



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION

MISSO, KEVIN;

Plaintiff;

v.

CITY OF HOMEWOOD, *et al.*;

Defendants.

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Case No.: Cv-2025-902801-MYA

MOTION TO DISMISS

Defendants City of Homewood, Alabama and Jennifer Andress, in her official capacity as a member of the City of Homewood Council, moves the Court to dismiss this lawsuit under Alabama Rules of Civil Procedure 12(b)(6). Plaintiff Kevin Misso's complaint fails to state a claim upon which relief can be granted against Homewood and Ms. Andress because:

- Homewood's sale of the property made the basis of this lawsuit is not governed by a "competitive bid process" as implied in the complaint. The only law that requires a "competitive bid process" is the Competitive Bid Law, which does not govern the sale of property by a municipality.
- The claims against Ms. Andress should be dismissed because she lacks the capacity as a council person to provide the relief sought in the complaint. Ala. R. Civ. P. 9(a). Further, a campaign contribution does not create a conflict of interest (Ala. Code § 36-25-1(8) (1975)) and is not a "thing of value" under the Ethics Act (Ala. Code § 36-25-1(34) (1975)).
- No allegation of the complaint against Ms. Andress constitutes a violation of Code of Ethics for Public Officials. Ala. Code §§ 36-25-1, et seq. (1975).

POINTS AND AUTHORITIES

A. The complaint.

The complaint seeks to stop the sale of property in Downtown Homewood owned by the City of Homewood and formerly used as the Homewood City Jail. (Doc 1.) Misso's

legal premise, pleaded unartfully, is a “competitive bid process.” There is no “competitive bid process” that applies to the sale of property. The only “competitive bid process” required of municipalities is the inapplicable Competitive Bid Law.

The complaint lacks substance factually and legally and consists entirely of misstatements and mischaracterizations. For example, Misso misrepresents that he sent a letter of intent to purchase the Homewood City Jail Property in 2022. (Doc 1, ¶ 9.) Black's Law Dictionary defines a letter of intent as “[a] written statement detailing a preliminary understanding of parties who plan to enter into a contract or some other agreement”

No document fitting the description of a letter of intent may be found among Misso's exhibits or anywhere else. Misso's supporting document is merely a letter requesting a meeting to discuss ideas on redevelopment of the site with the Homewood. (Doc 1, Ex. A.) Further, neither a letter of inquiry nor a letter of intent serves as a basis to obtain injunctive or declaratory relief because the Competitive Bid law does not apply, and there was no purchase offer or contract.

B. The complaint fails to state a claim upon which relief can be granted under the Competitive Bid Law.

First, Misso mistakenly bases his complaint on a nonexistent “competitive bid process.” Again, there is no “competitive bid process” applicable to municipalities. The Competitive Bid Law governs “all expenditure of funds for labor, services, work, or for the purchase of materials, equipment, supplies, or other personal property involving thirty thousand dollars (\$30,000) or more, and the lease of materials, equipment, supplies, or other personal property where the lessee is or becomes legally and contractually bound

under the terms of the lease to pay a total amount of thirty thousand dollars (\$30,000) or more . . .” Ala. Code § 41-16-50(a) (1975).

The Competitive Bid Law governs only purchases and leases of labor, services, and personal property, not sales of real or personal property. It is self-evident that fictionized “competitive bid process” cannot serve as grounds for injunctive relief. The Competitive Bid Law does not apply. The complaint has no legitimate legal basis.

The holding in *Cotton Bayou Ass’n v. Department of Conservation*, 622 So. 2d 924 (Ala. 1993) is dispositive of this case. The Department of Conservation owned real property leased to a lessee. Cotton Bayou sued the Department, alleging that the Competitive Bid Law required the Department to obtain bids before leasing the property, and sought a temporary restraining order, a permanent injunction, and declaratory relief. The Circuit Court ruled in favor of the Department stating the Competitive Bid Law did not apply.

The Circuit Court held that Alabama law allowed the State to lease real estate by a negotiated lease, denied the request for injunctive relief, and issued a declaratory judgment that the Department complied with all legal requirements. The Supreme Court of Alabama affirmed.

This appeal presents the single issue of whether a State of Alabama agency has the authority to negotiate for the lease of real property or must lease real property pursuant to the competitive bid law, Ala. Code 1975, § 41-16-1 et seq., The trial court held that the State may lease real estate by negotiated lease. We affirm.

Cotton Bayou Ass’n, 622 So. 2d at 924-25.

There is no material distinction between the facts in *Cotton Bayou Ass’n* and this case. The City of Homewood may negotiate a sale of its property like the Department of Conservation leased its property.

The rules of statutory construction also lead to the conclusion that Homewood may negotiate a sale of the Homewood City Jail property.

"[T]he first rule of statutory construction [is] that where the meaning of the plain language of the statute is clear, it must be construed according to [its] plain language." *Ex parte United Serv. Stations, Inc.*, 628 So. 2d 501, 504 (Ala. 1993).

Further, "the special mention of one thing in a law implies the exclusion of the things not mentioned, 'Expressio unius est exclusio alterius.'" *Schenher v. State*, 38 Ala. App. 573, 576, 90 So. 2d 234 (Ala. Civ. App. 1956) ("[T]he statute, in providing that a violation of the narcotics statute shall be a misdemeanor, 'except as otherwise herein provided,' and by enumerating certain drugs the possession of which is termed a felony and making special mention of morphine and heroin, as well as the inclusory drug 'opium,' implies the exclusion of codeine from such provision.")

Courts do not rewrite statutes.

'[m]atters of policy are for the Legislature and, whether wise or unwise, legislative policies are of no concern to the courts.' *Marsh v. Green*, 782 So. 2d 223, 231 (Ala. 2000). '[I]t is not the duty of this Court to question the wisdom, or the lack thereof, used by the Legislature in enacting the laws of this State.' *Ex parte T.D.T.*, 745 So. 2d 899, 904 (Ala. 1999). '[T]his Court is not at liberty to rewrite [a] statute or to substitute its judgment for that of the legislature.' *Gowens v. Tys. S.*, 948 So. 2d 513, 522 n.1 (Ala. 2006); see also *Ex parte Carlton*, 867 So. 2d 332, 338 (Ala. 2003).

Willis v. Kincaid, 983 So. 2d 1100, 1102-1103 (Ala. 2007).

If the Legislature intended to include the sale of real property in the Competitive Bid Law, it would have done so. *Fausak's Tire Center, Inc. Blanchard*, 959 So. 2d 1132, 1144 (Ala. Civ. App. 2006) .

Had the legislature intended to include a judicial-admission exception to the writing requirement for a contract to sell or purchase securities in a closely held corporation, it could have imported the wording of § 7-8-319(d), the former UCC Statute of Frauds, or equivalent language,

into subsection (8) of the general Statute of Frauds. The fact that the legislature did not import such language into subsection (8) of § 8-9-2 convinces us that the legislature did not intend to establish a judicial-admission exception (or any other exception) to the writing requirement for the sale or purchase of securities in a closely held corporation.

Fausak's Tire Center, Inc. Blanchard, 959 So. 2d 1132, 1144 (Ala. Civ. App. 2006).

Nothing in the plain language of the Competitive Bid Law suggests it applies to a municipality's sale of real property. Accordingly, the sale of municipal property cannot be subject to Competitive Bid Law.

Second, the statute authorizing a municipality to sell real property makes no mention of bids or the Competitive Bid Law. Ala. Code § 11-47-20 (1975) ("The governing body of any city or town in this state may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto, and a conveyance made by the mayor in accordance with such ordinance invests the grantee with the title of the municipality.")

The Alabama Attorney General interpreted Section 11-47-20 to mean that the Competitive Bid Law does not cover a municipality's sale of property.

You are also advised that there is no statute which requires said Town to sell its real property on a competitive bid basis. Therefore, the property to which you refer may be sold by the Town on a negotiated basis.

Alabama Attorney General's Opinion, Vol. 143, pp. 21-22 (emphasis added).

C. Misso's allegation of an "appearance of impropriety [which] may violate" Alabama Code § 36-25-5(a) (1975) is without basis and spurious.

Misso does not and cannot cite any law that prohibits a council person from voting on any matter before the Homewood Council involving Mike Mouron. Mr. Mouron contributed individually to Ms. Andress's campaign. He is not the entity interested in the

Homewood City Jail property, but he does have an ownership interest in the entity seeking to develop the property.

Officials are prohibited from accepting a “thing of value.” Without a statutorily defined “thing of value” given, there can be no violation of the Code of Ethics for Officials.

Under Alabama Code § 36-25-1(34):

The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:

1. A contribution reported under Chapter 5 of Title 17 or a contribution to an inaugural or transition committee.

(Emphasis added.) Mr. Mouron’s campaign contribution was not a prohibited “thing of value” based on the complaint’s allegations. There is no allegation or proof that anything was required of Ms. Andress for the campaign contribution.

Alabama Code § 36-25-5(a) (1975) provides:

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.**

(Emphasis added.)

This statute does not prohibit a municipal council person accepting a developer’s campaign contribution from voting on matters related to the developer as Misso alleges. A municipal council person does not achieve personal gain by doing so.

Further, Alabama Code § 36-25-1(8) (1975) includes the following definition:

A conflict of interest shall not include any of the following:

d. Any campaign contribution, including the purchase of tickets to, or advertisements in journals, for political or testimonial dinners, if the contribution is actually used for political purposes and is not given under circumstances from which it could reasonably be inferred that the purpose of the contribution is to substantially influence a public official in the performance of his or her official duties.

(Emphasis added.)

There is no allegation or evidence that Ms. Andress has been influenced by a campaign contribution, or that the contribution was not “actually used” for the campaign.

The Court is not bound to accept the wild allegations and conclusions in the complaint as true when considering the motion to dismiss of Homewood and Ms. Andress.

Although we are required to accept [the plaintiff's] factual allegations as true at this stage of the proceedings, we are not required to accept her conclusory allegations that [the defendant] acted willfully, maliciously, fraudulently, or in bad faith. Rather, to survive [the defendant's] motion to dismiss, [the plaintiff] was required to plead facts that would support those conclusory allegations. *See Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002) (noting, on review of the dismissal of a complaint for failure to state a claim, that '[t]he plaintiff's factual allegations are accepted as true' but that 'conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal').

Ex parte Gilland, 274 So. 3d 976, 985 n.3 (Ala. 2018).

D. Conclusion.

Misso's complaint lacks factual and legal substance. The transaction made the basis of his complaint is not recognized legally as a claim. This lawsuit should be dismissed.

DATE: July 16, 2025.

Respectfully,

/s/ Wayne Morse, Jr.

Michael G. Kendrick (KEN002)

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CERTIFICATE OF SERVICE

Pursuant to Alabama Rule of Civil Procedure 5(d), I certify that on July 16, 2025, I electronically filed the foregoing motion on Alafile which sends notification of such filing to all attorneys of record. I further certify that I served a copy on the following plaintiff via U.S. First Class Mail and by email:

Kevin Misso
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/s/ Wayne Morse, Jr.

OF COUNSEL