



2010-054

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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April 2, 2010

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Birmingham-Jefferson Civic Center
Authority – Competitive Bid Law –
Franchises – Advertising – Contracts
– Jefferson County

An agreement between the
Birmingham-Jefferson Civic Center
Authority (“Authority”) and a
company for the naming rights of the
facilities of the Authority is not
subject to the Competitive Bid Law.

Dear Mr. Stewart:

This opinion of the Attorney General is issued in response to your
request on behalf of the Birmingham-Jefferson Civic Center Authority.

QUESTIONS

(1) If the Birmingham-Jefferson Civic Center Authority determines that it is in the public interest and the interest of the Authority to enter into an agreement with a company or companies whereby the company or companies would purchase the right to have their name affixed to some or all of the facilities owned and operated by the Authority, would such an agreement be subject to the Competitive Bid Law?

(2) If so, may the Authority, as part of the bid process, make its decision as to which

company or companies is awarded the naming rights based on factors other than the highest dollar value, such as whether the company is local and the nature of the business?

FACTS AND ANALYSIS

Your request states as follows:

The Birmingham-Jefferson Civic Center Authority is a public corporation organized pursuant to Act 547 of the 1965 Regular Session of the Alabama Legislature. . . .

. . . .

As a public corporation, the Authority is subject to the Competitive Bid Law. Companies have approached the Authority expressing an interest in purchasing the right to advertise their companies in various ways at the facilities of the Authority. The Authority would be interested in selling these advertising rights to provide a stream of revenue. One manner in which this revenue could be generated would be the possibility of selling "naming rights" to certain facilities for a company to have its name affixed to the facility in return for money paid to the Authority. As an example, the Authority has an arena in which sporting events and concerts are held. Companies have approached the Authority and offered sums in return for the arena to be named the "_____ Arena." The company's name would be affixed to the arena.

Section 22 of article I of the Recompiled Constitution of Alabama states that "no . . . law . . . making any . . . exclusive grants of special privileges . . . shall be passed by the legislature. . . ." ALA. CONST. art. I, § 22. The granting of an exclusive contract or a franchise that does not comply with the Competitive Bid Law constitutes an exclusive grant of special privileges in violation of section 22. *Kennedy v. City of Prichard*,

484 So. 2d 432 (Ala. 1986). Competitive bidding procedures must be used even when the contract will cost nothing. *Id.*

This Office issued a previous opinion to you addressing a similar agreement. Opinion to Honorable Thomas L. Stewart, Attorney, Birmingham-Jefferson Civic Center Authority, dated November 9, 1992, A.G. No. 93-00038. The agreement in that opinion was between the Authority and Fastix for a computerized ticketing system in which customers paid a service charge to the company. The *Stewart* opinion concluded that bidding was not required by section 22 because the Authority is not subject to the section. That opinion additionally concluded that bidding was not required separately by the bid law because no public funds were expended by the Authority under the agreement. Regarding section 22, the *Stewart* opinion reasoned as follows:

[T]he Authority is a separate and distinct public corporation having no power to grant a franchise. Thus, Constitution of Alabama 1901, § 22 is inapplicable. See Constitution of Alabama 1901, Amendment 280 and Hospital Systems, Inc. v. Hill Rom, Inc., 545 So.2d 1324 (Ala. 1989) holding that a health care authority is a "separate entity from the state and from any local political subdivision, including a city or county within which it is organized" and, therefore, it is "not one of the governmental entities within the contemplation of the prohibition of Section 22 of our State Constitution.

Id. at 3 (emphasis added).

The Alabama Supreme Court has since relied on *Hospital Systems in Play Fair Racing, Inc. v. Birmingham Racing Comm'n*, 672 So. 2d 8 (Ala. 1995), holding that the Birmingham Racing Commission was not subject to section 22 because it was a public corporation. Consistent with these authorities, an agreement for the naming rights of facilities of the Authority is not subject to the bid law. In light of the answer to your first question, the answer to your second question is moot.

Honorable Thomas L. Stewart
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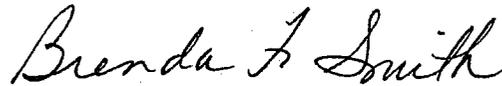
CONCLUSION

An agreement between the Birmingham-Jefferson Civic Center Authority and a company for the naming rights of the facilities of the Authority is not subject to the Competitive Bid Law.

I hope this opinion answers your questions. 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

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