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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Callie T. Dietz
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Administrative Office of Courts – Court
Reporters – Employees, Employers,
Employment - Contracts

Section 12-17-272 of the Code of Alabama authorizes the Administrative Director of Courts (“ADC”) to determine the need for and to approve the engagement of the temporary services of special court reporters, as needed from time to time in the circuit courts of the state, without hiring these court reporters as employees under the Unified Judicial System and without regard to the competitive bid law or the professional services law.

Dear Ms. Dietz:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Does section 12-17-272 of the Code of Alabama authorize the Administrative Director of Courts to determine the need for and to approve the engagement of the temporary services of special court reporters, as needed from time to time in the circuit courts of the state, or must such special court reporters be (a) hired as full-time or part-time employees of the Unified Judicial System, (b) engaged under the professional services

statute [section 41-16-70 of the Code], or (c) engaged under the competitive bid statute [section 41-16-20 of the Code]?

FACTS AND ANALYSIS

Your request states that the need for the appointment of special court reporters usually arises on relatively short notice when the official court reporter for the circuit judge is sick, absent, incapacitated, or otherwise unexpectedly unavailable for a term of court, a trial, or a hearing. This need can and does arise from time to time in any of the circuits in the state and frequently requires the services of a special court reporter within 24 to 72 hours of the request or less. When the need arises, the affected circuit judge will typically call and alert the ADC to the need, on an emergency basis, of the services of a special court reporter for a brief period of time, usually one or two days, and rarely more than a week or two.

Each of the judges of the circuit courts of this state are authorized to appoint official court reporters in the circuit over which the judge presides. ALA. CODE § 12-17-270 (2006). These official court reporters are employed as employees of the Unified Judicial System and are entitled to a salary. ALA. CODE § 12-17-274 (2006). Special roving reporters may also be appointed by the ADC on either a full-time or part-time basis, perform duties as prescribed by the ADC, and are entitled to compensation as established by the ADC. ALA. CODE § 12-17-272 (2006). The special roving reporters are also hired as employees of the Unified Judicial System.

Section 12-17-272 also provides for the employment of special court reporters and states, in pertinent part, as follows:

Special reporters may be employed by a circuit judge or district court judge, as the work of the court requires, subject to prior approval of the Administrative Director of Courts as to the need of such employment, length of employment, amount of compensation and use thereof. Transcript fees of special roving reporters and special reporters shall be paid at the rate set for court reporters, pursuant to Section 12-17-276. The Administrative Director of Courts shall promulgate regulations providing for use by judges of

official court reporters or previously appointed special roving reporters and special reporters when these reporters are not otherwise officially engaged in order that special reporters only be appointed when official reporters and special roving reporters are not available.

Id. Based on the foregoing, special court reporters are appointed only when an official court reporter or a special roving reporter is not available, and these court reporters are hired on an as-needed basis. The fees and compensation to be paid to special court reporters are set by the Alabama Supreme Court and the ADC pursuant to rules and regulations.

In construction of statutes, legislative intent may be gleaned from the language used, the reason and necessity for the act, and the purpose sought to be obtained. *Bama Budweiser of Montgomery, Inc. v. Anheuser-Busch, Inc.*, 611 So. 2d 238, 248 (Ala. 1992); *Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County*, 589 So. 2d 687, 689 (Ala. 1991). It is clear from the statutes governing the appointment of court reporters that special court reporters are to be appointed only when an official court reporter or a roving reporter is not available and only on an as-needed or emergency basis. The use of special court reporters is an exception to the general rule. There is no requirement for special court reporters to be hired as employees of the Unified Judicial System.

Furthermore, special court reporters are not required to be hired through the competitive bidding statutes or the professional services statutes. Section 12-17-272 of the Code provides an exception to the bid law because it specifically authorizes the ADC to determine and approve the need for employment, the length of employment, the use of the employment, and the amount of the compensation. The purpose of the competitive bid law is to get the best possible services at the lowest possible price. *Arrington v. Associated Gen. Contractors of Am.*, 403 So. 2d 893 (Ala. 1981). In this case, the price is already set by the Alabama Supreme Court and the ADC.

Professional services must be procured under a competitive, qualification-based selection process as set forth in section 41-16-72, *et seq.*, of the Code of Alabama. ALA. CODE §§ 41-16-72 through 41-16-79 (Supp. 2008). "Professional services" are defined as follows:

The services of physicians, architects, engineers, attorneys, and other individuals, or business entities offering the services of such

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individuals, who possess a high degree of scientific or specialized skill and knowledge where the experience and professional qualifications of the service provider are particularly relevant to the provision of the required service.

ALA. CODE § 41-16-71(2) (Supp. 2008). The services of a court reporter are not specifically included in these provisions, and the Director of Finance, through the Division of Purchasing, has not established a list of court reporters as professional service providers. *See* ALA. CODE § 41-16-72 (Supp. 2008).

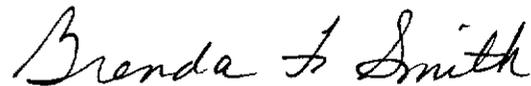
CONCLUSION

It is the opinion of this Office that section 12-17-272 of the Code authorizes the ADC to determine the need for and to approve the engagement of the temporary services of special court reporters, as needed from time to time in the circuit courts of the state, without hiring these court reporters as employees under the Unified Judicial System and without regard to the competitive bid law or the professional services law.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

TK/BFS
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