

91-00207
OFFICE OF THE ATTORNEY GENERAL



JIMMY EVANS
ATTORNEY GENERAL
STATE OF ALABAMA

MAR 21 1991

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY ALABAMA 36130
AREA (205) 242-7300

Honorable Constance S. Aune
In-House Counsel
Board of School Commissioners of
Mobile County
P. O. Box 1327
Mobile, AL 36633-1327

Education, Boards of -
Appropriations - Employees,
Employers, Employment - State
Funds - Contractors

Section 5 of Act 90-735 (1990
Regular Session) does not
prohibit local board of
education from using state
funds to contract with
independent contractor where
said independent contractor
would be paid an established
fee and there would be no
direct payment from local board
for salaries of personnel
employed by said independent
contractor.

Dear Ms. Aune:

This opinion is issued in response to your request for an
opinion from the Attorney General.

QUESTION

May a local board of education use state
funds to retain the services of an independ-
ent contractor to provide certain services
to a school system? For example, may

state funding be used to retain the services of a janitorial firm where the system would pay the firm an established fee, and there would be no direct payment from the local board for salaries of any personnel employed by this firm?

FACTS AND ANALYSIS

Section 5 of Act No. 90-735 (1990 Regular Session), commonly known as the 1990-1991 Alabama Special Education Trust Fund Act, provides:

"No funds provided herein for the public schools, including funds for Other Current Expenses and salaries of the Minimum Program and Financial Assistance Program and/or for support personnel salaries, shall be used for the payment of any salaries of personnel not under the direct control, employment, and supervision of local boards of education."

We note that in Childers v. Morgan County Board of Education, 465 So.2d 428, 430 (Ala.Civ.App. 1985), the court cited the definition of "salary" as being "a stated compensation amounting to so much by the year, month, or other fixed period, to be paid . . . for the performance of official duties or the rendering of services of a particular kind. . . ."

Because you state that the board of education intends to retain the services of an independent contractor, which would hire and supervise its own employees to provide the contracted service and because the funds paid to said independent contractor would not constitute the payment of "salaries" of the independent contractor's employees, it is the opinion of this office that in such a factual situation, the board of education would not be using the funds in question for the "payment of salaries of personnel not under the direct control, employment, and supervision of local boards of education," and thus, Section 5 of Act No. 90-735 (1990 Regular Session) would not prohibit such an expenditure.

CONCLUSION

Section 5 of Act 90-735 (1990 Regular Session) does not prohibit a local board of education from using state funds to contract with an independent contractor where said independent contractor would be paid an established fee and there would be no direct payment from the local board for salaries of personnel employed by said independent contractor.

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

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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