



## Attorney's dual role for Memphis could pose conflict of interest

By Marc Perrusquia

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Last year, the city of Memphis paid Allan Wade, a politically connected staff attorney, more than the mayor and the chief administrative officer -- combined.

Wade received \$387,000 from the city in 2008 through an unusual combination of a salary paid to him as an employee (who also gets full health and retirement benefits) and fees paid to his law firm for outside legal work.

The arrangement has earned Wade \$1.2 million since 2006, according to records obtained by The Commercial Appeal.

"That's pretty outrageous," said Dan Norwood, a private Memphis attorney who has worked extensively with the City Charter and believes Wade's arrangement could pose a conflict of interest.

Wade says there is no conflict and that he has a legal opinion to back it up.

Yet, an expert on legal ethics said the arrangement poses thorny questions for rules governing conduct by lawyers because Wade is working for both the city's legislative and administrative branches.

Hired by the city in 1992 and paid \$92,000 a year to provide independent legal advice to the City Council, Wade also went to work for the administration in 2005. That year, Mayor Willie Herenton signed a contract designating Wade as special counsel representing the city in lawsuits.

Under that contract, Wade is paid \$210 an hour as outside counsel handling a variety of lawsuits. He gets \$275 an hour under a separate contract signed by Herenton last

year to oversee the city's school-funding litigation with Memphis City Schools.

Brian Faughnan, chairman of the Tennessee Bar Association's committee on ethics and professional conduct, said conflicts must be judged case by case but said it can get sticky for an attorney representing both a chief executive and a board of directors if they have adverse interests.

"If things get to the point where the CEO and the board don't agree on what is in the best interests of the corporate entity, then things can get more complicated," said Faughnan, who also represents The Commercial Appeal in freedom-of-information matters.

Wade said Friday that the issue of his dual roles has been raised before and he has received a favorable ruling from the Tennessee Board of Professional Responsibility, the agency that polices attorney conduct.

Asked for a copy of the ruling and any complaint, Wade said it was confidential.

"I'm not defending what you write. You can do your hatchet job," he said.

He said that while he agreed the arrangement poses the potential for conflict because of adverse positions between the mayor and council, there isn't one in fact.

"First you have to have an adverse position," he said.

Records show that last winter, as the Allan J. Wade law firm was receiving portions of the \$966,000 it has been paid since 2006 under the Herenton-signed contracts, Wade issued a written opinion favorable to the mayor.

The opinion followed disclosures that Herenton's private real estate firm had secretly received a \$91,000 payment connected to a city-backed effort to redevelop the Greyhound bus station Downtown, a matter that has also been the focus of a federal grand jury investigation.

Responding to news reports, then-council chairman Myron Lowery asked Wade if the council should open an ethics investigation into Herenton's involvement.

Wade replied in a nine-page opinion that no action by the council was required, asserting media reports on the matter were unreliable and that his own investigation had found no evidence that the mayor's financial interest in the deal was the "subject of an official act or action by or with the city."

Now serving as interim mayor following Herenton's July retirement, Lowery said Friday he considers Wade an excellent attorney but didn't want to make any rash statements.

"I've long been concerned about attorney fees from our legal division," he said. "I need to look into this. I need time to reflect."

Escalating legal fees played a role in Lowery's first action as mayor pro tem --

attempting to fire City Atty. Elbert Jefferson, a Herenton appointee. Lowery said he terminated Jefferson because of soaring fees paid to outside attorneys over the last few years. Between 2006 and 2009, city spending on outside legal, consulting and lobbying contracts jumped to nearly \$8 million, an increase of more than 100 percent.

Lowery's move to get rid of Jefferson failed after the attorney filed a lawsuit asserting his termination required council approval.

Jefferson didn't co-sign Wade's initial 2005 contract as outside legal counsel (Sara Hall was city attorney then), but he did join Herenton in signing the subsequent 2007 agreement making Wade outside counsel for the school-funding litigation.

Records show Wade is representing the city in defending against several other lawsuits, including one filed in July challenging the payment of legal fees for former Memphis Light, Gas and Water Division president Joseph Lee.

Wade was hired by the city as an employee in 1992 following longstanding complaints by council members that they couldn't get independent legal advice. Prior to Wade's hiring, the council was represented by the city attorney, who is appointed by the mayor. Council members said they couldn't get objective legal advice in disputes with the mayor because of that relationship.

Some of the concerns about a possible conflict in Wade's dual roles stem from the City Charter, which says "no ... officer nor subordinate officer of the city, shall be connected with, or interested in, directly or indirectly, any contract with the city."

"It does raise some interesting questions," said Clifford Pierce, who served as city attorney from 1975 to 1990. The language in the charter was written in 1909 and evidently applies to political appointees and people in "semi-managerial" positions, Pierce said.

Pierce said it was a longstanding practice in his day to pay the city attorney a salary and full health and pension benefits while allowing him to also have an outside practice. Pierce said while he did litigation work for the city, his only compensation was his \$60,000-a-year salary.

"I didn't get paid extra for it," he said.

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