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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Municipalities – Licenses and
Permits – Private Property –
Municipal Ordinances – Pike County

Whether to issue a business license
is a factual determination that may
only be made by the city.

Under section 11-51-90.2(c)(1) of
the Code of Alabama, a city may
amend its business license
classification ordinance for a
business not specifically classified
by creating a subcategory within a
classification applying generally to
that business.

Dear Mr. Calhoun:

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

QUESTIONS

May the Troy City Council amend the city
code to provide for a business license for the
business of wheel locking motor vehicles and
further provide that a vehicle left unattended on
private real property without the express or
implied permission of the owner or lessee of the
real property can be considered an abandoned

vehicle that can be wheel locked if done so pursuant to the provisions of the city ordinance?

May the ordinance be lawfully adopted without the enactment of a local act authorizing same?

FACTS AND ANALYSIS

Your request states as follows:

Presently, the City of Troy has no ordinance and is unaware of any general law or local act specifically authorizing a private person or entity to enter private real property and wheel lock (thereby immobilizing) a motor vehicle located on that property in the city. The city council desires to adopt an ordinance establishing a business license for the business of wheel locking by creating a new license or amending its current vehicle towing license.

This Office recently explained the governing law on the issuance of municipal business licenses as follows:

In 2006, the Legislature of Alabama enacted Act 2006-586, which was subsequently approved by the Governor and has come to be known and cited as the "Municipal Business License Reform Act of 2006." 2006 Ala. Acts No. 2006-586, 1548. This act is now codified in section 11-51-90 of the Code of Alabama. ALA. CODE § 11-51-90 (2008). One of the stated purposes of the act is to "provide a statewide uniform system for the issuance and calculation of municipal business licenses." 2006 Ala. Acts No. 2006-586, 1548, 1549.

Opinion to Honorable Wanda J. Cochran, Attorney for City of Orange Beach, dated February 23, 2009, A.G. No. 2009-045, at 2.

Section 11-51-90, which was not substantively amended by the act, authorizes municipalities to license any exhibition, trade, business, vocation, occupation, or profession that may be carried on in the city not prohibited by the Constitution or state law. The act added section 11-51-90.2, which provides, in part, that “[e]very taxpayer required to purchase a business license under this chapter shall . . . be classified into one or more of the following 2002 North American Industrial Classification System (NAICS) sectors and applicable sub-sectors, industry groups, industries, and U.S. industries thereunder.” ALA. CODE § 11-51-90.2(a)(2) (2008). This section then lists numerous numbered classifications by numbered “sector,” title, and business category.

Section 11-51-90.2 additionally provides that a municipality may “[c]reat[e] one or more sub-sectors in each of the NAICS sectors listed in subsection (a).” ALA. CODE § 11-51-90.2(c)(1) (2008). Pursuant to this authority, a municipality may amend its business license classification ordinance for a business not specifically classified by creating a sub-category within a classification applying generally to that business.

This Office is unaware of any provision of law prohibiting the business of wheel locking. Ultimately, however, whether a particular activity is legal, with or without a local act, and therefore proper for licensing, is a factual determination that must be made by the city. Opinion to Honorable Charles “Bo” Worthy, Mayor, Town of Eclectic, dated July 10, 2000, A.G. No. 2000-192.

Likewise, to the extent that the city seeks to regulate such a business, this Office has stated the following in considering an ordinance authorizing wheel locking for the failure to pay parking tickets:

Only a court of law may determine the validity of a municipal ordinance. Municipal ordinances are presumed to be valid until they are declared invalid by a court of law. *Storer Cable Communications v. City of Montgomery*, 806 F. Supp. 1518 (M.D. Ala. 1992); *Hurvich v. City of Birmingham*, 35 Ala. App. 341, 343, 46 So. 2d 577, 579 (1950). For this reason, it is the longstanding policy of this Office not to issue opinions on whether municipal ordinances conflict with state law. Opinions to Honorable Carl E. Chamblee, Jr., Municipal Judge, Trussville Municipal Court, dated March 20, 2000, A.G. No.

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2000-104 (impoundment of motor vehicles where the operator does not have a valid driver's license); and to Honorable John G. Smith, Attorney, City of Tallassee, dated January 22, 1996, A.G. No. 96-00106.

Opinion to Honorable Robert W. Ennis, Attorney, City of Tuscaloosa, dated June 6, 2007, A.G. No. 2007-103, at 6.

CONCLUSION

Whether to issue a business license is a factual determination that may only be made by the city.

Under section 11-51-90.2(c)(1) of the Code of Alabama, a city may amend its business license classification ordinance for a business not specifically classified by creating a subcategory within a classification applying generally to that business.

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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