a local bank. The county retains ownership of the park property.

During the last election, the manager of the park ran for and was elected to a seat on the county commission, taking office in November 2004.

Initially, it should be noted that only a court of competent jurisdiction can test the qualifications and eligibility of an officeholder to remain in office. *State v. McEachern*, 231 Ala. 609, 166 So. 36, 39 (1936); opinion of the Attorney General to Honorable Gregory D. Wren, Member, House of Representatives, dated February 1, 1996, A.G. No. 96-00122.

Section 11-3-2(a) of the Code of Alabama states as follows:

(a) Subject to the restrictions of Section 280 of the Constitution of Alabama of 1901, and the laws of this state, one member of a county commission may be appointed to and may serve on public boards, commissions, and authorities within this state unless authorized by law. Notwithstanding the foregoing, this subsection shall not be interpreted to authorize a county commission to appoint a member to serve on the board of any authority, corporation, or association organized pursuant to Chapter 21 of Title 22 unless the appointment is authorized in the articles of incorporation of the authority, corporation, or association.

ALA. CODE § 11-3-2(a) (Supp. 2004).

According to section 11-3-2(a), unless prohibited by section 280 of the Constitution of Alabama, or some other law of the state, a member of the county commission may serve on public boards, commissions, and authorities in this state, except a county commissioner cannot serve on the board of any authority, corporation, or association governing healthcare or hospital facilities, unless the appointment is authorized in the articles of incorporation of the facility. *See* Opinion of the Attorney General to Honorable Jerry C. Pow, Bibb County Judge of Probate, dated June 21, 2004, A.G. No. 2004-160.

Section 280 of the Constitution of Alabama forbids an individual from occupying two offices of profit at the same time. ALA. CONST. art. XVII, § 280. The Supreme Court of Alabama has determined that a position or office is an office of profit if: (1) the officeholder excises some part of the sovereign power of the State and (2) compensation is to be received for the performance of the duties of the office. *See Opinion of the Justices* No. 64, 244 Ala. 386, 13 So. 2d 674 (1943). A county commissioner holds an office of profit. Opinion of the Attorney General to Honorable Allen C. Jones, Attorney, Pike County Commission, dated July 28, 1999, A.G. No. 99-00260.

A park manager, as an employee of the park board, does not exercise any portion of the sovereign power of the state, and therefore, does not hold an office of profit. *See State v. Baumhauer*, 244 Ala. 1, 12 So. 2d 326 (1942), which discusses the difference between public employment and a public office.

CONCLUSION

Under the facts stated in the request, the manager of a park controlled by the Jackson County Park Board is not prohibited from serving on the Jackson County Commission, unless prohibited from doing so by the rules and regulations or terms of his or her employment.

QUESTION 2

If the park manager retains his or her seat on the county commission, and abstains from voting on appointments to the park board or any issue involving the park finances or expenditure of funds, can the park manager continue to hold a seat on the county commission without violating the Ethics Law?

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FACTS, ANALYSIS, AND CONCLUSION

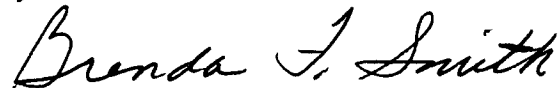
Questions regarding the application or violation of the State Ethics Law must be presented to the State Ethics Commission. That commission is required, by law, to issue opinions regarding the State Ethics Law. ALA. CODE § 36-25-4(a)(9) (2001).

I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General

By:



BRENDA F. SMITH
Chief, Opinions Division

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