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OFFICE OF THE ATTORNEY GENERAL



CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

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JAMES R. SOLOMON, JR.
DEPUTY ATTORNEY GENERAL
WILLIAM M. BEKURS, JR.
EXECUTIVE ASSISTANT
WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL
JANIE NOBLES
ADMINISTRATIVE ASSISTANT

ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 834-5150

Honorable J. Wagner Finnell
City Attorney
City of Tuscaloosa
Legal Department
P.O. Box 2089
Tuscaloosa, AL 35403-2089

Municipalities -- Federal
Grants -- Funds

Although UDAG proceeds should not be used to purchase preferred stock in a business, under Code of Alabama 1975, § 11-81-A-1 et. seq., proceeds may be loaned to manufacturer if appropriate collateral is provided. Under cited code section, proceeds may be utilized outside corporate limits and police jurisdiction of municipality.

Dear Mr. Finnell:

The opinion request of the City of Tuscaloosa has been received in the Office of the Attorney General. Your request presents the following information:

The Independent Kraft Corporation, a manufacturer of hardboard, proposes to have a factory constructed in Tuscaloosa County, the location being outside of the City of Tuscaloosa, (approximately seven miles, but within the limits of Tuscaloosa County), and to manufacture hardboard. The factory will

Honorable J. Wagner Finnell

Page Two

cost approximately two hundred and fifty million dollars and will employ permanently 300 people on the site, and will result in the creation of secondary jobs which will greatly benefit the City and the County.

The City of Tuscaloosa has been requested to ask the Department of Housing and Urban Development for an Urban Development Action Grant, for the purpose of stimulating industrial growth and improving the employment outlook in Tuscaloosa County.

We are informed that a financing proposal for the project has been made in the form of a capital lease. The proposal also includes the following UDAG related condition:

"The commitment is contingent upon Independent Kraft Corporation obtaining a UDAG Grant from the United States Government in the amount of \$10,000,000.00 This Grant to be issued to the City of Tuscaloosa, Alabama, for the purchase of Non-Cumulative Preferred Stock, with an annual dividend not to exceed four percent (4%) and to be callable in not less than fifteen (15) years. This Grant to be funded prior to the completion of construction, and mill start-up."

It is proposed that the Grant be issued through the City of Tuscaloosa, since the County does not have a Planning Board and since the Planning Department of the City of Tuscaloosa is familiar with this type of activity.

Your questions read as follows:

Act No. 80-697, Alabama Legislature, now codified as Section 11-81A-1, Code of Alabama, 1975, is apparent authority to the City of Tuscaloosa to receive and disperse the UDAG funds in accordance with the proposal of the Independent Kraft Corporation. However, due to the unique

Honorable J. Wagner Finnell
Page Three

method of employing the Grant for financing and due to the fact that the plant itself is located outside of the Corporate Limits, we ask questions as follows:

1. Does the City of Tuscaloosa, after having obtained a UDAG Grant in the amount of \$10,000,000, have the authority to assist in the financing of this worthwhile industrial undertaking by the purchase of Preferred Stock?
2. Is the authority in any way weakened or changed due to the fact that the factory itself is located outside of the Corporate Limits and outside of the Police Jurisdiction of the City of Tuscaloosa, but within Tuscaloosa County and not within the Police Jurisdiction of any other municipality?

The Authority for expending federal funds found in Code of Alabama 1975, §§ 11-81A-1 through 11-81A-7 is indeed very broad. Under the terms of Section 11-81A-1 a municipality may pay over, donate or loan grant proceeds. (Emphasis Supplied) And a municipality may issue securities in anticipation of the receipt of a grant under specified conditions. However, nowhere within this enabling legislation is a municipality authorized to so totally enter the arena of private enterprise as to become a stockholder of a private corporation. Furthermore, it is our understanding that under the UDAG regulations the grant proceeds may be used only as a loan from the City to the industry and once repaid to the city are to be used for new loans to other industrial enterprises. Therefore, while this office wholeheartedly endorses the benefits to be gained from the utilization of these funds for the stated purpose, the loan of UDAG proceeds to Independent Kraft Corporation should be secured by the requiring of substantial collateral. It is therefore, the opinion of this office that the City of Tuscaloosa may loan UDAG proceeds to the manufacturer if appropriate collateral is provided.

Honorable J. Wagner Finnell
Page Four

Although a municipality itself, unlike, for example, its Industrial Development Board, is not regularly empowered to expend municipal funds in an area outside of its police jurisdiction, the provisions of Code of Alabama 1975, § 11-81A-1 through 11-81A-7 governing the expenditure of federal grant proceeds do not restrict the geographical area in which such proceeds may be used. Therefore, it is the further opinion of this office that even though the factory itself is located outside both the corporate limits and police jurisdiction of the City of Tuscaloosa, the City is not prohibited from loaning UDAG grant proceeds to the manufacturer.

I do hope that this response sufficiently answers your inquiry. If, however, we may be of further assistance, do not hesitate to contact us.

Sincerely yours,

CHARLES A. GRADDICK

By--



CAROL JEAN SMITH
Assistant Attorney General

CJS:es