



AlaFile E-Notice

03-CV-2019-901622.00

Judge: BROOKE E REID

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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 7/8/2020 5:12:21 PM

X005 ALABAMA WATER AND WASTEWATER INSTITUTE

RESPONSE TO MOTION TO VACATE OR MODIFY

[Filer: SEFTON PATRICK LADD WHEEL]

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GINA J. ISHMAN
CIRCUIT COURT CLERK
MONTGOMERY COUNTY, ALABAMA
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MONTGOMERY, AL, 36104

334-832-1260

**IN THE CIRCUIT COURT
OF MONTGOMERY COUNTY, ALABAMA**

BIRMINGHAM AIRPORT AUTHORITY,)
)
 Plaintiff,)
)
 v.)
)
 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.)

CASE NO. 03-CV-2019-901622.00

**ALABAMA WATER AND WASTEWATER INSTITUTE’S
RESPONSE TO DEFENDANTS’ MOTION TO ALTER, AMEND OR VACATE,
OR IN THE ALTERNATIVE, REQUEST FOR CLARIFICATION**

Alabama Water and Wastewater Institute (“AWWI”), previously allowed to participate in this case as *amicus curiae*, submits this response to Defendants’ Motion to Alter, Amend or Vacate, or in the Alternative, Request for Clarification, as follows:

1. AWWI adopts and incorporates the response filed by the Birmingham Airport Authority but wishes to write to how the requested amendment or clarification sought by the Ethics Commission will affect AWWI’s members.
2. AWWI is a non-profit organization representing the interests of nineteen public water and/or sewer suppliers in the State of Alabama. Certain of its membership consists of

public corporations whose revenue is self-generated and derived solely from the sale of water and sewer services and associated user fees and charges related to those services

3. AWWI members serve both commercial and residential water and sewer customers. While some of the revenues may sometimes be derived from water and sewer rates negotiated with businesses, the industry standard is for the fees and rates charged to customers to be based on standard rate schedules approved by a board of directors.

4. The Ethics Commission's proposed language would impose further burdens on AWWI's members to the extent it would require them to trace the origin of all its otherwise self-generated revenue to account for whether the funds were derived from "commercial arms-length transactions" or "private business entities" to determine which employees may or may not be covered by the Ethics Law.

5. The Ethic Commission's requested clarification is inconsistent with existing Alabama Supreme Court precedent holding that monies collected from customers for water and sewer bills does not convert the funds to state, county, or municipal funds simply because they were paid by the individual served by the public corporation. See Water Works & Sanitary Sewer Board of the City of Selma v. Randolph, 833 So. 2d 604 (Ala. 2002). The Alabama Supreme Court has not undertaken to include a new qualifier on the funds dependent upon whether the funds are derived from undefined commercial arms-length transactions or private business entities. AWWI, therefore, urges the Court to decline the Ethics Commission's invitation to do so.

WHEREFORE, the premises considered, AWWI respectfully requests that this Court deny Defendants' motion.

Respectfully submitted, this the 8th day of July 2020.

s/ Patrick L.W. Sefton

Patrick L. W. Sefton (SEF001)

Robert E. Sasser (SAS003)

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ALABAMA WATER AND WASTEWATER INSTITUTE'S RESPONSE TO DEFENDANTS' MOTION TO ALTER, AMEND OR VACATE, OR IN THE ALTERNATIVE, REQUEST FOR CLARIFICATION** has been e-filed using the Ala/File system, which will send notification of such filing to counsel of record, on this the 8th day of July 2020:

s/ Patrick L.W. Sefton _____

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Robert E. Sasser (SAS003)

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