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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Richard J. Lindsey
Member, House of Representatives
14160 County Road 22
Centre, Alabama 35960

Tobacco Tax – County Commissions –
Economic Development – Transportation –
Roads, Highways, and Bridges – Cleburne
County

The term “economic development,” as used in Act 2003-323 includes expenditures for transportation infrastructure, maintenance, or improvement. The county commission must make a determination that a particular expenditure for transportation infrastructure, maintenance, or improvement serves an economic development purpose.

Dear Representative Lindsey:

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

QUESTIONS

(1) Does the provision in Section 5 of Act 2003-323 authorizing the county commission to expend the proceeds of an additional tobacco tax for economic development, among other things, authorize the county commission to expend the funds for transportation infrastructure, maintenance, and improvement?

(2) Assuming the answer to Question 1 is yes, if the county commission opts to expend proceeds of the tobacco tax for transportation infrastructure,

maintenance, and development, must the county commission identify a specific, delineated, economically sensitive development purpose for expending the funds, or may the county commission treat general transportation infrastructure, maintenance, and improvement as economic development use because such transportation infrastructure, maintenance, and improvement serves as a primary stimulus for all economic development?

FACTS AND ANALYSIS

Act 2003-323 is a local act that levies an additional tax on the sale and use of tobacco and tobacco products in Cleburne County. 2003 Ala. Acts No. 2003-323, 786. Section 5 of the act provides for the use of the proceeds of the tax as follows:

(a) The proceeds from the tax authorized, less the amount or percentage of the actual cost of collection as may be agreed upon by the Cleburne County Commission, shall be distributed to the Cleburne County General Fund to be *expended for the purposes of economic development, the development of parks and other recreational programs and facilities, and for the promulgation of public health programs and facilities.*

Id. at 788 (emphasis added). This act does not specifically authorize the county commission to use the tobacco tax funds for transportation infrastructure, maintenance, and improvement in the county. Thus, you ask whether the term “economic development” includes transportation infrastructure, maintenance, and improvement.

The term “economic development” is not defined in the act, and there is no general definition of the term found in the Code of Alabama. Thus, the term must be given its commonly accepted meaning. *State Dep’t of Transp. v. McLelland*, 639 So. 2d 1370, 1371 (Ala. 1994); *IMED Corp. v. Sys. Eng’g Assoc. Corp.*, 602 So. 2d 344, 346 (Ala. 1992). This Office has recognized that an economic development project may include transportation infrastructure, maintenance, and improvement. See opinion to Honorable Hobson Manasco, Jr., Winston County Attorney, dated January 13, 2005, A.G. No. 2005-041.

Furthermore, section 94.01 of the Alabama Constitution provides for the promotion of economic and industrial development by counties and municipalities and states that public funds may be used to improve and develop property and that this includes the grading and construction of roads that serve the sites used for economic and industrial development. ALA. CONST. art. IV, § 94.01 (amend. 772). Accordingly, it is the opinion of this Office that the term “economic development” includes transportation infrastructure, maintenance, and improvement.

Your second question asks whether the county commission must identify a specific, delineated, economically sensitive development project for expending the funds for transportation infrastructure, or whether the county may simply determine that transportation infrastructure serves as a primary stimulus for all economic development and thus expend the funds for those purposes. As stated above, the act does not specifically authorize the county commission to use the tobacco tax funds for transportation infrastructure, maintenance, and improvement throughout the county; thus, such use of the funds must be related to economic development.

Although it may be argued that all transportation infrastructure, maintenance, and improvement stimulates economic development, it is the opinion of this Office that the act requires the county commission to find that a particular expenditure for transportation infrastructure, maintenance, or improvement serves an economic development purpose. This does not mean, however, that the expenditure must be tied to a specific, delineated project, but that the county commission must make a determination that the expenditure for a particular road will serve to enhance or stimulate economic development in a specified area. The county commission should articulate the reasons and factors considered in making the determination that the expenditure promotes economic development.

CONCLUSION

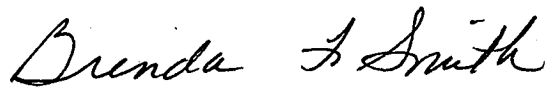
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I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

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