

2009-033

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

January 22, 2009

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Honorable E. Shane Black
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102 South Jefferson Street
Athens, Alabama 35611

Municipalities – Public Purpose – Parks
and Recreation – Maintenance – Contracts
– Public Works Law – Competitive Bid
Law – Jefferson County

The City of Pinson may contract with a
community center to renovate the center in
exchange for the center making cultural
facilities available to the public. If the
project exceeds \$50,000, it is subject to
bid under the Public Works Law.

The city may contract with a third party to
dispose of solid waste from and provide
maintenance for the Turkey Creek Nature
Preserve. If the solid waste disposal
contract involves \$15,000 or more, it is
subject to bid under the Competitive Bid
Law. If the maintenance contract exceeds
\$50,000, and otherwise qualifies as "public
works," it is subject to bid under the
Public Works Law.

Dear Mr. Black:

This opinion of the Attorney General is issued in response to your request
on behalf of the Pinson City Council.

QUESTIONS

(1) May the City of Pinson restore a community
center operated by a nonprofit corporation?

(2) Is the project subject to the Public Works Law?

(3) May the city contract with a third party to assist with the maintenance of the Turkey Creek Nature Preserve, primarily through garbage and rubbish removal and other nominal maintenance?

(4) Is the contract subject to the Competitive Bid Law?

FACTS AND ANALYSIS

Your request states that there is a tract of land in the City of Pinson owned by the Jefferson County Board of Education ("Board"). You additionally state that there is an historic school on the land that is no longer used for school purposes. The Board leases the building to the Palmerdale Homestead Community Center ("PHCC"), a nonprofit corporation. The PHCC hosts a variety of community functions and events at the building, such as free classes on community emergency preparedness, arts and craft shows, theatrical events, and quilting bees. The building is often available to community members for private parties and functions at minimal charge.

Your request further states as follows:

The Turkey Creek Nature Preserve ("Preserve") is also located in the city. The Preserve is home to a variety of wildlife, including three species of endangered Darter Fish. The Preserve contains approximately 800 acres. . . . Portions of the Preserve are used and enjoyed for recreational purposes by city residents. The Preserve is open to the public free of charge. The primary attraction in the Preserve is the Turkey Creek Falls area, an historic landmark for the county and state. Residents enjoy a variety of basic outdoor activities and scenery in the Preserve.

The city understands that management of the Preserve is a joint effort between the Alabama Land Trust, Forever Wild, Freshwater Land Trust, and the Society to Advance the Resources at Turkey Creek ("START"). START is a 501(c)(3) organization that, through volunteerism, donations, and other support,

combats litter, performs security patrol, and actively monitors the activities in the Preserve.

In addition, this Office understands that the Preserve is owned by the Alabama Forever Wild Program and the Jefferson County Commission.

Section 11-47-16 of the Code of Alabama provides as follows:

Each county, city and town in this state shall have the power to establish, operate, maintain or contract with others to operate and maintain public cultural facilities consisting of museums, art galleries, art centers, music halls and related facilities, and, if necessary, to acquire sites for, construct, or otherwise acquire such facilities, all to the end of making cultural facilities available to the public. . . .

ALA. CODE § 11-47-16 (1992) (emphasis added).

Section 11-80-5 of the Code of Alabama provides as follows:

The counties and municipalities of this state are hereby authorized to plan, establish and furnish recreational, social and cultural facilities, services and programs, including transportation services and programs, especially for senior citizens within the state . . . *Such services* may be administered by and through such instrumentality or instrumentalities as may be designated for that purpose by the governing body of such county or municipality and *may also be furnished* by each such entity or on a multi-jurisdictional basis through mutual agreements between two or more such entities and also *by contract with such public or private agencies as may be determined by such governing bodies as necessary or desirable.*

ALA. CODE § 11-80-5 (1994) (emphasis added).

This Office has considered the question of whether a county commission could donate funds to a nonprofit performing arts center for renovations. Opinion to Honorable Larry Bennich, Chairman, Morgan County Commission, dated May 8, 1998, A.G. No. 98-00142. That opinion concluded that the county was authorized under section 11-47-16 to enter into an agreement with the center to provide the funds in return for the center making cultural facilities available to the public. Sections 11-47-16 and 11-80-5 similarly authorize the City of

Pinson to contract with the PHCC to renovate the community center in exchange for the center making cultural facilities available to the public.

The Public Works Law, codified at section 39-2-1, *et seq.*, of the Code of Alabama, controls all public works contracts that exceed \$50,000 and requires that such contracts be competitively bid. ALA. CODE § 39-2-1 to 39-2-14 (1992 & Supp. 2007). Section 39-2-1(5) defines “public works” as “[t]he construction, repair, *renovation*, or maintenance *of public buildings*.” ALA. CODE § 39-2-1(5) (Supp. 2007) (emphasis added). This law specifically includes the renovation of public buildings. Moreover, this Office has stated that the renovation by a city of a historical school on city property for use as a community center is subject to the requirements of the Public Works Law. Opinion to Honorable Barbara Walden, City Clerk/Treasurer, City of Boaz, dated September 27, 2004, A.G. No. 2004-223. Consistent with these authorities, if the project to renovate the community center exceeds \$50,000, it is subject to the bidding requirements of the Public Works Law.

Regarding the Turkey Creek Nature Preserve, section 22-27-5(a) of the Code of Alabama authorizes municipalities to enter into a contract with a private individual to provide for the collection of solid wastes generated in the municipality. ALA. CODE § 22-27-5(a) (2006). Section 11-47-130 of the Code of Alabama authorizes municipalities to “*maintain* the health and *cleanliness* of the city or town within its limits and within the police jurisdiction thereof.” ALA. CODE § 11-47-130 (1992) (emphasis added). Section 11-47-19 of the Code of Alabama authorizes municipalities to “establish, lay out and *improve public grounds, parks* and boulevards.” ALA. CODE § 11-47-19 (1992) (emphasis added). Municipalities can enter into contracts in furtherance of governmental purposes. ALA. CODE § 11-40-1 (1989); *Wilkins v. Dan Haggerty & Associates, Inc.*, 672 So. 2d 507 (Ala. 1995).

Section 93 of article IV of the Recompiled Constitution of Alabama prohibits the state from lending money or credit in aid of a private person, association, or corporation. ALA. CONST. art. IV, § 93 (amends. 1, 12, 58). Section 94 of article IV of the Recompiled Constitution of Alabama likewise prohibits a town from granting money or other thing of value in aid of a private individual, corporation, or association. ALA. CONST. art. IV, § 94 (amends. 112, 558). These constitutional prohibitions, however, apply to the granting of public funds to private entities. They do not apply to the granting of public funds to other governmental entities. See the following opinions:

- Honorable Donald B. Sweeney, Jr., Attorney, Alabama Institute for the Deaf and Blind, dated June 24, 2008, A.G. No. 2008-098;

- Honorable Robert L. Potts, President, University of North Alabama, and Honorable William T. Musgrove, III, City Attorney, City of Florence, dated April 8, 2004, A.G. No. 2004-116;
- Honorable Lawrence M. Wettermark, Mobile County Attorney, dated November 3, 1999, A.G. No. 2000-025;
- Honorable William D. Owings, Attorney, Town of West Blocton, dated July 21, 1998, A.G. No. 98-00180.

As previously stated, the Preserve is owned by the Alabama Forever Wild Program and Jefferson County, a public entity. Ownership of the Forever Wild part of the Preserve is also by a public entity. Section 219.07 of article XI of the Recompiled Constitution of Alabama (Amendment 543) provides for the transfer of land dedicated as natural area preserves to the state. ALA. CONST. art. XI, § 219.07(12) (amend. 543). "Title to the property acquired from funds in the Forever Wild Land Trust shall be held in the Alabama Trust Fund for the State of Alabama." ALA. CONST. art. XI, § 219.07(7)(c) (amend. 543). Accordingly, the city may enter into a contract with a third party to dispose of solid waste from and provide maintenance for the Preserve.

The Competitive Bid Law for local agencies, including municipalities, is found in section 41-16-50 of the Code of Alabama. The bid law applies generally to contracts of at least a certain amount for labor, services, work, or for the purchase or lease of materials, equipment, supplies, or other personal property. Section 41-16-50, as amended by Act 2008-379, effective August 1, 2008, increased the minimum amount at which contracts become subject to the bid law from \$7,500 to \$15,000. ALA. CODE § 41-16-50 (Supp. 2008).

The Legislature, courts, and this Office have all agreed that contracts involving the expenditure of public funds for solid waste collection are subject to the Competitive Bid Law. See ALA. CODE § 41-16-50(a) [Supp. 2007]; *Brown's Ferry Waste Disposal Ctr., Inc. v. Trent*, 611 So. 2d 226 (Ala. 1992); *Beavers v. County of Walker*, 645 So. 2d 1365 (Ala. 1994); Opinion to Honorable Jonathan A. Brown, Attorney for the City of Vernon, dated February 23, 1996, A.G. No. 96-00142.

Opinion to Honorable Dewey D. Mitchell, Chairman, Lauderdale County Commission, dated July 22, 2003, A.G. No. 2003-197, at 4. Therefore, the solid waste disposal contract should be bid pursuant to the bid law if the costs involve \$15,000 or more. Contracts involving \$15,000 or more may not be divided into smaller parts to avoid the bid law.

The definition of "public works" in the Public Works Law additionally includes the "*maintenance*" of structures and "any other improvement . . . *maintained* on public property." ALA. CODE § 39-2-1(5) (Supp. 2007) (emphasis added). This Office has explained that "maintenance" under the Public Works Law is "[t]he care and work put into property to keep it operating and productive; general repair and upkeep." Opinion to Honorable Renee Culverhouse, Interim Chancellor, Alabama Department of Postsecondary Education, dated May 3, 2007, A.G. No. 2007-089, at 3 (*quoting Black's Law Dictionary* 973 (1999)). A maintenance contract for the Preserve meeting the definition of "public works" is subject to bid under the Public Works Law if the costs are in excess of \$50,000.

CONCLUSION

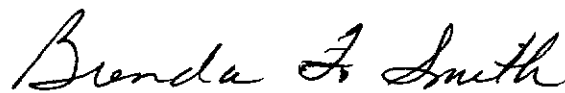
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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

TK/GWB

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