

Whether other organizations may use the facility at no charge or at a nominal fee depends on who possesses the facility and any agreements reached by the parties in contractual negotiations.

Dear Mayor Melton:

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

QUESTIONS

Would it be permissible for the City of Geneva, the City of Geneva schools, Wiregrass Boys and Girls Club, and the Children's Policy Council to finance a community center together?

Would it be permissible to establish a designated fund with the Children's Policy Council to receive funds from these organizations?

Can the City of Geneva contribute directly to this fund?

Can grant monies be used?

What portion of the funds collected would be subject to the bid laws?

Would it be permissible for private individuals/civic clubs to donate to this fund?

Should the City of Geneva have sole possession of the facility?

Would it be permissible for the other organizations to utilize the facility for a nominal fee or at no charge?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that the City of Geneva desires to build a new community center. Four organizations, including the City of Geneva, the City of Geneva schools, Wiregrass Boys and Girls Club, and the Children's Policy Council would like to assist with this project. The structure would be built on property owned by the City of Geneva. Your questions focus on the financing and possession of the proposed community center.

Initially, you question whether the four organizations mentioned could jointly finance the community center. Your obvious concern with this joint financial arrangement is the appropriation of public funds by the city and, possibly, the commingling of public funds toward this particular project. Previously, this Office has issued opinions wherein a municipality collaborates with other entities for the purpose of undertaking a particular task. Typically, the most significant hurdle for a public entity to surpass is whether such actions would violate sections 93 or 94 of the Constitution of Alabama.

Historically, there is a strong public policy against the granting of public funds or property to private groups or corporations, whether for profit or non-profit. The public policy, which is applicable to counties and municipalities, is articulated in section 94 of the Constitution of Alabama, as amended by amendment 558. Section 94 prohibits a municipality or county from granting money or any other thing of value to a private person, corporation, or association. ALA. CONST. art. IV, § 94 (amend. 558). The language of section 94 has been interpreted by the Supreme Court of Alabama to allow the appropriation of public funds to private entities only when the appropriation is for a public purpose that is consistent with the goals and authority of the entity providing the funds. *Opinion to Honorable Betty Brewer, Cullman County Judge of Probate, dated March 9, 2001, A.G. No. 2001-111.*

Generally speaking, a public purpose "has for its objective the promotion of public health, safety, morals, security, prosperity, contentment, and the general welfare of the community." *Opinion of the Justices No. 269, 384 So. 2d 1051, 1053 (Ala. 1980).* "The paramount test should be whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant party of the public, as distinguished from a remote and theoretical benefit." *Slawson v. Ala. Forestry Comm'n, 631 So. 2d 953, 956 (Ala. 1994).* The question of whether the proposed appropriation for a community center may be classified as a public purpose by the City of Geneva is a decision that remains within the domain of the Geneva City Council.

If the Geneva City Council determines that a public purpose is served by joining with other entities to build a community center, the city may appropriate funds to a nonprofit, private entity to assist in the building of the center.

Instead of directly appropriating funds to a nonprofit agency, this Office and the courts have recommended that the better practice would be for the municipality to enter into a written agreement with the entities setting out the benefits that would be conferred upon the public by the entities in return for the appropriation by the city. Opinions to Honorable William E. Shinn, Jr., County Attorney, Madison County, dated May 24, 2005, A.G. No. 2005-137; Honorable Glenn Fuller, Mayor, Town of New Site, dated January 31, 1997, A.G. No. 97-00099; and to Honorable Morgan Reynolds, Attorney, City of Clanton, dated August 1, 1996, A.G. No. 96-00281. For example, the agreement would state the amount of the appropriation, how the funds will be used by the entities to build a community center, and include the conditions upon which the community center will be open to the public, and/or specify how the center will be used to benefit the public.

This Office has concluded that a municipality can contract with a nonprofit corporation or organization to provide services that the city itself can provide. *Id.* Section 11-47-16 of the Code of Alabama allows a city to establish, operate, and maintain cultural facilities. Section 11-47-211 authorizes a city to provide parks, playgrounds, and recreational facilities. If the city determines that the building of the community center falls within these statutory authorities, the city may enter into an agreement or contract with these organizations to provide for a community center.

Any contract should memorialize the benefits conferred upon both parties. Opinion to Honorable Bobby L. Crowder, Mayor, City of Valley, dated November 6, 1995, A.G. No. 96-00034. The restrictions of section 94 of the Constitution of Alabama are "not applicable to a contract with mutual benefits to each party and a consideration on both sides." Opinions to Honorable John I. Cottle, III, Attorney, Tallassee City Board of Education, dated November 10, 2004, A.G. No. 2005-017; and to Honorable F. Lenton White, Attorney, City of Dothan, dated April 28, 1995, A.G. No. 95-00204.

Assuming the Geneva City Council determines that the appropriation of funds would meet a public purpose consistent with the goals of the city, this Office is unaware of a particular prohibition that would prevent the City of Geneva from joining other entities in the financing of this community center. *Crowder* at 4. The following opinions have been issued previously wherein a municipality and another organization or individual have collectively financed a particular endeavor:

- Honorable Charles B. Cole, Mayor, Town of New Brockton, dated May 28, 2003, A.G. No. 2003-115;
- Honorable Ronald L. Davis, Attorney, City of Northport, dated April 12, 2002, A.G. No. 2002-211;

- Honorable James L. Banks, Mayor, Town of Odenville, dated March 27, 1997, A.G. No. 97-00151.

The other entities mentioned in your request are the City of Geneva schools, Wiregrass Boys and Girls Club, and the Children's Policy Council. Whether the Geneva City schools could assist in the financing of the community center would also depend on a determination by the school board that a public purpose would be served by a conveyance of this nature and that purpose was consistent with the goals of the school board. The school system could use funds that are not otherwise restricted. Opinion to Honorable Ed Richardson, State Superintendent, Department of Education, dated August 28, 2003, A.G. No. 2003-232.

In addition, funds generated through fundraising efforts by a school may also be used. Opinions to Honorable Gerald Allen, Member, House of Representatives, dated March 23, 2001, A.G. No. 2001-124; Honorable Roger H. Bedford, Jr., Member, Alabama State Senate, dated September 20, 1988, A.G. No. 88-00450. The remaining entities are nonprofit agencies. Specific requirements that would limit the ability of nonprofit agencies may depend on an interpretation of federal law, which authorizes the tax-free status of these organizations and the purposes for which these entities were created. These entities should seek advice from their own legal counsel.

Your next inquiry seeks clarification regarding whether the Children's Policy Council may establish a separate fund in which monies for the community center will be deposited. You also question whether the city would be authorized to contribute directly to this fund. This Office is unaware of any prohibition against various persons and organizations contributing to a private fund that is established to pay for the construction of a community center.

Previously, in an opinion issued to Honorable Barbara Walden, City Clerk/Treasurer of Boaz, dated September 27, 2004, A.G. No. 2004-223, this Office stated that a city may appropriate funds to nonprofits where the council determines a public purpose is served. Again, rather than simply appropriating money directly to the nonprofit entity, the better practice is for the municipality to enter into a written agreement with the entity receiving the funds, which specifies how the funds will be used and the benefits to be received by the city and the public in exchange for those funds.

In an opinion to Honorable William T. Musgrove, Jr., City Attorney, City of Florence, dated January 25, 2000, A.G. No. 2000-071, the City of Florence inquired as to whether it could appropriate \$250,000 to the Children's Museum of the Shoals, Inc., for refurbishing and remodeling a structure located on property on which the city held a 99-year lease. This Office determined that, if the

Florence City Council determined that a public purpose would be served, the city could appropriate funds directly to the Children's Museum of the Shoals, Inc., and the city could sublease the building to the Children's Museum for nominal consideration. *See, generally, Brewer*; and opinion to Tommy Gibson, Chairman, Gas Board of the City of Boaz, dated April 28, 2006, A.G. No. 2006-090.

You also question whether grant funds may be used in the construction efforts. In previous opinions issued by this Office, it has been determined that grant funds must be used in accordance with the particular specifications set forth in the grant proposal. Opinions to Honorable Howard Shell, Mayor, City of Atmore, dated July 14, 2003, A.G. No. 2003-190; and to Honorable Laurie Strange Swenson, Planning Commission, City of Newville, dated May 6, 2002, A.G. No. 2002-224. Whether grant funds may be used to assist in building the recreational center depends on the specifications found within the grant itself.

Next, you question what portion of the funds collected would be subject to the bid laws. The bid laws are applicable only to public funds. *See, generally, opinion to Honorable Roy W. Williams, Jr., Attorney, City of Cullman, dated February 4, 2004, A.G. No. 2004-067 at 2* (stating that funds collected by a city become public funds once transferred to the city.). Once the funds are appropriated to a private or nonprofit entity, those funds cease to be public in nature. *Walden* at 3 (stating that, if a city transfers funds to a nonprofit organization, the funds become private funds, and the bid law provisions would not apply to the project). Accordingly, the bid laws are not applicable to funds donated by the city to a nonprofit entity that will subsequently be used for the construction of the community center.

You also inquire as to whether private individuals may contribute to the fund. This Office is unaware of a legal provision that would prohibit private individuals from contributing to the fund. This Office has stated that a city may solicit funds from local businessmen or residents to be used as matching funds for improvements to the town. *Cole* at 1. This Office cannot address whether individuals may contribute to funds established by nonpublic entities. Any private individual funds donated to a public entity become public funds. *Walden* at 3.

Your next question seeks guidance regarding whether the City of Geneva should have sole possession of the facility. This particular question is within the discretion of all parties involved. The city, however, may have specific concerns with regard to liability because the facility will be located on municipally owned property. The city may therefore choose to sell or lease the property to one of the other entities. The city may sell or lease the property for a nominal value if the city determines that a public purpose will be served. *See, generally, the following opinions:*

- Honorable James W. Richardson, Mayor, City of Carbon Hill, dated October 10, 2002, A.G. No. 2003-008 (stating that the City of Carbon Hill may sell real estate for less than adequate consideration to a private entity only if the city determines that a public purpose is served);
- Honorable B.J. Meeks, Mayor, City of Childersburg, dated July 14, 2003, A.G. No. 2003-189 (stating that the City of Childersburg can donate city-owned property to the Childersburg Veterans' Association Foundation for the purpose of building a Veterans' Museum and Art Center if the city determines that a public purpose is served);
- Honorable Douglas C. Martinson, II, Attorney, Town of Triana, dated January 25, 1999, A.G. No. 99-00093 (stating that the Town of Triana may enter into a lease agreement with the Triana Youth Center whereby the Youth Center will provide services to the youth of the town in return for space in a municipal building if the town council determines that such services constitute fair and adequate consideration and are of benefit to the citizens of the town);
- Honorable George H. Howell, Attorney, City of Prattville, dated March 11, 1998, A.G. No. 98-00111 (stating that a city may convey public property to a nonprofit corporation if there are benefits flowing to both parties and a public purpose is served).

See also, the opinion issued to Honorable F. Lenton White, Attorney, City of Dothan, dated April 28, 1995, A.G. No. 95-00204.

Lastly, you question whether it would be permissible for the other organizations to utilize the facility for a nominal fee or at no charge. If this particular facility is within the possession of the municipality, it may permit others to use the facility either for a nominal fee or at no charge if the council determines that a public purpose is served. Further, if the city does not possess the facility, the city may negotiate, through contract, that the fee will remain nominal or at no charge for use by other organizations. Opinions to Honorable William E. Shinn, Jr., County Attorney, Madison County, dated May 24, 2005, A.G. No. 2005-137; Honorable Glenn Fuller, Mayor, Town of New Site, dated January 31, 1997, A.G. No. 97-00099; *see, generally, Martinson*. This question, however, is an issue that must be resolved by the interested parties. Whether a fee will be assessed may depend on the cost of maintaining the facility and whether the entity possessing the facility could cover such costs.

CONCLUSION

If the City of Geneva determines that a public purpose is served, the city may join with nonprofit organizations to finance a community center.

The City of Geneva may appropriate funds to the Children's Policy Council for the purpose of assisting in the financing of a community center. The city and the organization should enter into a written contract setting out the benefits to be conferred upon the city and the citizens of the City of Geneva in return for the funds appropriated to the organization.

Whether grant monies may be used for the construction of the community center depends on the terms of the grant.

The competitive bid laws are not applicable to private funds. Once public funds are given to a private entity, those funds cease being public in nature.

The City of Geneva may accept donations from private individuals and civic clubs.

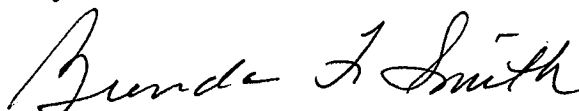
Whether the City of Geneva should have sole possession of the facility is within the discretion of all parties involved.

Whether other organizations may use the facility at no charge or at a nominal fee depends on who possesses the facility and any agreements reached by the parties in contractual negotiations.

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

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division