



AlaFile E-Notice

03-CV-2019-901622.00

Judge: BROOKE E REID

To: WHITE JOHN MARK
mwhite@whitearnolddowd.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

BIRMINGHAM AIRPORT AUTHORITY V. ALABAMA ETHICS COMMISSION ET AL
03-CV-2019-901622.00

The following matter was FILED on 6/26/2020 2:09:58 PM

D001 ALABAMA ETHICS COMMISSION

MOTION TO VACATE OR MODIFY

[Filer: RAULSTON CYNTHIA PROPST]

Notice Date: 6/26/2020 2:09:58 PM

GINA J. ISHMAN
CIRCUIT COURT CLERK
MONTGOMERY COUNTY, ALABAMA
251 S. LAWRENCE STREET
MONTGOMERY, AL, 36104

334-832-1260



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03-CV-2019-901622.00

CIRCUIT COURT OF

MONTGOMERY COUNTY, ALABAMA

GINA J. ISHMAN, CLERK

STATE OF ALABAMA

Revised 3/5/08

Cas

Unified Judicial System

03-MONTGOMERY

 District Court Circuit Court

CV21

BIRMINGHAM AIRPORT AUTHORITY V. ALABAMA
ETHICS COMMISSION ET AL**CIVIL MOTION COVER SHEET**

Name of Filing Party: D001 - ALABAMA ETHICS COMMISSION

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

CYNTHIA PROPST RAULSTON
100 North Union Street, Suite 104
Montgomery, AL 36104
Attorney Bar No.: RAU002 Oral Arguments Requested**TYPE OF MOTION****Motions Requiring Fee**

- Default Judgment (\$50.00)
Joinder in Other Party's Dispositive Motion
(i.e. Summary Judgment, Judgment on the Pleadings,
or other Dispositive Motion not pursuant to Rule 12(b))
(\$50.00)
- Judgment on the Pleadings (\$50.00)
- Motion to Dismiss, or in the Alternative
Summary Judgment (\$50.00)
Renewed Dispositive Motion (Summary
Judgment, Judgment on the Pleadings, or other
Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- Summary Judgment pursuant to Rule 56 (\$50.00)
- Motion to Intervene (\$297.00)
- Other _____
pursuant to Rule _____ (\$50.00)

*Motion fees are enumerated in §12-19-71(a). Fees
pursuant to Local Act are not included. Please contact the
Clerk of the Court regarding applicable local fees.

Local Court Costs \$ 0 _____

Motions Not Requiring Fee

- Add Party
- Amend
- Change of Venue/Transfer
- Compel
- Consolidation
- Continue
- Deposition
- Designate a Mediator
- Judgment as a Matter of Law (during Trial)
- Disburse Funds
- Extension of Time
- In Limine
- Joinder
- More Definite Statement
- Motion to Dismiss pursuant to Rule 12(b)
- New Trial
- Objection of Exemptions Claimed
- Pendente Lite
- Plaintiff's Motion to Dismiss
- Preliminary Injunction
- Protective Order
- Quash
- Release from Stay of Execution
- Sanctions
- Sever
- Special Practice in Alabama
- Stay
- Strike
- Supplement to Pending Motion
- Vacate or Modify
- Withdraw
- Other _____
pursuant to Rule _____ (Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously
with this motion an Affidavit of Substantial Hardship or if you
are filing on behalf of an agency or department of the State,
county, or municipal government. (Pursuant to §6-5-1 Code
of Alabama (1975), governmental entities are exempt from
prepayment of filing fees)

Date:

6/26/2020 2:08:16 PM

Signature of Attorney or Party

/s/ CYNTHIA PROPST RAULSTON

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, ALABAMA

**BIRMINGHAM AIRPORT)
AUTHORITY,)**

Plaintiff,)

v.)

Civil Action No. CV-2019-901622

**ALABAMA ETHICS COMMISSION,)
a State Agency; CHARLES PRICE)
BEVERLYE N. BRADY, JOHN)
M. PLUNK, JACQUELYN L. STUART,)
and STANTON H. MCDONALD, in their)
official capacities as Commissioners of)
the Alabama Ethics Commission; and)
TOM ALBRITTON, in his official)
capacity as Executive Director of the)
Alabama Ethics Commission,)**

Defendants.)

**MOTION TO ALTER, AMEND OR VACATE OR
IN THE ALTERNATIVE, A REQUEST FOR CLARIFICATION**

COME NOW the Defendants, pursuant to Ala. R. Civ. Pro., Rule 59(e), and move this Court to alter, amend, vacate or clarify its June 11, 2020 Order in this case. In support of this Motion the Defendants argue the following:

On June 11, 2020, this Court entered an Order granting the Plaintiff’s Motion for Summary Judgment. (Doc. 193) In that order, the Court found,

[t]he funds used to pay Authority employees are self-generated revenues that *are not derived from or linked to actual taxpayer contributions*, and therefore those funds do not constitute “state, county, or municipal funds” as that phrase is used in the Ethics Act. Therefore, Authority employees are not “public employees” under the Ethics Act. (Emphasis added). (*Id @ ¶13*).

The Defendants request that this Court clarify, alter or amend that order to explain what the highlighted phrase above means with respect to the Airport Authority for whom Advisory Opinion 2019-07 was written.

As the facts establish, “funding for the operations of the Airport...is derived exclusively from user and landing fees paid by the airlines and from rental, concession, and other fees paid by lessee, concessionaires, and other users of the airport property and facilities.” (Doc. 26 @ ¶11). The transactions between the Authority and the airlines, the lessees, and concessionaires are arms-length commercial transactions negotiated between private entities and this public corporation. Therefore, the Defendants interpret the Court’s Order to apply to this limited fact scenario. The phrase, “actual taxpayer contributions” is not contained in the holding of the *Randolph*¹ case upon which the Plaintiff, and this Court’s Order, relied; it is not a phrase appearing in the Code of Alabama; it does not appear in any caselaw dealing with public funds;² it is not contained in the definition of public employee. In other words, no precedential or binding authority explains what this phrase means, insofar as the Defendants have been able to discover through their research, and for that reason the Commission needs additional direction as to how to apply the Court’s holding.

The Commission routinely issues and adopts advisory opinions consistent with Ala. Code §36-25-4(a)9. Those opinions are relied upon by the requestor, and others who are in “materially similar circumstances.” The lack of specificity in the phrase “actual taxpayer contributions” presents a real impediment to the Commission adopting future opinions consistent with this Court’s order for those who are in “materially similar circumstances.” A positive statement about how the revenues are generated would be more instructive to the Commission moving forward than a statement in the negative about how they are not generated. For that reason, the Defendants need clarification of and request an amendment to this Court’s order. The Defendants suggest the following clarification based on what appears to be the Court’s reasoning from the Authority’s unique facts:

The funds used to pay Authority employees are revenues that are derived from commercial arms-length transactions between this public corporation and private business entities in which the parties can negotiate their terms, and therefore the funds derived from those negotiations do not constitute “state, county, or municipal

¹ *Water Works and Sewer Board of the City of Selma v. Randolph*, 833 So. 2d 604 (Ala. 2002)

funds” as that phrase is used in the Ethics Act. Therefore, Authority employees are not “public employees” under the Ethics Act.

The requested amendment does not alter the relief granted to the Plaintiffs in any way, but will assist the Defendants in their adoption of future advisory opinions. The requested language is specific to the requestor of the advisory opinion, the Authority, and those who are in “materially similar circumstances.”

CONCLUSION

For the above stated reasons, Defendants respectfully request this Honorable Court grant Defendants’ Motion to Amend the Court’s order as described above. The Plaintiffs object to the amendment; therefore, the Defendants request a hearing on this motion.

/s/ Cynthia Propst Raulston

CYNTHIA PROPST RAULSTON

General Counsel

Alabama Ethics Commission

Attorney for Defendants

CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the above upon all counsel of record via electronic means through the Alabama Electronic Case Filing System and/or U.S. Mail on this the 26th day of June 2020.

/s/ Cynthia Propst Raulston

CYNTHIA PROPST RAULSTON

General Counsel

Alabama Ethics Commission

Attorney for Defendants