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Honorable Robert I. Gulledge
State Senator, 32nd District
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Highways, Roads & Bridges -
Easements - Utilities

The State Highway Department may enter into a contract whereby an individual, partnership or corporation may construct and operate sewer lines on right of way of a highway and the Highway Department can prescribe regulations for the construction of such sewer lines.

Dear Senator Gulledge:

Reference is made to your request for an opinion from the Attorney General as to the following question:

Under the provisions of Section 23-1-59 of the Code of Alabama 1975, the highway department is authorized in pertinent part as follows:

"The highway department shall have the power to enter into contracts and agreements with the owners or operators of water, sewer, or other pipelines which are constructed, to

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be constructed or operated along or across the right-of-way of public roads, bridges and highways of this state and to prescribe all reasonable rules and regulations as to the construction, repair or maintenance of the poles, wires and lines of such telegraph, telephone, community antenna television systems or power companies and pipelines of gas districts, gas, water, sewer or other pipeline companies so as to insure the safety of the travelling public in using the roads, bridges and highways in this state.

(b) The highway department may prescribe any reasonable rules and regulations so as to prevent unnecessary trespassing upon or injury to any of the public roads, bridges or highways of the state upon which state money may be expended or appropriated or upon any part of the right-of-way of any of the public roads or highways in the state upon which state money may be expended or appropriated."

Please give your opinion as to whether or not the highway department has the authority under Section 23-1-59 to enter into a contract or agreement with a private sewage company, which proposes to install a sewage line to be available for the accommodation of properties adjacent to the right-of-way or easement traversed by the line, and to utilize the state highway right-of-way for the purpose of accommodating sewage lines in this situation.

Section 23-1-59, which you quoted, gives the State Highway Department the authority to enter into contracts and agreements with the owners and operators of sewer lines to be operated or constructed along or across the

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right-of-way of public roads and highways and to prescribe reasonable rules and regulations as to the construction, maintenance and repair of such sewer lines to insure the safety of those using the public roads and highways. The provision does not state that the sewer lines have to be owned by a public corporation. Section 23-1-59 requires that the State enter into contracts or agreements with the owners and operators of the sewer lines and thus, sufficient consideration must be given to the State by these owners and operators. Furthermore, the State Highway Department may set out rules and regulations regarding the construction, maintenance and repair of these sewer lines.

I hope that I have sufficiently answered your question. If our office may be of further assistance, please do not hesitate to contact us.

Sincerely,

CHARLES A. GRADDICK
Attorney General

By-



LYNDA F. KNIGHT
Assistant Attorney General

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