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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
ATTORNEY GENERAL

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Municipalities – Employees, Employers,  
Employment – Incentives – Funds –  
Awards – Baldwin County

The Attorney General's Office has no authority to determine whether a private charitable foundation may implement an awards program for the police officers of the City of Foley ("City") if such program is completely independent of the City.

If the City of Foley will assist the charitable organization with the implementation and/or administration of an awards program, the charitable organization should donate the desired funds to the City of Foley. The City may accept donations from the private charitable foundation and use such funds to implement the awards program for the police officers of the City of Foley pursuant to section 11-40-22 of the Code of Alabama. As long as the Foley City Council determines that a public purpose is served by the banquet and awards, such acts would not violate section 94 of the Constitution of Alabama.

Pursuant to section 11-40-22 of the Code, the City of Foley may expend up to \$1000 per employee on the cost of plaques, training seminars, and cash awards to the

“Foley Police Department Officer of the Year.”

The City of Foley may not give an annual cash award of \$1000 to an officer and implement a one-time \$1500 increase to that same officer’s salary.

The City of Foley may give multiple cash awards to different deserving officers so long as the aggregate amount of any one award does not exceed \$1000.

The City may allocate a donation in the manner that it determines best serves the City and that is consistent with the purposes for which the donation was made to the City. Any funds donated directly to the police department must be used in compliance with the purposes for which the funds were donated to the City.

Although section 11-40-22 of the Code does not require a written directive regarding the procedure for administering an awards program, a written directive should be implemented prior to the commencement of any awards program.

Dear Ms. Bonner:

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

QUESTIONS 1 AND 2

May a charitable foundation implement and administer an awards program for a police officer that is independent of the City of Foley?

If not, may the award funds be provided by the foundation and donated to the City for program administration and payment to the police officer?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that a charitable foundation unrelated to the City of Foley desires to establish an awards program in which a "Foley Police Department Officer of the Year" would be recognized annually. This foundation would fund an annual \$2500 cash award to the recipient of the award. All of your questions relate to establishing this awards program.

Your initial question asks whether a charitable foundation may implement and administer an awards program for police officers independent of the City of Foley. The Attorney General is charged with making determinations of law. There is no statutory authority governing your particular question. As such, this Office lacks authority to make a determination or prescribe the independent actions of a charitable organization with regard to the implementation and administration of an independent awards program. This Office notes, however, that any awards program that relies on the City of Foley for assistance in the administration of that program would not be considered a program independent of the City of Foley.

The next portion of your question contemplates whether a charitable organization may donate funds to the City of Foley for the City to implement the awards program. This issue was previously addressed in an opinion to the Honorable Martha A. Elrod, City Clerk/Treasurer, City of Gadsden, dated February 1, 2001, A.G. No. 2001-088. This opinion stated, in pertinent part, as follows:

While the Ethics Commission has approved the use of donated private funds, section 11-40-22 of the Code of Alabama would allow the police department to use public funds for the meals of employees and awards, provided it follows the provisions of this section. Section 11-40-22 of the Code of Alabama provides:

(a) Notwithstanding any limitations of law pertaining to the municipality, the mayor of any municipality in Alabama is hereby authorized, subject to budget restraints approved by the governing body, to make cash or non-cash awards not to exceed \$1,000 to employees of the municipality in recognition of exemplary performance or for innovations that significantly reduce costs or result in outstanding improvements in services to the public.

(b) Any employee selected to receive a cash or non-cash award for exemplary performance or for innovations that significantly reduce costs must first be recommended by his or her supervisor and approved by the governing body of the municipality.

(c) Nothing in this section shall affect any program in existence on September 22, 1997.

ALA. CODE § 11-40-22 (Supp. 2000).

This Office has stated that a city may award up to \$1000 in cash or non-cash awards to each employee who meets the standards set forth in section 11-40-22 of the Code of Alabama. Opinion to Kenneth A. Clemons, Mayor, City of Gardendale, dated September 10, 1998, A.G. No. 98-00217. Therefore, the total cost of plaques, training seminars, and cash awards to each employee may not exceed \$1000. In addition, according to section 11-40-22 of the Code, any employee "must first be recommended by his or her supervisor and approved by the governing body of the municipality." ALA. CODE § 11-40-22(b) (Supp. 2000). Therefore, the city council must approve each award to an employee.

Section 94 of the Constitution of Alabama, as amended by Amendment 558, prohibits a municipality or county from giving money to a private person, corporation, or association. ALA. CONST. art. IV, § 94; ALA. CONST. amend. 558. This Office, however, has determined that the governing body may expend public funds if it determines that there is a public purpose involved. Opinion to Donald R. Goetz Sr., Mayor, City of Jasper, dated April 10, 2000, A.G. No. 2000-121; Opinion to Jeff Collier, Mayor, Town of Dauphin Island, dated March 31, 1999, A.G. No. 99-00152. The Supreme Court of Alabama has interpreted that a public purpose "has for its objective the promotion of public health, safety, morals, security, prosperity, contentment, and the general welfare of the community." *Opinion of the Justices No. 269*, 384 So.

2d 1051, 1053 (Ala. 1980), quoting *Clifford v. City of Cheyenne*, 487 P. 2d 1325, 1329 (Wyo. 1971). The Court stated that "the trend among modern courts is to give the term 'public purpose' a broad expansive definition." *Id.* Therefore, if the city council determines that the banquet and awards will serve a public purpose, the police department may use public funds for the meals of the employees, plaques, seminars, and cash awards. See Opinion to William T. Musgrove Jr., City Attorney, City of Florence, dated January 25, 2000, A.G. No. 2000-071.

*Elrod* at 4-5.

Based on the foregoing, it is the opinion of this Office that the City of Foley may accept donations from a private charitable foundation and use such funds to implement an awards program for the police officers of the City pursuant to section 11-40-22 of the Code.

#### CONCLUSION

This Office has no authority to determine whether a private charitable foundation may implement an awards program for the police officers of the City of Foley if such program is completely independent of the City.

If the City of Foley is going to assist the charitable organization with the implementation and/or administration of an awards program, the charitable organization should donate the desired funds to the City of Foley. The City may accept donations from the private charitable foundation and use such funds to implement the awards program for the police officers of the City of Foley pursuant to section 11-40-22 of the Code of Alabama. As long as the Foley City Council determines that a public purpose is served by the banquet and awards, such acts would not violate section 94 of the Constitution of Alabama.

#### QUESTIONS 3, 4, AND 5

May the City of Foley award up to \$2500 in cash to the "Foley Police Department Officer of the Year?"

If not, may the City make an annual award of \$1000 to such officer and implement a one-time \$1500 increase in the officer's salary?

Alternatively, each year, may the City give multiple cash awards to different deserving officers so long as the aggregate amount of any one award does not exceed \$1000; i.e., \$1000 to Officer 1, \$1000 to Officer 2, and \$500 to Officer 3?

#### FACTS, ANALYSIS, AND CONCLUSION

As discussed above, the provision of section 11-40-22 has been interpreted as permitting a city to award up to \$1000 in cash or non-cash awards to each employee who meets the standards set forth in section 11-40-22 of the Code of Alabama. *Elrod* at 4. Accordingly, the City of Foley may expend up to \$1000 per employee on the total cost of plaques, training seminars, and cash awards.

Because the City of Foley may not expend more than \$1000 per employee, the City may not give an annual cash award of \$1000 to an officer and implement a one-time \$1500 increase to that same officer's salary.

The City of Foley may give multiple cash awards to different deserving officers so long as the aggregate amount of any one award does not exceed \$1000.

#### QUESTION 6

Alternatively, may the City give an annual cash award to a deserving officer in the amount of \$1000 and contribute \$1500 annually to the Foley Police Department for a particular purpose unrelated to the award?

#### FACTS, ANALYSIS, AND CONCLUSION

It is the opinion of this Office that the City may allocate a donation in the manner that it determines best serves the City and that is consistent with the purposes for which the donation was made to the City. Any funds donated directly to the police department must be used in compliance with the purposes for which the funds were donated to the City.

QUESTION 7

Does Alabama law require the City to maintain a written directive regarding the procedure for administering the awards program, including the process by which the "Foley Police Department Officer of the Year" is selected?

FACTS, ANALYSIS, AND CONCLUSION

Although section 11-40-22 of the Code of Alabama does not require a written directive regarding the procedure for administering an awards program, section 68 of article IV of the Constitution of Alabama requires that incentive plans state a quantitative amount an employee can earn and that such plans be established prior to the beginning of the fiscal year. Opinion to Honorable Glenda A. Morgan, Mobile City Clerk, dated August 16, 2007, A.G. No. 2007-129; opinion to Honorable Robert J. Burns, Mayor, City of Tarrant, dated March 24, 1997, A.G. No. 97-00147. Based on the requirements for incentive programs found in section 68 of the Constitution of Alabama, it is the opinion of this Office that such plans must be written.

You may also wish to submit these questions to the Alabama Ethics Commission for a determination with respect to the Alabama Ethics Law.

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

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division