

DEKALB COUNTY BOARD OF ETHICS
ADVISORY OPINION NUMBER 11
(Request of Charles E. Johnson, Sr., Member of the DeKalb County Peachtree-
DeKalb Airport Advisory Board (appointed from District 7))

The DeKalb County Board of Ethics met on 13 August 2007 for its regularly scheduled meeting and at the time considered the request of Charles E. Johnson, member of the Peachtree-DeKalb Airport Advisory Board ("Advisory Board"), for an Advisory Opinion.

Charles E. Johnson ("Johnson") is a member of the DeKalb Peachtree Airport Advisory Board. Johnson is also the President of the engineering and consulting Firm of Williams-Russell and Johnson, Inc. ("the Firm").

Johnson requests an advisory opinion as to whether his membership on the Advisory Board precludes him and the Firm from participating in or providing services for the DeKalb-Peachtree Airport Authority ("Authority"), as he wishes to avoid any appearance of impropriety or conflict of interest concerning the discharge of his duties on the Advisory Board for the Authority relative to any coinciding or conflicting interest he may have by virtue of his interest in and for the Firm.

The Advisory Board members serve as appointees, cannot bind the DeKalb Commissioners or other governing authorities and act in an exclusively advisory role for the business activities of the Authority and DeKalb County Board of Commissioners. The duties of the Advisory Board are, to wit:

Sec. 6-20. Duties.

The airport advisory board shall act only in an advisory capacity and shall have no power of authority to bind the county or any officer, agent or employee thereof. However, the advisory board shall specifically have the duty to consider, evaluate and initiate recommendations to the governing authority:

- (1) To acquire by purchase, lease, gift or otherwise, and to hold, lease, sell, use and dispose of real and personal property of every kind and character or any interest therein.*
- (2) To exercise the power of eminent domain to acquire any private real property or any rights or interests therein, including any easements, as necessary or convenient for the accomplishments of the purposes of this article, including the elimination of airport hazards, in accordance with the provisions of any and all existing laws applicable to the exercise of such power.*
- (3) To plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, and lease all airport facilities owned and operated by the governing authority which it may acquire or plan to acquire.*
- (4) To regulate, protect and police such airports and all related activities and facilities.*
- (5) To enter into any contracts, leases or other agreements, promulgate any orders, set any tolls, fees or other charges for the use of airport facilities, property or services.*
- (6) To adopt and enforce reasonable rules and regulations for the orderly, safe, efficient and sanitary operation of airports and related facilities owned and operated by the county.*
- (7) To make application to any federal, state, county or municipal government or agency or to any other source, public or private, for loans, grants, guarantees or other financial assistance in aid of airports owned and operated by the county.*

(Code 1976, § 6-4210)

Provisions of the DeKalb County Code of Ethics that govern Johnson's a possible ethical violation or appearance of a conflict of interest, under the circumstances and facts he presents, are found in subsection 22A(c) (1); (2); (4); (5); & (6); sections (d) and (e).

Subsection (c) (1) provides that:

No member of the governing authority shall:

By his conduct give [a] reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official acts or actions, or that he is affected unduly by the rank or position of or kinship or association with any person;

Subsection (c) (2) provides that governing authority members shall not:

Directly or indirectly request, exact, receive, or agree to receive a gift, loan, favor, promise, or thing of value for himself or another person if: (i) it tends to influence him in the discharge of his official duties; or (ii) he recently has been, or is now; or in the near future may be, involved in any official act or action directly affecting the donor or lender

Subsection (c) (4), (5) & (6) provide that:

Appear on his own personal behalf, or represent, advise, or appear on the personal behalf of, whether paid or unpaid, any person before any court or before any legislative, administrative, or quasi judicial board, agency, commission, or committee of the state or of any county or municipality concerning any contract or transaction which is or may be the subject of an official act or action of DeKalb County or otherwise use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others;. . . .

Engage in, accept employment with, or render services for any private business or professional activity when such employment or rendering of services is adverse to and incompatible with the proper discharge of his official duties. For the purposes of this paragraph, the employment of a consultant by any businesses involving matters unrelated to any contract or transaction by or with DeKalb County shall not be deemed incompatible with such consultant's official duties"

Acquire an interest in any contract or transaction at a time when he believes or has reason to believe that such an interest will be affected directly or indirectly by his official Act or actions of the governing authority.

Sections (d) and (e) provide certain requirements for alleviating ethical violations and the appearance of impropriety or conflict of interest. The Board considered the nature and circumstances of the interest of Johnson with the Firm, as relates to his official activities for the Governing Authority perhaps in matters of interest to him and his Firm and on which he might give advise and counsel to the governing authority relative to contract and services for the Authority.

Subsection (e) proscribes conflicts of interest as contemplated by subsection (c) (1), (2), (4), (5) & (6) and mandates that:

*A member of the governing authority shall disqualify himself from participating in any official act of action of DeKalb County directly affecting a business or activity in which he has any **interest**, whether or not a remote interest.*

Subsection (d) requires that where such conflict may appear:

*A member of the governing authority who has an **interest** that he has reason to believe may affect his official acts or actions or by the official acts or actions of the governing authority of DeKalb County shall disclose the precise nature and value of such interest by sworn written statement to the Board of Ethics and ask for its opinion as to the propriety of said interest. Every member of the governing authority who knowingly has any interest, direct or indirect, and any contract to which DeKalb County is or is about to become a party, or any other business with DeKalb County shall make **full disclosure** of such interest to the governing authority of DeKalb County and to the Board of Ethics. The information disclosed by such sworn statements, except for the valuation attributed to the disclosed interest, shall be made a matter of public record for the Board of Ethics. (Emphasis added).*

*"**Interest**" means any direct or indirect pecuniary or material benefit held by or accruing to a member of the governing authority or to a member of the Board of Ethics as a result of a contract or transaction which is or may be the subject of an official act or action by or with DeKalb County. Unless otherwise provided in this section, the term "interest" does not include any remote interest. A member of the governing authority or a member of the Board of Ethics shall be deemed to have an interest in transactions involving:*

*(B) Any person with whom a contractual relationship exists whereby the **member may receive any payment or other benefit;***

*(C) Any business in which the member is a **director, officer, employee, prospective employee, or shareholder;** . . . §22A (b) (7), 1992.*

The Board concluded that a conflict of interest will not be created under 22A(c), if:

Mr. Johnson disqualifies or recuses himself from participating in any official act or act of advice, consultation, rendering of opinions or recommendations to governing authorities with respect to any and all matters for which he or his Firm has an **interest** or where he or his Firm may acquire even a remote interest in a DeKalb County Purchasing and Contracting proposal, present or future.

Therefore, the Board advises that Mr. Johnson will be in compliance with the DeKalb County Code of Ethics if:

- (1) (1) He absents himself from any meetings of the Advisory Board during such time as any interest concerning Johnson and/or the Firm and any ongoing activities of Johnson and the Firm, its agents, representatives, affiliates, subsidiaries or assigns, is under any consideration whatsoever, and recuses or disqualifies himself from any participation in communications, advise and consultation, opinions, investigations, interviews, procurement matters, activities or relations he may have with or for the Advisory Board which may relate to any such interest, including, but not limited to, those interest wherein Johnson or the Firm may provide services of any kind to the governing authority;

(2) Disqualify and recuse himself from voting, as a member of the Advisory Board, if such votes are called upon as official activities or duties, on any matters related to inquiries, interviews, advise, consultation, opinions, investigations, interviews, procurement matters, activities or consideration of activities of the Advisory Board or any other governing authority of DeKalb County concerning the any interests of Johnson and his Firm, its agents, representatives, affiliates, subsidiaries or assigns; and, from participating in any discussions, opinions, investigations, studies or communications concerning his official capacities and duties on the Advisory Board relating to any such interest.

(3) Johnson should for any matter referred to in § 22A (d) (above) fully disclose to the governing authorities (The Board of Ethics and the Airport Authority and/or the DeKalb Board of Commissioners) any interest that he has reason to believe may be or appear to affect his official acts or actions as a representative in the governing authority and provide the precise nature and value, if any, of any such interest, direct or indirect. The directive, pursuant to (d), is that he shall make sworn full disclosure of such interest to the governing authority of DeKalb County and to the Board of Ethics together with his sworn statement of his course of action to alleviate the conflict or appearance of conflict. The information disclosed by such sworn statements, except as to value attributed to the disclosed interest, shall be made a matter of public record with the Board of Ethics.

The above opinion is based only upon a hypothetical set of facts and is advisory only. There are instances where the appearance of a conflict of interest may exist for example by reason of actions taken in advance of the involvement of the business interest of Mr. Johnson which would require that Mr. Johnson disclose as per above and request an advisory opinion prior to accepting employment or a contract interest with the governing authority. Timely disclosure is advised.

Teri Thompson, Chair
DeKalb County Board of Ethics

Attest:

Veronica Higgs
DeKalb County Board of Ethics

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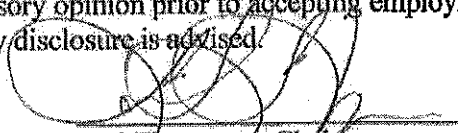
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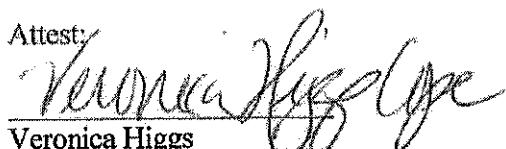
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