

OFFICE OF THE ATTORNEY GENERAL



94-00083

JIMMY EVANS
ATTORNEY GENERAL
STATE OF ALABAMA

JAN 14 1994

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

Honorable Henry R. Caton
Mayor
Town of Harpersville
P. O. Box 296
Harpersville, AL 35078

Municipalities - Audits -
Fire Departments - Volunteers
- Funds

If the Harpersville Volunteer Fire Department is sanctioned by the Town of Harpersville, tax-funded revenues received by the Volunteer Fire Department are subject to audit as are other municipal funds.

If the Harpersville Volunteer Fire Department is sanctioned by the Town of Harpersville, the Town Council of Harpersville has authority over the dispensing of revenues to and for their volunteer fire department.

Dear Mayor Caton:

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

QUESTION 1

The Volunteer Fire Department of Harpersville, Alabama, receives "tax funded" revenues from the Birmingham

Racing Commission, the Alabama Forestry Commission and the Shelby County Commission. Are these revenues subject to be audited by the State Auditors of Alabama?

FACTS AND ANALYSIS

Tax-funded revenues are provided to the Harpersville Volunteer Fire Department from the Alabama Forestry Commission and the Shelby County Commission pursuant to Code of Alabama 1975, § 9-3-18, as follows:

"(a) It is the intent of the legislature that this section provides assistance to organized volunteer fire departments and organized rescue squads. The legislature deems these organizations public in nature, as they protect the health, safety and welfare of the public.

"(b) The state, any county, any municipality, any fire, water, sewer, garbage or school district, or any other public governmental entity or political subdivision is hereby authorized to donate money, property, equipment or other thing of value to any organized voluntary fire department or organized voluntary rescue squad. If disposed of it will return to the agency where it was obtained."

Funds are provided by the Birmingham Racing Commission pursuant to Section 11-65-36(10) as follows:

"(10) Four percent of the net commission revenues shall be allocated in total to any public fire districts or volunteer fire departments organized and operating in the county or counties in which the sponsoring municipality or any part thereof shall be located; and if there shall be more than one of such fire districts or volunteer fire departments, the said four percent of the net commission revenues shall be allocated among such fire districts and volunteer fire departments in proportion to the

approximate number of single family residences and other buildings provided fire protection thereby, which number in the case of a public fire district shall be the paid membership thereof and in the case of a volunteer fire department shall be a census of the number of protected residences and other buildings confirmed by affidavit of the chief executive of such volunteer fire department . . ."

It is axiomatic that tax-funded revenues are public funds. The Legislature has recognized that a volunteer fire department is public in nature, performing a governmental function, fire protection.

An Attorney General's opinion, 85-00129, dated October 18, 1984, to Ms. C. Eleanor Byrd, Town Clerk-Treasurer of the Town of Silverhill, opined: "If the Town of Silverhill Volunteer Fire Department is recognized or sanctioned by the Town of Silverhill then funds collected by that agency become municipal funds . . . if the conclusion is that these funds are municipal funds, then these monies would be included in the written financial report of the Mayor to the Town Council and would be audited with other municipal funds." Pursuant to Section 11-43-85, Code, the Mayor, ". . . at least once a year, shall appoint an independent public accountant or the Department of Examiners of Public Accounts to conduct an examination in accordance with generally accepted auditing standards of all books and accounts of the city or town since the preceding examination"

CONCLUSION

If the Harpersville Volunteer Fire Department is sanctioned by the Town of Harpersville, tax-funded revenues received by the Volunteer Fire Department are subject to audit as are other municipal funds.

QUESTION 2

Are the Town's elected officials responsible for the dispensing of this revenue?

FACTS AND ANALYSIS

Section 11-43-140, Code, provides that "cities and towns may maintain and operate a volunteer or paid fire department and may do any and all things necessary to secure efficient service. . . ." "May" is discretionary. "There is no legislative duty on the part of a city to maintain one, it being only a right permitted by law." Hyland v. Baumhauer, 244 Ala. 1, 12 So.2d 326. "But once a city or town organizes and provides for a fire department, a duty is owed to the citizens of the city or town." Williams v. City of Tusculumbia, 426 So.2d 824 (Ala. 1983).

The aforecited Attorney General's opinion to Ms. Byrd, specifically opined: "Additionally, the Town Council would have final authority on expenditure of these funds." (Emphasis supplied.)

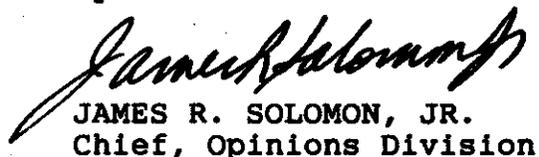
CONCLUSION

If the Harpersville Volunteer Fire Department is sanctioned by the Town of Harpersville, the Town Council of Harpersville has authority over the dispensing of revenues to and for their volunteer fire department.

I hope this sufficiently answers your questions. 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

JE/BC/jho
C1.94