



STATE OF ALABAMA ETHICS COMMISSION

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June 7, 2018

Mr. Sonny Brasfield
Executive Director
Association of County Commissions of Alabama
P.O. Box 5040
Montgomery, AL 36103

Dear Mr. Brasfield:

At their meeting held on June 6, 2018, the members of the Alabama Ethics Commission granted your request for an Advisory Opinion and issued Advisory Opinion No. 2018-03. A copy of that opinion is attached.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Thomas B. Albritton
Executive Director

/td

Attachment



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June 6, 2018

ADVISORY OPINION NO. 2018-03

Mr. Sonny Brasfield
Executive Director
Association of County Commissions of Alabama
P.O. Box 5040
Montgomery, AL 36103

Personal Use of Office/County Employee
being hired to manage voting equipment for
municipality

Counties and municipalities may enter into contracts through which the municipality reimburses the county for the use of the County's election equipment and county employees who possess the requisite skill and knowledge to operate the equipment; but municipalities may not directly engage the county employee to do so under these facts without putting the employee in the position of violating Ala. Code § 36-25-5(a) and (c).

Dear Mr. Brasfield:

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

FACTS

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

“County commissions are charged with the administration of voting machines in Alabama. This duty includes being responsible for the maintenance and storage of voting equipment, the preparation and testing of equipment in advance of elections, management of the equipment on election day and the steps necessary to ensure the orderly counting and certification of the election results after the polls have closed. The process is both costly and requires a substantial level of expertise on the part of those who are responsible for the operation of the voting equipment.

It is common practice for county commissions to make voting equipment available to municipalities for their elections, which do not usually coincide with either the political party primaries or the state’s general election. In order to protect the equipment and ensure orderly elections in the future, counties often make the equipment available only if it is managed and supervised by a person trained and certified to carry out such duties. Often, the only people available who meet those qualifications are county employees who have been trained and certified to carry out these duties for the county commission.

It has come to our attention that some cities may be hiring county employees, who are off-duty from their county positions, to manage the operation of county voting machines in municipal elections. The permissibility of this process, in light of the provisions of Alabama’s ethics law, is a matter that we believe needs clarification.”

QUESTIONS PRESENTED

If a county commission allows a municipality to utilize county voting equipment, at the municipality’s expense, may the municipality hire an off-duty county employee to manage the voting equipment? If such a practice is permissible, are there any limitations or conditions that should be considered?

ANALYSIS

The primary issues which the questions raise involve the application of Ala. Code § 36-25-5(a) and (c), which state:

- (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.

- (c) 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.

Under the facts, the employees referenced are paid for the election services provided to the municipality over and above their county pay and only while off-duty. They are being engaged by another public entity based on the specialized skill set they acquired through their county position, but they are using county equipment to earn additional compensation.

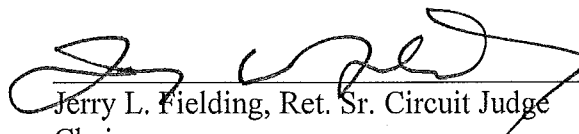
Such arrangements, therefore, put public employees in the position of violating the above-referenced Code sections. That being said, these arrangements may be used only if the County, and not the municipality, compensates the county employee to do this work. Whether that compensation is above and beyond what the employee is paid for their existing responsibilities is left to the County to determine. The county and the municipality may enter into a contract through which the municipality reimburses the county for the use of the employee and the county equipment, but the municipality may not directly engage the county employee to do so under these facts.

CONCLUSION

Counties and municipalities may enter into contracts through which the municipality reimburses the county for the use of the County's election equipment and county employees who possess the requisite skill and knowledge to operate the equipment, but municipalities may not directly engage the county employee to do so under these facts without putting the employee in the position of violating Ala. Code § 36-25-5(a) and (c).

AUTHORITY

By 4-0 vote of the Alabama Ethics Commission on June 6, 2018.

A handwritten signature in black ink, appearing to read "Jerry L. Fielding", is written over a horizontal line.

Jerry L. Fielding, Ret. Sr. Circuit Judge
Chair
Alabama Ethics Commission