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Honorable Bobby J. Kemp
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State Highway Department
Montgomery, Alabama

Highway Department - Highways,
Roads & Bridges-Right of Way-
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 Mr. Kemp:

Acknowledgment is made of your request for the opinion of the Attorney General regarding the following matter:

The Highway Department has recently received a number of requests for permission to utilize State highway right of way for the purpose of accommodating sewage lines in the following situations:

1. A developer requests accommodation for properties being developed in a particular area.

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2. An individual, partnership or corporation proposes to enter into a business venture for the purpose of installing a sewage line supposedly to be available for the accommodation of any properties adjacent to the right of way traversed by the line.
3. An individual, partnership or corporation proposes to collect sewage from a given area that is not located adjacent to the right of way and the sewage lines are to be located on the right of way for the purpose of transporting the sewage from the property to a treatment plant or disposal site.

These requests have been made by individuals, partnerships or corporations, rather than by a publicly-owned utility.

Please give us your opinion as to whether or nor the above situations meet the criteria for accommodation of utilities on State right of way, and whether or not such accommodation would be in violation of Section 93 of the Alabama Constitution, 1901.

Also, please advise what the criteria must be to qualify as a utility authorized to be accommodated on State highway right of way.

Section 93 of the Constitution of Ala., 1901 to which you refer in your letter, was last amended by Amendment No. 58. The pertinent part of this Amendment reads:

The state shall not engage in works of internal improvement, nor lend money or its credit in aid as such, except as may

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be authorized by the Constitution of Alabama or amendments thereto; nor shall the state be interested in any private or corporate enterprise, or lend money or its credit to any individual, association, or corporation, except as may be expressly authorized by the Constitution of Alabama, or amendments thereto. . . .

With regard to the utilization of the right of way along state highways, Code of Alabama 1975, Section 23-1-59 provides:

The (Highway) department shall have the power to enter into contracts and agreements with the owners or operators of telegraphs or telephone lines, community antenna television systems, power transmission lines, gas districts, gas, water, sewer or other pipelines which are constructed, to 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.
(parenthesis added).

The above provision gives the State Highway Department the authority to enter into contracts and agreements with the owners and operators of those utilities listed therein, including sewer lines, to be operated or constructed along or across the right-of-way of public roads and highways

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and to prescribe reasonable rules and regulations as to the construction, maintenance and repair of the poles, wires and lines laid by such utilities to insure the safety of those using the public roads and highways. The provision does not state that the utilities have to be owned by a public corporation.

Section 23-1-59 as quoted above does not conflict with Section 93 of the Constitution as amended by Amendment 58 because Section 23-1-59 requires that the State enter into contracts or agreements with the owners and operators of these utilities and thus, sufficient consideration must be given to the State by these owners and operators. Therefore, State would not be lending money or credit to any individual, association or corporation.

In answer to your question, the State Highway Department may enter into a contract with an individual, partnership or corporation whereby the individual, partnership or corporation may construct and operate sewer lines across or along the right of way of public roads and highways provided adequate consideration is given to the State Highway Department by the individual, partnership or corporation. 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 questions. 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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