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MAILING ADDRESS
P.O. BOX 4840
MONTGOMERY, AL
36103-4840

STREET ADDRESS
RSA UNION
100 NORTH UNION STREET
SUITE 104
MONTGOMERY, AL 36104

James L. Sumner, Jr.
Director

TELEPHONE (334) 242-2997
FAX (334) 242-0248
WEB SITE: www.ethics.alabama.gov

October 5, 2011

ADVISORY OPINION NO. 2011-08

Mr. Collins Pettaway, Jr.
County Attorney
Perry County, Alabama
Chestnut, Sanders, Sanders & Pettaway, L.L.C.
One Union Street
Selma, Alabama 36702-1290

Use Of County Vehicle By County Coroner/
Perry County Commission Allowing
Coroner Of Perry County To Use County
Vehicle For Personal Use

The Perry County Commission may, by
policy, allow the Perry County Coroner to
use a County vehicle for personal, as well as
business use, so he may be accessible when
needed.

Dear Mr. Pettaway:

The Alabama Ethics Commission is in receipt of your request for an Advisory Opinion of this Commission, and this opinion is issued pursuant to that request.

QUESTION PRESENTED

May the Perry County Commission by resolution allow the Coroner of Perry County to use a County vehicle supplied to him for his official duties, to be used to drive him to his place of employment in Bibb County and any other errands for personal use, so he can be on-call to answer any job related duties?

FACTS AND ANALYSIS

The facts as have been provided to this Commission are as follows:

Collins Pettaway, Jr. is the County Attorney for Perry County. The Perry County Commission, per the attached resolution, has asked for an opinion as to whether or not the Coroner of Perry County can use a vehicle supplied to him for his official duties for personal travel.

The question is whether the Coroner of Perry County, who lives in Perry County, can use or drive a vehicle provided to him by the Perry County Commission to go to work at his place of employment in Bibb County, Alabama (an adjacent county), and to perform any other errands for personal use, so he can be on-call to answer any job related duties.

The Coroner is an elected position. The Perry County Commission is the governing body for Perry County, Alabama. To facilitate the effectiveness for the Office of County Coroner, the Perry County Commission authorized and provided a vehicle for the Coroner to use in his official duties. The Coroner is also allowed to use the gasoline provided by the County and maintenance for the vehicle provided by the County. The Coroner handles the deaths in the County. Rarely would he have to transport bodies, as the County has a contract with a vendor for such service, although the situation could arise for that. The Coroner has a job in Bibb County and desires to use the vehicle to travel to said job, so he can answer calls, when and if they come. He also needs clarity on running any errands or handling any personal business while using the County-provided vehicle.

The Alabama Ethics Law, Code of Alabama 1975, Section 36-25-1(26) defines a public official as:

“Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2.”

Section 36-25-5(a) states:

“(a) No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family

member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.”

Section 36-25-5(c) states:

“No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such organizations communicating with public officials or public employees.”

The Ethics Law, as a general rule, prohibits the use of not only one’s public office for one’s personal benefit, but also any resources belonging to the public for personal benefit. The exception is where there is a lawful employment agreement regulated by agency policy.

In the facts before the Commission, it would be impractical for the Coroner not to be allowed to use the County vehicle for personal travel, when he is subject to being called at any time. If he is not in the vehicle, he may have to drive a fairly substantial distance to drop off his personal car and pick up the County vehicle, so he may respond to the call.

Based on the facts as provided and the above law, provided there is a lawful employment agreement regulated by agency policy allowing the Coroner to use the County vehicle for his personal travel, the Ethics Law would not be violated.

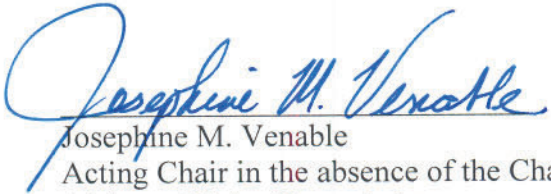
CONCLUSION

The Perry County Commission may, by policy, allow the Perry County Coroner to use a County vehicle for personal, as well as business use, so he may be accessible when needed.

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AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on October 5, 2011.



Josephine M. Venable
Acting Chair in the absence of the Chair
Alabama Ethics Commission