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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable K. Doyle Allen, Chairman  
Randolph County Commission  
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Counties - Competitive Bid Law -  
Purchasing - Contracts

A county commission may sell material if there is a need to dispose of it as surplus property.

A county commission may sell material to a federal agency, a state agency, or another county commission under section 11-1-10 of the Code of Alabama.

The governing bodies of two or more local agencies subject to section 41-16-50 of the Competitive Bid Law may enter into a joint purchasing agreement for materials, equipment, and supplies under section 41-16-50(b) of the Code of Alabama. The agreement may provide that one of the agencies will serve as a joint purchasing or bidding agent to physically purchase and obtain items from the vendor for all of the agencies and that the remaining agencies will obtain their share from and reimburse the purchasing agency.

Dear Mr. Allen:

This opinion of the Attorney General is issued in response to your request on behalf of the Randolph County Commission.

QUESTION

May the Randolph County Commission make purchases from or sell to other governmental entities?

FACTS AND ANALYSIS

You ask this Office to clarify our opinion to Honorable Jay M. Ross, Attorney, Mobile County Commission, dated January 28, 2009, A.G. No. 2009-034, in the light of section 41-16-50(b) of the Code of Alabama. ALA. CODE § 41-16-50(b) (Supp. 2009). That opinion considered whether a county commission could purchase fuel by competitive bid with the bid including language for the county to resell some of the fuel to various entities at no markup. The *Ross* opinion concluded that there is no statutory authority for the county to sell fuel. Your request states that the opinion prevents the county from purchasing asphalt for road work from a neighboring county and selling pipe, pothole-patching material, and various items to area municipalities when the materials are available.

Consistent with the *Ross* opinion, this Office has long held that a county or municipality generally is without authority to sell material, but that it may do so if the material is surplus property. Opinions to Honorable Robert Stephens, Chairman, Coffee County Commission, dated March 2, 1993, A.G. No. 93-00145 (pipe); Honorable George P. Thames, Mayor, City of Robertsedale, dated August 29, 1986, A.G. No. 86-00349 (dirt); Honorable J. David Stout, Mayor, City of Fort Payne, dated November 16, 1984, A.G. No. 85-00072 (chert); Honorable J. Edward Yeargan, Mayor, City of LaFayette, dated May 19, 1981, A.G. No. 81-00383 (pipe).

The *Ross* opinion did not address the exception to the general rule for counties in section 11-1-10 of the Code of Alabama. ALA. CODE § 11-1-10(a) (2008). This section specifically authorizes county commissions to contract for materials with federal agencies, state agencies, and other county commissions. A municipality is not one of the governmental entities covered by section 11-1-10, and our research does not reveal a comparable provision within the municipal statutes authorizing contracts with counties.

For material that is not surplus property to be sold to municipalities, the *Ross* opinion likewise did not address whether it could be obtained from another governmental entity under section 41-16-50(b). This joint-purchasing provision in the Competitive Bid Law provides as follows:

*The governing bodies of two or more contracting agencies, as enumerated in subsection (a), or the*

governing bodies of two or more counties, or the governing bodies of two or more city or county boards of education, *may provide, by joint agreement, for the purchase of labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property for use by their respective agencies.* The agreement shall be entered into by similar ordinances, in the case of municipalities, or resolutions, in the case of other contracting agencies, adopted by each of the participating governing bodies, which *shall set forth* the categories of labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property to be purchased, the manner of advertising for bids and the awarding of contracts, the *method of payment by each participating contracting agency, and other matters deemed necessary to carry out the purposes of the agreement.* *Each contracting agency's share of expenditures for purchases under any agreement shall be appropriated and paid in the manner set forth in the agreement* and in the same manner as for other expenses of the contracting agency. *The contracting agencies entering into a joint agreement, as herein permitted, may designate a joint purchasing or bidding agent, and the agent shall comply with this article.* Purchases, contracts, or agreements made pursuant to a joint purchasing or bidding agreement shall be subject to all terms and conditions of this article.

ALA. CODE § 41-16-50(b) (Supp. 2009) (emphasis added).

This section allows the governing bodies of two or more agencies to contract jointly for the purchase of materials, equipment, and supplies. It states that one of the agencies may perform as a joint purchasing or bidding agent and gives broad authority to craft the terms of the agreement, including the method of payment. Pursuant to this authority, the agencies may determine that the joint purchasing agent will physically purchase and obtain the materials, equipment, and supplies from the vendor for all of them, and that they, in turn, will obtain their share from and reimburse the purchasing agency.

Accordingly, a county does not have the general authority to make purchases from or to sell materials to other governmental entities, but may sell materials if the material sold is surplus property or the buyer is a federal agency, a state agency, or another county commission under section 11-1-10 of the Code. The only way a county may purchase or sell materials for

municipalities is through a joint purchasing agreement under section 41-16-50 of the Code. The opinion to Honorable Jay M. Ross, Attorney, Mobile County Commission, dated January 28, 2009, A.G. No. 2009-034, is modified to the extent it conflicts with this opinion.

CONCLUSION

A county commission may sell material if there is a need to dispose of it as surplus property.

A county commission may sell material to a federal agency, a state agency, or another county commission under section 11-1-10 of the Code of Alabama.

The governing bodies of two or more local agencies subject to section 41-16-50 of the Competitive Bid Law may enter into a joint purchasing agreement for materials, equipment, and supplies under section 41-16-50(b) of the Code of Alabama. The agreement may provide that one of the agencies will serve as a joint purchasing or bidding agent to physically purchase and obtain the items from the vendor for all of the agencies and that the remaining agencies will obtain their share from and reimburse the purchasing agency.

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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