

OFFICE OF THE  
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STATE OF ALABAMA

JAN 4 1988

Honorable Patrick H. Tate  
City Attorney  
City of Fort Payne  
P. O. Box 593  
Fort Payne, Alabama 35967

Municipalities - Investments -  
Funds

A city may enter into an agreement with a broker for the investment of surplus municipal funds only if the agreement can be made in compliance with the provisions of Code of Alabama 1975, §§ 11-81-19 and 21.

Dear Mr. Tate:

The opinion request of the City of Fort Payne has been received in the Office of the Attorney General. Your request presents the following information and question:

WHEREAS, the City of Fort Payne, Alabama, a municipal corporation does from time to time use municipal funds not presently for other purposes and which they are currently investing with local banks and insured federal savings and loan associations and,

WHEREAS the Code of Alabama is unclear as to whether or not the City may invest these surplus funds with a company such as Edward D. Jones & Company who would in turn use the funds to purchase various certificates of deposit and governmental securities.

Honorable Patrick H. Tate  
Page Two

BE IT HEREBY RESOLVED that the Mayor and City Council as the governing body of the City of Fort Payne, Alabama, do hereby request a formal opinion of the Attorney General of Alabama as to whether or not it may enter into an agreement with Edward D. Jones & Company to invest surplus municipal funds in various securities issued by the United States Government and its various instrumentalities or certificates of deposit or other securities issued by federal insured banks and savings and loan associations.

As noted in materials sent with your request, Code of Alabama 1975, §§ 11-81-19 and 11-81-21 control the investment of municipal funds.

It is noted from information forwarded to us that large certificates of deposit are bought by the broker who sells parts of various certificates of deposit to investors. This information does indicate that these deposits, up to \$100,000, are covered by deposit insurance. A letter which accompanied your request lists several types of securities which would be available. One example listed is securities of the Federal National Mortgage Association (Fannie Mae Bonds) and we note that in an opinion to Hon. M. D. Cunningham, City of Dothan under date of October 24, 1983 (84-00027) this office held that such bonds are not direct obligations of the United States of America or its agencies. Other literature furnished to us also states that many securities issued by various government sponsored agencies are not directly guaranteed by the United States Government.

Your request does not state the exact nature of the relationship between the city and the broker. We would issue a note of caution to you that repurchase agreements are not a vehicle which may be used by a municipality. Opinion to Hon. Kathleen Collier, City of Birmingham under date of July 2, 1986 (86-00288).

As noted in your request, you are familiar with Code of Alabama 1975, §§ 11-81-19 and 11-81-21 which govern the investment of surplus municipal funds. The facts presented in your request raise some important issues. We turn first to the issue of certificates of deposit. Code of Alabama 1975, § 11-81-19 provides that funds may be "deposited in a bank

Honorable Patrick H. Tate  
Page Three

on interest." Under the terms offered by the broker for purchase of a portion of a certificate of deposit held by the broker it is not clear whether municipal funds would, in fact, be deposited in a bank on interest. Your request, as a matter of fact, asks whether the city may "invest these surplus funds with a company...who would in turn use the funds to purchase various certificates of deposit and governmental securities." Section 11-81-19 also states that funds "shall be invested in bonds of such subdivision or in bonds of the United States or in bonds of the State of Alabama or in bonds of any county or municipal corporation in the State of Alabama." As noted earlier in this opinion, many of the securities offered by the broker do not fulfill the requirements of this section. As with certificates of deposit, the exact nature of the relationship with the broker is unclear. The municipality, itself, not the broker, must be the direct investor and must have custody and direct control of the bonds.

It is, therefore, the opinion of this office that if, and only if, the nature of the relationship with the broker, as discussed in this opinion, permits the municipality to comply with the requirements of Code of Alabama 1975, §§ 11-81-19 and 21 may the City of Fort Payne enter into an agreement with the broker for the investment of surplus municipal funds.

I do hope I have sufficiently answered your request. If, however, this office can be of further assistance, please do not hesitate to contact us.

Sincerely yours,

DON SIEGELMAN  
Attorney General  
By:

  
CAROL JEAN SMITH  
Assistant Attorney General

DS/CJS/dn