



2005-046

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
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January 19, 2005

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Honorable Jack Fendley
Mayor, Town of Pennington
Post Office Box 40
Pennington, Alabama 36916

Municipalities - Volunteer Fire
Departments - Fire Protection - Leases -
Competitive Bid Law - Choctaw County

The Town of Pennington can contract with the Pennington Volunteer Fire Department to provide fire protection and related emergency services to the citizens of the town.

The contract between the town and the volunteer fire department for these services is not required to be let by competitive bidding.

The town may lease a portion of the municipal complex to the volunteer fire department for a period of 99 years by ordinance entered on its minutes.

The town may donate or sell, for minimal consideration, its fire and emergency equipment and supplies to the volunteer fire department. The town, however, may wish to contract with the volunteer fire department regarding the transfer of these items.

Dear Mayor Fendley:

This opinion of the Attorney General is issued in response to your request on behalf of the Town of Pennington.

QUESTION 1

Can the Town of Pennington cease to provide fire protection to its citizens and meet its duty to provide fire protection by entering into a contract with the Pennington Volunteer Fire Department, Inc., to provide fire protection and other emergency-related services to the town?

FACTS AND ANALYSIS

Your request states as follows:

The Town of Pennington is an incorporated municipality in the State of Alabama. The town has its own volunteer fire department, which currently serves to provide fire protection and other emergency services to the town. A majority of the members of the fire department desire to become independent of the town and form their own nonprofit corporation, which would then contract with the town to provide fire services and other emergency services to the town.

The town has one complex in which the fire department, the town's municipal offices, and an ambulance services company use to perform each of their respective duties. Once incorporated, the fire department wishes to enter into a 99-year lease on the portion of the land and building currently used by the fire department. The other portion of said land and building will remain used for their current purposes. The fire department desires that all current equipment, machinery, and supplies currently used by it be donated to the fire department by the town once the fire department's incorporation becomes effective.

Section 11-43-140 of the Code of Alabama provides that cities and towns may maintain and operate a volunteer or paid fire department and may do all things necessary to secure efficient service. ALA. CODE § 11-43-140 (1989). Municipalities can enter into contracts in furtherance of governmental purposes. ALA. CODE § 11-40-1 (1989); *Wilkins v. Dan Haggerty & Associates*, 672 So. 2d 507 (Ala. 1995). This Office has determined that a city may contract with a volunteer fire department to provide fire protection in areas where the city was providing this service. Opinions of the Attorney General to Honorable John B.

Nisbet Jr., Mayor, City of Jacksonville, dated April 24, 1992, A.G. No. 92-00260, and to Honorable Frank P. White, Flomaton, dated May 15, 1984, A.G. No. 84-00279.

A city is under no duty to provide fire protection services to its citizens. *Williams v. City of Tusculumbia*, 426 So. 2d 824, 825 (Ala. 1983). On the other hand, if a city undertakes the responsibility of providing a professional fire department, it has a duty to provide skillful fire protection. *Ziegler v. City of Millbrook*, 514 So. 2d 1275 (Ala. 1987). The Supreme Court of Alabama, however, determined in *Hollis v. City of Brighton*, 885 So. 2d 135, 141 (Ala. 2004) that the City of Brighton did not undertake a legally enforceable duty to provide skillful fire protection by creating a volunteer fire department.

CONCLUSION

The Town of Pennington may contract with the Pennington Volunteer Fire Department, a nonprofit corporation, to provide fire protection and other emergency-related services to the citizens of that town.

QUESTION 2

If so, since these contracted services will exceed \$7500 per year, is the Town of Pennington required to seek bids for these services to comply with the State Competitive Bid Law?

FACTS AND ANALYSIS

Pursuant to section 41-16-50 of the Code, the expenditure of funds by certain state and local entities for labor, services, work, or for the purchase of materials, supplies, equipment, or other personal property costing \$7500 or more must be by free and open competitive bidding. ALA. CODE § 41-16-50 (2000). The Legislature deems organized volunteer fire departments as public in nature as they protect the health, safety, and welfare of the public. ALA. CODE § 9-3-18(a) (2001). Contracts between public entities are not required to be competitively bid. Opinion to Honorable Guy F. Gunter, III, Attorney, City of Opelika, dated January 25, 1996, A.G. No. 96-00107.

CONCLUSION

Competitive bidding is not required when the Town of Pennington contracts with the Pennington Volunteer Fire Department to provide fire protection services for the citizens of the town.

QUESTION 3

Can the Town of Pennington enter into a 99-year lease with the Pennington Volunteer Fire Department allowing the fire department sole and exclusive use of the fire department's current portion of the municipal complex?

FACTS, ANALYSIS, AND CONCLUSION

Section 11-47-21 of the Code of Alabama states as follows:

The governing body of any city or town in this state may, by ordinance to be entered on its minutes, lease any of its property not needed for public or municipal purposes, and a lease made by the mayor in accordance with such ordinance shall be binding for the term specified in the lease, not to exceed a period of 99 years; . . .

ALA. CODE § 11-47-21 (1992). The Town of Pennington may, therefore, lease a portion of the municipal complex to the Pennington Volunteer Fire Department for a period of 99 years, provided the proper procedure is followed and the property is not needed for public or municipal purposes.

QUESTION 4

Can the Town of Pennington donate and/or sell to the Pennington Volunteer Fire Department for minimal consideration all of its current fire and emergency equipment, machinery, and supplies currently used by the fire department?

FACTS AND ANALYSIS

Section 9-3-18(b) of the Code of Alabama provides that "any municipality . . . may donate money, property, equipment, or any other thing of value to those organizations [organized volunteer fire departments and organized rescue squads] deemed public in nature specified in subsection (a). If disposed of, it will return to the agency where it was obtained." ALA. CODE § 9-3-18(b) (2001) (bracketed material added).

The Attorney General has concluded on several occasions that, pursuant to section 9-3-18(a), a municipality may donate funds, property, and equipment to an organized volunteer department. Opinions to Honorable Charles I. Grover, Mayor, City of Trussville, dated January 10, 1988, A.G. No. 88-00325, and A.G. No. 84-00279. It was mentioned, however, in these opinions that the municipality, in an abundance of caution, should contract with the volunteer fire department to provide fire protection services to the citizens of the municipality in exchange for the funds, property, or equipment. The adequacy of the consideration and terms of the contract is a matter properly left to the contracting parties.

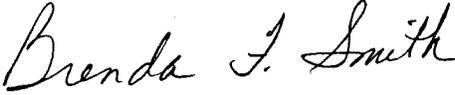
CONCLUSION

The Town of Pennington may donate or sell, for minimal consideration, its fire and emergency equipment, machinery, and supplies currently used by the town to the Pennington Volunteer Fire Department. The town, however, may wish to contract with the volunteer fire department regarding the transfer of these items.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

TROY KING
Attorney General
By:


BRENDA F. SMITH
Chief, Opinions Division