

OFFICE OF THE  
ATTORNEY GENERAL

DON SIEGELMAN  
ATTORNEY GENERAL  
MONTGOMERY, ALABAMA 36130  
(205) 261-7400

242-7300



STATE OF ALABAMA

89-00448

SEP 28 1989

Honorable A. Victor Guarisco  
Mayor  
P.O. Box 400  
Daphne, Alabama 36526

Municipalities - Utility Boards-  
Municipal Employees - Employees,  
Employers, Employment

A municipality may neither enter into a manpower management agreement under which city employees would perform services for the Utilities Board nor permit the city manager to serve as superintendent of utilities.

Dear Mayor Guarisco:

This opinion is issued in response to the joint request of the City of Daphne and the Utilities Board of the City of Daphne for an Attorney General's opinion.

QUESTION

Option No. 1 - Release the employees of the Utilities Board and reengage them as City employees under a Utilities Department reporting to the City Manager, resulting in a manpower management contract between the Utilities Board and the City of Daphne, or

Option No. 2 - Appoint the City Manager as Superintendent of the Utilities Department under the current Utilities Board structure.

FACTS AND ANALYSIS

Acts of Alabama, Act 88-615 in the pertinent part of Section 2 states:

"The city manager shall be the head of the administrative branch of the municipal government responsible to the council for the proper administration of all affairs of the municipality as listed in Section 11-43-28, Code of Alabama 1975, as amended."

The council has the power to appoint and remove the city manager. Furthermore, we note in your opinion request the statement that "it is the desire of the elected officials of Daphne and the members of the Utilities Board to take advantage of the professional supervision of the City Manager." The Utilities Board is an incorporated board.

With these facts in mind, we turn to the two options presented in your opinion request.

Option 1. We have carefully reviewed the provisions of Act 88-615 and the Municipal Code. We find no authority which would permit a municipality to enter into a manpower management contract under which city employees would be made available to perform work for an incorporated Utilities Board.

Option 2. Section 5 of Act 88-615 provides that other statutes and parts of statutes applying to all municipalities and to municipalities over 12,000 inhabitants not in conflict with Sections 1-4 of Act 88-615 "shall apply to the City of Daphne and those areas annexed under this act." Code of Alabama 1975, § 11-43-21 states that the city manager "must devote all of his working time and attention to the affairs of the municipality." Therefore, Option 2 is not a possibility.

CONCLUSION

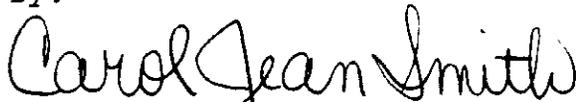
It is the opinion of this office that a municipality may neither enter into a manpower management agreement under which city employees would perform services for the Utilities Board nor permit the city manager to serve as superintendent of utilities.

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I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN  
Attorney General  
By:

A handwritten signature in cursive script that reads "Carol Jean Smith". The signature is written in dark ink and is positioned above the typed name and title.

CAROL JEAN SMITH  
Assistant Attorney General

DS/CJS/cg  
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