

85-00415
OFFICE OF THE ATTORNEY GENERAL

CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

JAMES R. SOLOMON, JR.
DEPUTY ATTORNEY GENERAL

WILLIAM M. BEKURS, JR.
EXECUTIVE ASSISTANT

WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES
ADMINISTRATIVE ASSISTANT

JUL 1 1985

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

Honorable W. Henry Allen
Judge of Probate
Lamar County
P. O. Box 338
Vernon, Alabama 35592

Water, Sewer & Fire Protection
Authorities - Competitive Bid
Law - Contracts

Water, Sewer & Fire Protection
Authority organized pursuant to
§11-88-1, Code of Alabama 1975,
is, in general, subject to the
provisions of the Competitive
Bid Law, §§41-16-50, et seq. in
awarding construction con-
tracts.

Dear Judge Allen:

You have requested of this office an opinion as to whether or not a Water, Sewer & Fire Protection Authority incorporated under the provisions of Title 11-88-1, et seq., Code of Alabama 1975, as last amended, will be covered by the provisions of the Competitive Bid Law in the awarding of construction contracts.

Section 41-16-20 provides in pertinent part:

"All contracts of whatever nature for labor, services or work...involving \$2,000.00 or more made or on behalf of any state...authority...shall, except as otherwise provided in this article, be let by free and open competitive bidding, ..."

Section 41-16-50(a)(1) as amended by Act 85-281, provides in pertinent part as follows:

"All expenditure of funds of whatever nature for labor, services or work,... involving \$3,000.00 or more,...made by or on behalf of any...governing boards of instrumentalities of counties and municipalities, including waterworks boards, sewer boards, gas boards and other like utility boards and commissions, except as hereinafter provided, shall be made under contractual agreement entered into by free and open competitive bidding,..."

Water, Sewer and Fire Protection Authorities organized pursuant to §§11-88-1, et seq., come into being upon the adoption of a resolution by the county governing body approving an application for incorporation which is then filed with the judge of probate of the county in question.

Although these authorities are expressly designated instrumentalities of the state, (§11-88-2) and thus appear to be subject to §41-16-20, their form, purpose, and creation under the provisions of §§11-88-1, et seq., make it clear that they are more properly to be considered instrumentalities of counties, and thus it is the opinion of this office that they are covered by the provisions of §41-16-50, which, as noted above, specifically include waterworks boards, sewer boards, gas boards and other like utility boards and commissions. This is significant in that §41-16-51(b)(7) provides that the Competitive Bid Law does not apply to:

"The purchase of equipment, supplies or materials needed, used and consumed in the normal and routine operation of any waterworks system, sanitary sewer system, ...owned by...authorities that are...instrumentalities of municipalities or counties and no part of the operating expenses of which...have, during the then current fiscal year, been paid from revenues derived from taxes or from appropriations of the state, a county or a municipality;..."

Honorable W. Henry Allen
Page 3

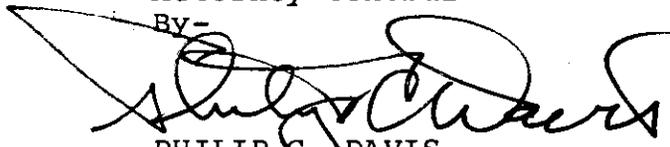
Further, we note that §11-88-47 provides the authority the option to elect to construct certain improvements without asking for bids under certain circumstances when the authority's service area includes a resort area as defined in the statute.

I trust that the foregoing answers your question. If this office can be of further service to you, please let us know.

Yours very truly,

CHARLES A. GRADDICK
Attorney General

By-

A handwritten signature in black ink, appearing to read "Philip C. Davis", written over a horizontal line.

PHILIP C. DAVIS
Assistant Attorney General

PCD:bb