

OFFICE OF THE ATTORNEY GENERAL



JEFF SESSIONS
ATTORNEY GENERAL
STATE OF ALABAMA

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ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (334) 242-7300

Honorable J. Robert Miller
Attorney, City of Huntsville
Gas Utility Board
122 South Side Square
Huntsville, AL 35801

Contracts - Bonds - Public
Works - Utility Boards

Engineering services
necessary to plan the
construction of a public work
are not subject to the
bonding requirements of Code
of Alabama 1975, § 39-1-1.

Dear Mr. Miller:

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

QUESTION

Are engineering studies for a
proposed gas pipeline to be built for the
City of Huntsville Gas Utility Board
subject to the bonding requirements of
Code of Alabama 1975, § 39-1-1 relating
to the construction or repair of public
works?

FACTS AND ANALYSIS

The Huntsville Gas Utility Board intends to hire an engineering firm to conduct engineering studies and perform drillings in preparation for the installation of a gas main under a portion of Honeycomb Creek at Lake Guntersville. The study will inform Huntsville Utilities of the best manner in which to lay the pipeline under the lake. The study will also provide an environmental study which will set forth certain requirements that must be satisfied to receive approval from the governmental authorities that control Lake Guntersville.

Code of Alabama 1975, § 39-1-1 requires that anyone who contracts with the State or a subdivision thereof for the repair, construction, or prosecution of any public work, where the cost exceeds \$20,000.00, must execute a performance bond and a payment bond. The amounts of these bonds are set at 100% and 50% of the contract price, respectively. The engineering study that you wish to undertake is not subject to this bonding requirement.

Code of Alabama 1975, § 39-1-1 was patterned after the Miller Act, 40 U.S.C.A. §§ 270a-270d, and was enacted for the same purposes. St. Bunn Constr. Co. v. Cataphote, Inc., 621 So.2d 1325 (Ala.Civ.App. 1993); Headley v. Housing Authority of Prattville, 347 So.2d 532 (Ala.Civ.App. 1977). Construing the Miller Act, the Comptroller General of the United States determined that architectural services are not within the meaning of the Miller Act bonding requirements. Comp. Gen. B-83868 (1949), 28 Op (US) Comp. Gen. 517. See 48 ALR4th 1170. Engineering services necessary for the planning of the project are clearly analogous to architectural services and are not subject to the bonding requirements of Code of Alabama 1975, § 39-1-1.

CONCLUSION

Engineering services necessary to plan the construction of a public work are not subject to the bonding requirements of Code of Alabama 1975, § 39-1-1.

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I hope this sufficiently answers your question. If our office can be of further assistance, please contact Jack W. Wallace, Legal Department, Examiners of Public Accounts.

Sincerely,

JEFF SESSIONS
Attorney General
By:

A handwritten signature in cursive script that reads "James R. Solomon, Jr." with a stylized flourish at the end.

JAMES R. SOLOMON, JR.
Chief, Opinions Division

JS/JWW
M4.95/OP