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MAR 22 1984

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Honorable W. Hardy McCollum
Probate Judge, Tuscaloosa County
Courthouse
Tuscaloosa, Alabama 35401

Counties - Jails - Contracts

County may not agree to pledge
its full faith and credit to
the payment of amounts owed as
monthly lease payments pursuant
to a lease with a private
financial institution.

Dear Judge McCollum:

This is in response to your request for an opinion of
the Attorney General. In your request, you state the follow-
ing facts:

Tuscaloosa County is presently under a
Federal Court Order to not exceed a
certain number of prisoners in its exist-
ing county jail. It has become necessary
for Tuscaloosa County to construct a new
jail to house additional prisoners. We
are presently advertising for bid
proposals for financing the construction
of this new jail which will be an
additional jail to the existing one. The
County is inviting financing proposals
from interested bidders on which they
would quote the County a monthly lease
amount by which the financial institution
will construct the jail and lease it to
the County for fifteen years payable in
monthly payments. The question has
arisen as to whether Tuscaloosa County

can enter into a binding fifteen year lease with a financial institution with part of the agreement being that at the end of the fifteen year period the financial institution will convey the jail building to Tuscaloosa County. The financial institutions will require that Tuscaloosa County pledge its full faith and credit to the payment of said monthly lease payments.

You then ask whether Tuscaloosa County can enter into a binding fifteen year lease with a financial institution to repay the construction costs of the new jail and as part of the lease agreement, pledge the county's full faith and credit to the payment on the amounts owed pursuant to the lease over the fifteen year period.

Under a lease purchase agreement such as you propose, title to the new jail would be held by the private financial institution until such time as the institution conveyed the jail to the county at the end of the term of the fifteen year lease. Payments made by the county to the financial institution would be guaranteed under the terms of the lease. The financial institution would be entitled to take depreciation for the building under the current Internal Revenue Code, and thereby reap substantial tax benefits.

The County Commission of each county has the duty to erect and maintain a jail in the county. §11-14-10, Code of Alabama 1975. It is the opinion of the Attorney General that a county's duty to erect and maintain a jail implicitly empowers the county to enter into contracts, including leases, necessary to obtain that end. The answer to the question of whether the county commission could bind the county for fifteen years would also depend upon the specific provisions of the lease, which are not provided in your request. Therefore, we will turn to the second part of your question.

Amendment 112 to §94 of the Constitution of Alabama 1901 provides that "[t]he legislature shall not have the power to authorize any county ... to lend its credit, or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever ...". In Opinion of the Justices, 294 Alabama 555, 319 So. 2d 682 (1975), the Alabama Supreme Court stated that §94 "was designed to prevent the expenditure of public funds in aid of private individuals or corporations by reason of which a pecuniary liability, a debt of the [county] is incurred. (cite omitted)".

An agreement by which Tuscaloosa County pledges its full faith and credit to secure monthly lease payments to a private financial institution for a period of fifteen years would be in direct violation of the express terms of amendment 112. It is, therefore, the opinion of the Attorney General that Tuscaloosa County is prohibited by amendment 112 from pledging its full faith and credit to the payment of monthly lease payments to a private financial institution.

We hope this response adequately answers your questions. If we may be of further assistance, please do not hesitate to contact us.

Very truly yours,

CHARLES A. GRADDICK
Attorney General

By-



LEURA J. GARRETT
Assistant Attorney General