



August 1, 2019

Hon. Jerry L. Fielding (jerryfielding@yahoo.com)
Hon. Lyn Stuart (lyn_stuart@att.net)
Beverly N. Brady, Esq.
Hon. Charles Price
John M. Plunk, Esq. (johnmplunk@gmail.com)
Alabama Ethics Commission
P.O. Box 4840
Montgomery, AL 36103

Via U.S. & Electronic Mail

Re: Birmingham Airport Authority

Dear Commissioners:

I am writing on behalf of the Huntsville-Madison County Airport Authority (“HMCAA”) in support of the position taken by the Birmingham Airport Authority (“BAA”) in its request for a formal advisory opinion regarding the status of BAA’s board members and employees under the Alabama Ethics Act (the “Ethics Act”), Ala. Code § 36-25-1, *et seq.* (Ala. Code 1975). HMCAA recently received a proposed advisory opinion prepared by the Executive Director of the Ethics Commission, Mr. Thomas B. Albritton, Esq. (“Mr. Albritton”). In the proposed opinion, Mr. Albritton reaches the wrong conclusion based on an incorrect interpretation of the definition of “public employee” under the Ethics Act. HMCAA respectfully requests that the Ethics Commission reject Mr. Albritton’s proposed opinion in favor of BAA’s proposed opinion.

In the proposed opinion, Mr. Albritton concludes that BAA employees are “public employees” subject to the Ethics Act. This conclusion directly contradicts prior written guidance from the Alabama Ethics Commission to HMCAA. In 2011, HMCAA received a letter from Hugh Evans, then general counsel to the Alabama Ethics Commission, confirming that (1) HMCAA’s board members are “public officials” subject to the Ethics Act, but they are not required to file Statements of Economic Interests because they are paid less than \$50,000 per year (now \$75,000 per year); and (2) HMCAA’s employees are not “public employees” subject to the Ethics Act because they are not paid in whole or in part from state, county or municipal funds. (A copy of HMCAA’s correspondence with Hugh Evans is enclosed with this letter). Since 2011, HMCAA has relied on and operated under this written guidance from the Alabama Ethics Commission.

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Legal Counsel

Amy Nation

Mr. Albritton's conclusion that BAA employees are "public employees" subject to the Ethics Act is fundamentally flawed. The Ethics Act defines "public employee" as "any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities...who is paid in whole or in part from *state, county or municipal funds*." Ala. Code § 36-25-1 (Ala. 1975)(emphasis added). Under this definition, a person employed by a governmental authority meets the definition of "public employee" only if that person is paid from "state, county or municipal funds." *Id.* Mr. Albritton's conclusion is based entirely on his argument that BAA employees are paid from "public funds," but the definition of "public employee" does not include the term "public funds." In fact, the term "public funds" is nowhere to be found in the Ethics Act.

In the words of the Alabama Supreme Court, "[w]hen the language of a statute is plain and unambiguous, as in this case, courts must enforce the statute as written by giving the words of the statute their ordinary plain meaning—they must interpret that language to mean exactly what it says and thus give effect to the apparent intent of the Legislature." *Perdue v. Green*, 127 So. 3d 343, 357 (Ala. 2012), *on reh'g* (July 11, 2012). "This is true even if we might sometimes think that the ramifications of the words in a statute are inefficient or unusual....It is our job to say what the law is, not to say what it should be." *Id.*

BAA employees are paid from revenue generated by BAA through fees paid by airlines, lessees, concessionaires, and other users of airport property and facilities. The central question before this committee is whether BAA's self-generated funds constitute "state, county or municipal funds," not whether BAA's self-generated funds constitute "public funds."


The Alabama Supreme Court has held that self-generated funds by a public corporation do not constitute state, county or municipal funds. In *Water Works & Sewer Bd. of City of Selma v. Randolph* ("*Randolph*"), 833 So. 2d 604 (Ala. 2002), the Water Works and Sewer Board of the City of Selma (the "Selma Water Board") argued that it was not subject to the Alabama Sunshine Law (the "Sunshine Law"), Ala. Code § 13A-14-2 (Ala. 1975). The Sunshine Law applied to bodies, boards and commissions "charged with the duty of disbursing any *funds belonging to the state, county or municipality*." Ala. Code § 13A-14-2(a) (Ala. 1975)(emphasis added). The Selma Water Board generated revenue through the operations of its system and the borrowing of money. The Alabama Supreme Court held that the Selma Water Board was not subject to the Sunshine Law because the Selma Water Board's self-generated funds were not "funds belonging to the state, county or municipality." *Id.* at 608. (The Sunshine Law was subsequently replaced by the Alabama Open Meetings Act, Ala. Code § 36-25A-1, *et seq.* (Ala. 1975), which does not contain the phrase "funds belonging to state, county or municipality funds").

Mr. Albritton cites cases, attorney general opinions, and Black's Law Dictionary for the general proposition that money generated by public corporations for public use constitutes "public funds." These authorities are irrelevant. The question is not whether BAA employees are paid from "public funds," but whether BAA employees are paid from "state, county and municipal funds." The *Randolph* case, which is binding precedent, mandates the conclusion that BAA employees are not paid from "state, county or municipal funds."

HMCAA strongly supports BAA's position that BAA employees are not "public employees" subject to the Ethics Act because they are not paid from "state, county or municipal funds." Any opinion concluding that revenues generated by BAA constitute "state, county or municipal funds" would have a wide ranging effect on any number of authorities and public corporations across the state of Alabama.

HMCAA appreciates the Commission's consideration of this important matter.

Very truly yours,



Amy H. Nation
General Counsel

cc: Thomas R. Albritton, Esq. (via email only: tom.albritton@ethics.alabama.gov)
Cynthia P. Raulston, Esq. (via email only: cynthia.raulston@ethics.alabama.gov)
J. Mark White, Esq. (via email only: mwhite@arnolddowd.com)

encl.: as stated

Exhibit "A"

STATE OF ALABAMA
ETHICS COMMISSION



COMMISSIONERS

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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

April 13, 2011

Joseph A. Jimmerson, Esq.
Wilmer & Lee, P.A.
100 Washington Street
Suite 200
Post Office Box 2168
Huntsville, Alabama 35804

Dear Mr. Jimmerson:

I apologize for the delay in responding to your March 30th letter, but as I am sure you can imagine, we have been inundated since the new law went into effect.

Your letter of that date accurately reflects our conversation, and sets out accurately the status of your Airport Board members, as well as employees.

Sincerely,

A handwritten signature in black ink, appearing to read "Hugh R. Evans, III".

Hugh R. Evans, III
General Counsel

/td

Exhibit "B"

WILMER & LEE, P.A.
Attorneys at Law

John A. Wilmer
S. Dagnal Rowe
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S. Dagnal Rowe, Jr.
Kimberly N. Kelley
Christopher L. Lockwood
Amy H. Nation

RETIRED:
L. Tennent Lee, III
Winston V. Legge, Jr.

March 30, 2011

Hugh R. Evans, III, Esq.
State of Alabama
ETHICS COMMISSION
Post Office Box 4840
Montgomery, Alabama 36103-4840

Re: Requirement for filing Statement of Economic Interests and participating in Ethics Training

Dear Hugh:

As discussed, the Huntsville-Madison County Airport Authority ("the Airport Authority") is an Alabama public corporation, incorporated pursuant to Section 4-3-40, *et seq.*, of the *Code of Alabama* (1975). The board of directors of the Airport Authority consists of five members who are appointed by the Huntsville City Council and the Madison County Commission. Members of the board of directors are paid a small amount for serving on the board and for attending committee meetings. In addition, directors are compensated for traveling outside of the Huntsville area, where sufficient time is spent on Airport Authority business. However, no director is paid \$50,000 or more per year by the Airport Authority.

The officers of the Airport Authority serve at the pleasure of the board of directors. While a number of employees of the Airport Authority are paid more than \$50,000 per year, no employee of the Airport Authority is paid in whole or in part from any state, county or municipal funds. (The Airport Authority occasionally receives grants or in-kind assistance from the state, county or city. These grants are for specific projects and are not used for operating expenses or payroll.) Some officers of the Airport Authority, while not technically purchasing or procurement agents, do have the authority to make purchases.

Law Offices and Mediation Center
100 Washington Street, Suite 200, Huntsville, Alabama 35801
Reply to Post Office Box 2168, Huntsville, Alabama 35804
(256) 533-0202 Fax (256) 533-0302

Page Two
Hugh R. Evans, III
State of Alabama
Ethics Commission
March 30, 2011

I would very much appreciate your confirming our understanding of the following:

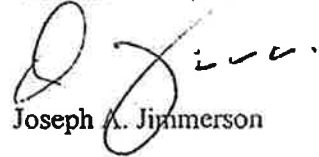
(1) That while members of the Airport Authority board of directors qualify as "public officials" under the definition stated in Section 36-25-1(26) of the *Code of Alabama* (1975), the directors are not required to file Statements of Economic Interests, in accordance with Section 36-25-14 of the *Code of Alabama* (1975) as their base pay is less than \$50,000 per year.

(2) That Airport Authority employees would not be defined as "public employees" under Section 36-25-1(25) of the *Code of Alabama* (1975), as they are not paid in whole or in part from state, county or municipal funds and, as such, they are not required to file Statements of Economic Interests as required by Section 36-25-14 of the *Code of Alabama* (1975).

(3) That since neither directors nor employees of the Airport Authority are required to file Statements of Economic Interests, they are not required to participate in the ethics training required by Section 36-25-4.1(e) of the *Code of Alabama* (1975).

Sincerely,

WILMER & LEE, P.A.



Joseph A. Jimmerson

JAJ/bfh
Enclosures

cc: Richard Tucker
Luther H. Roberts, Jr.