



2009-003

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

October 7, 2008

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Honorable D.T. Marshall
Montgomery County Sheriff
115 South Perry Street
Montgomery, Alabama 36104

Sheriffs - Sheriffs' Funds -
Expenditures - Competitive Bid Law
- Exemptions

The sheriff is not required to obtain the approval of the county before making expenditures from the Sheriff's Fund.

Purchases from the fund are not required to be made by competitive bidding.

Dear Sheriff Marshall:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

(1) Does the Montgomery County Commission or County Administrator have any right or legal standing to question an expenditure from the Sheriff's Fund simply because they are required to write a check from the fund?

(2) Is the fund exempt from the bid law?

FACTS AND ANALYSIS

Act 93-701 of the 1993 Regular Session of the Alabama Legislature is a local act, applicable to Montgomery County, establishing pistol

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permit fees and the Sheriff's Fund. The fund is provided for in section 3 of the act as follows:

(a) A fund which shall be known as the "Sheriff's Fund" is hereby established, to be expended by the Sheriff or his or her appointed agent, in law enforcement work as provided in subsection (b) of this section.

(b) The Sheriff or his or her appointed agent is hereby authorized and empowered to make requisition to the county treasurer or other custodian of county funds on the "Sheriff's Fund" for the payment of any and all expenses for the betterment of law enforcement in the public's interest and in the proper discharge and the conduct of duties of the Sheriff's Office in Montgomery. The county treasurer or other custodian of county funds *shall immediately pay out such funds upon requisition by the Sheriff or his or her appointed agent.*

1993 Ala. Acts No. 93-701, 1345, 1345 (emphasis added).

Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997); *State Dep't of Transp. v. McLelland*, 639 So. 2d 1370, 1371 (Ala. 1994). In addition, "[t]he word 'shall,' when used in a statute, is mandatory." *Ex parte Nixon*, 729 So. 2d 277, 278 (Ala. 1998). The act mandates payment from the fund on requisition of the sheriff without qualification.

Regarding your second question, this Office has recognized that purchases made by a public officer from discretionary funds controlled solely by the officer are not required to be made by competitive bid. Opinions to Honorable Bobby M. Junkins, Probate Judge, Etowah County, dated November 13, 2001, A.G. No. 2002-058 (special recording fees); Honorable Mike Blakely, Sheriff, Limestone County, dated March 5, 1984, A.G. No. 84-00191. Consistent with these opinions, purchases from the Sheriff's Fund are not subject to competitive bidding.

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CONCLUSION

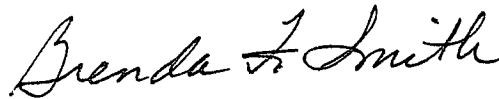
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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

TK/GWB/SA

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