



2010-030

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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January 4, 2010

Honorable Shelly Slate Waters  
District Judge  
District Court of Morgan County  
Post Office 668  
Decatur, Alabama 35602

Public Purpose - Corrections Fund -  
Municipalities - Expenditures -  
Juveniles - Morgan County

The Morgan County Commission ("Commission") may provide office space to an evening reporting center at a comprehensive youth service center if the Commission determines that a public purpose is served.

If the evening reporting center is in the county seat and is designated as a courthouse annex by the Commission, the City of Decatur may use Corrections Fund monies for the operation and maintenance of the evening reporting center.

Dear Judge Waters:

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

QUESTION

May the City of Decatur use Corrections Fund monies for the operation and maintenance of an evening reporting center?

FACTS AND ANALYSIS

Your request states as follows:

Morgan County does not have a juvenile detention facility, and we have been informed that the Alabama Department of Youth Services (“DYS”) does not anticipate approving the building of any more facilities. For that reason and others, we are looking for alternatives to deter further misconduct and to provide a reporting center in the evening. We currently operate our juvenile services through a nonprofit corporation called Systems of Services (“SOS”). SOS provides programs, including GED, tutoring, credit recovery for school, community service, counseling, parenting, job skills, and a day program. We want to create an evening reporting center and use funds collected by the City of Decatur under section 11-47-7.1 of the Code of Alabama to operate and maintain the center. The Morgan County Commission has allocated about \$500,000 for the building of the center. The county owns the land where the building housing SOS is located, and there is room to expand the building for the center.

This Office further understands that SOS is a comprehensive youth service center licensed by DYS, juveniles are ordered to SOS as a condition of probation, the building is owned by the county, and the building is not part of, but located about ten minutes from the courthouse.

Section 11-47-7.1(a) of the Code of Alabama authorizes an individual municipality, or municipalities jointly, to levy and assess an additional court cost for cases filed in the municipal court. ALA. CODE § 11-47-7.1(a) (2008). These funds are paid into the “Corrections Fund.” *Id.* Section 11-47-7.1(a) further provides that “[t]he affected governing body shall allocate the funds exclusively for the operation and maintenance of the municipal jail or jails, other correctional facilities, if any, *any juvenile detention center, or any court complex.*” *Id.* (emphasis added).

A “juvenile detention facility” is “[a]ny facility owned or operated by the state, any county, or other legal entity licensed by and contracted with the Department of Youth Services for the *detention* of children.” ALA. CODE § 12-15-102(13) (Supp. 2009) (emphasis added). “Detention” is defined as “[t]he temporary placement of children alleged or adjudicated to be delinquent in *secure custody*.” ALA. CODE § 12-15-102(9) (Supp. 2009) (emphasis added). The term “secure custody” “means *residential facilities* with construction features designed to *physically restrict* the movements and activities of persons in custody.” ALA. CODE § 12-15-102(24) (Supp. 2009) (emphasis added).

DYS has promulgated a rule describing the various programs that it licenses. ALA. ADMIN. CODE r. 950-1-4-.04(1)-(8) (2005). Rule 950-1-4-.04(5) provides for “juvenile detention centers” as secure facilities consistent with the statutory authority above. In contrast, Rule 950-1-4-.04(8) states that “comprehensive youth service centers” are “nonresidential treatment programs, which provide intensive services to juveniles while they live at home and report to the program on a daily basis.” ALA. ADMIN. CODE r. 950-1-4-.04(8) (2005). Because the proposed evening reporting center would not be a secure residential facility, it cannot qualify for Corrections Fund monies as a juvenile detention center.

Regarding whether the center would qualify for the monies as part of a court complex, the authority of the county commission to locate a private organization in the court complex must be examined. The county “controls the property of the county and is required to designate space in the courthouses for use of the courts. ALA. CODE § 11-3-11 (1989).” Opinion to Honorable James B. Johnson, Sheriff, Baldwin County Sheriff’s Office, dated June 29, 2001, A.G. No. 2001-214, at 2.

Section 93 of article IV of the Recompiled Constitution of Alabama prohibits the state from lending money or credit in aid of a private person, association, or corporation. ALA. CONST. art. IV, § 93 (amends. 1, 12, 58). Section 94 of article IV of the Recompiled Constitution of Alabama likewise prohibits a municipality or county from granting money or other thing of value in aid of a private individual, corporation, or association. ALA. CONST. art. IV, § 94 (amends. 112, 558). These sections prohibit “spending public funds for private purposes.” Opinion to Honorable Robert L. Balch, Superintendent, Morgan County Schools, dated July 28, 2009, A.G. No. 2009-095, at 2, quoting opinion to Honorable Tony

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Petelos, Commissioner, Department of Human Resources, dated February 17, 1999, A.G. No. 99-00112, at 3.

Sections 93 and 94 are not violated when the funds of a governmental entity are appropriated for a public purpose. *Slawson v. Ala. Forestry Comm'n*, 631 So. 2d 953, 956 (1994). The determination of whether a public purpose will be served by an expenditure of public funds is a factual one that can only be made by the governing body of the entity making the expenditure. Opinions to Honorable W. Phil Eldridge, Attorney, Geneva County Commission, dated May 7, 2007, A.G. No. 2007-093; and to Honorable Lee H. Warner, Executive Director, Alabama Historical Commission, dated March 28, 2003, A.G. No. 2003-114. "[T]he action taken must be consistent with the authority granted to the entity." *Warner*, at 5. The public-purpose analysis that the entity is required to engage in has been explained as follows:

To determine whether such a purpose is public, the [governing body] must look to the statutes setting forth the powers of [the entity]. If, within such powers, there exists the authority to promote [the action at issue], then the [body] need only decide whether transfer of the real property to this Board will help to accomplish that purpose.

*Eldridge*, at 2.

This Office has stated that the county commission may provide office space to a nonprofit corporation operating a court referral program if the commission determines that a public purpose is served. Opinions to Honorable Ronald L. Jones, Chief Examiner, Examiners of Public Accounts, dated October 30, 2002, A.G. No. 2003-020; Honorable James B. Johnson, Sheriff, Baldwin County Sheriff's Office, dated June 29, 2001, A.G. No. 2001-214. The *Johnson* opinion noted that, although a court referral program "is not a part of the courts, it provides services for the courts in the county." *Id.* at 3.

The better practice would be for the county to enter into a written contract with SOS "memorializ[ing] the benefits conferred on the public as consideration for the use of the free office space." *Johnson*, at 3.

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The commission is prohibited by section 41 of the Recompiled Constitution of Alabama from removing the courthouse outside the county seat unless the change is authorized by a vote of the electors in the county. Opinion to Honorable Bobby Singleton, Member, Alabama State Senate, dated January 10, 2006, A.G. No. 2006-038. The commission may, however, "if the courthouse is inadequate, . . . designate other property in the county seat as a courthouse annex and . . . locate the courts or other officers of the county in the designated annex." *Id.* at 3. Accordingly, if the evening reporting center is in the county seat and is designated as a courthouse annex by the Morgan County Commission, the City of Decatur may use Corrections Fund monies for the operation and maintenance of the center.

#### CONCLUSION

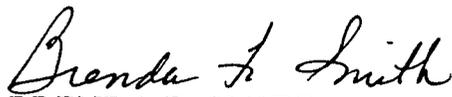
The Morgan County Commission may provide office space to an evening reporting center at a comprehensive youth service center if the Commission determines that a public purpose is served.

If the evening reporting center is in the county seat and is designated as a courthouse annex by the Commission, the City of Decatur may use Corrections Fund monies for the operation and maintenance of the evening reporting center.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING  
Attorney General  
By:

  
BRENDA F. SMITH  
Chief, Opinions Division

TK/GWB  
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