

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 Danny L. Smith
Attorney at Law
P.O. Box 249
Boaz, AL 35957

Municipalities - City
Councilmen - Attorneys Fees

Only if certain tests are met, may city pay attorney's fees for council members accused of alleged criminal offenses arising out of the discharge of their corporate duties.

Dear Mr. Smith:

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

QUESTION

May City Council members who have been accused of an alleged criminal violation of the Competitive Bid Law, be reimbursed for attorney fees which they have paid from their personal funds to protect and defend themselves from such allegations?

FACTS AND ANALYSIS

Your request presents the following facts:

In about April 1993, the City Council for the City of Boaz awarded a bid for a used 1991 Ford Taurus, with police package, to

Alexander Ford of Boaz. The bid of Alexander Ford was the only bid received for such automobile.

In about January 1994, four City Council members, David Ellis, Billy Faucett, Vann Scott and Tim Walker, were contacted by a Boaz police investigator who asked them to meet with him in his office at the police department. The police investigator informed the four council members that he had been conducting an investigation into their possible violation of the Competitive Bid Law, specifically Section 41-16-55, Code of Alabama 1975. The investigator advised the council members that they could be guilty of a class C felony for alleged collusive bidding in the purchase of the 1991 Ford Taurus in about April 1993.

Shortly after the meeting with the police investigator, the four accused council members met with the Marshall County District Attorney who informed them that no charges had at that time been levied nor had a case been presented to a grand jury but that the facts and findings of the investigation had been forwarded to the Office of the Attorney General for further investigation and that the possibility for future presentation to a grand jury did exist. The City Council members were told by the District Attorney and the City Attorney that they should seek independent counsel regarding the allegations. Shortly after the meeting with the Marshall County District Attorney, in about February 1994, the four accused council members jointly retained the services of Birmingham attorney, David Cromwell Johnson, to represent them.

In about September of 1994, the council members were informed that no criminal charges would be brought against them. The council members believe that this result was brought about at least in part

through the actions of their attorney.
The four council members paid to Mr.
Johnson a total of \$2,500.00 for his
services.

In an opinion to Honorable Ray Webster, Mayor of Gu-Win,
under date of July 20, 1989 (A.G. No. 89-00359), this office
stated:

"The Supreme Court of Alabama in
City of Montgomery v. Collins, 355 So.2d
1111 (Ala. 1978) ruled that the City of
Montgomery could expend municipal funds
to defend city police officers against
criminal charges if certain tests are
met. The Court stated that it must be in
the 'proper corporate interest' of the
municipality to expend its funds for this
purpose and that this 'proper corporate
interest' depends upon the existence of a
risk of future civil litigation against
the city itself arising out of the same
or similar circumstances. Furthermore,
the acts allegedly committed must be done
by the city officials in the discharge of
their corporate duties and the officers
performing these duties must have acted
honestly and in good faith. Also see
City of Birmingham v. Wilkinson, 239 Ala.
190, 194 So. 458 (1940) and opinions of
the Attorney General to Honorable
Leonard D. Allen, Jr., Mayor, City of
Russellville, dated January 7, 1983, and
to Honorable James N. Green, Mayor, Town
of Columbia, dated February 16, 1982,
which discussed the payment of litigation
costs against municipal officers and
employees."

From the facts presented here, the risk of future
litigation against the city does not appear to be great, if
any. In Collins at page 1114 the Court does find that
"matters of 'proper corporate interest,' recognized as the
polestar in questions of this kind, do not remain static but
expand with the growth of other public interests." Among the
other public interests listed by the Court are the good
morale of employees and recruitment and retention. See
Collins, supra, at 1115. Because public money would be

Honorable Danny L. Smith
Page 4

expended in paying these attorney's fees, we urge the council to carefully consider the interests of the City of Boaz. If, and only if, in the judgment of the city council, the tests set forth in Collins have been met should the City of Boaz pay the attorney's fees for council members accused of alleged criminal violations of the Competitive Bid Law.

We do note that Code of Alabama 1975, § 11-43-54 would prohibit council members seeking reimbursement from voting on this matter as they would have a special financial interest. Any question involving an interpretation of the State Ethics Law should be addressed to the State Ethics Commission.

CONCLUSION

The City of Boaz may pay the attorney's fees for council members accused of alleged criminal violations of the Competitive Bid Law only if: 1) there is a "proper corporate interest" as set forth in City of Montgomery v. Collins, supra; 2) the acts allegedly committed were done by the council members in the discharge of their corporate duties; and 3) the council members in performing such duties acted honestly and in good faith.

I hope this sufficiently answers your question. If our office can be of further assistance, please contact Carol Jean Smith of my staff.

Sincerely,

JEFF SESSIONS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

JS/CJS/cw
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