



2011-056

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable John F. Knight, Jr.
Member, House of Representatives
P.O. Box 6300
Montgomery, Alabama 36106

Educational Building Authorities –
Competitive Bid Law – Land Sales Act –
Professional Services – Contracts – Sales

The sale of certain electrical distribution facilities to a public utility by the Montgomery Public Educational Building Authority (“Authority”) is not subject to the Competitive Bid Law or the Land Sales Act.

Dear Representative Knight:

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

QUESTION

Whether sections 9-15-82(b), 41-16-51(b)(6), and 41-16-78 of the Code of Alabama exempt the Montgomery Public Educational Building Authority from Alabama’s Competitive Bid Law, including the Land Sales Act, for the sale of certain electric distribution facilities to a public utility.

FACTS AND ANALYSIS

In your letter of request, you informed this Office that the Montgomery Public Educational Building Authority purchased certain electrical distribution facilities from a public utility. These facilities at all times remained affixed to the real property located on the campus of Alabama State University (“ASU”) and contained various electrical equipment therein. In an attempt to provide a more energy-efficient and cost-effective electrical distribution system, the

Authority purchased personal property by bill of sale that included the equipment within these facilities, which consisted of arresters, conductors, composite underground systems, cutouts, metering equipment, overhead services, pole fixtures, poles, street lighting equipment, switches, transformers, and other equipment of the same nature. Because the goal of providing a more efficient and effective electrical distribution center for the benefit of ASU was unsuccessful, the Authority seeks to resume the previous provision of electrical services by having the public utility repurchase the electrical distribution facilities. Although the parties contemplate that such transaction would occur through a bill of sale from the Authority to the public utility, your current inquiry questions whether the contemplated sale would be exempt from certain statutory provisions.

The Authority is established pursuant to section 16-18-1, *et seq.*, of the Code of Alabama. Public educational building authorities are defined as public corporations and as political subdivisions of the state. ALA. CODE § 16-18-2 (2001). Section 16-18-7 of the Code sets forth the powers of a public educational building authority. In relevant part, this section permits an authority to sell or convey its property as follows:

(16) To sell and convey any of its properties that may have become obsolete or worn out or that may no longer be needed or useful as or as a part of ancillary improvements in connection with educational institutions;

...

(19) To sell any of its ancillary improvements or part thereof, provided, that any such sale may be made only if any such sale would not constitute a breach of any then outstanding agreement on the part of the authority; and

(20) To convey, with or without valuable consideration, any of its ancillary improvements or part thereof to the state, any one or more counties, municipalities or educational institutions, provided, that such conveyance may be made:

a. Only with the consent of the governing body of the determining municipality, such consent to be evidenced by a resolution adopted by the said governing body; and

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b. Only if any such conveyance would not constitute a breach of any then outstanding mortgage and deed of trust, trust indenture or other agreement to which the authority is a party.

ALA. CODE § 16-18-7 (2001).

In your request, you specifically question whether such a sale would be exempt from provisions in the Land Sale Act and the Competitive Bid Law. It is the opinion of this Office that neither the Land Sale Act nor the Competitive Bid Law apply to your factual situation. The Land Sale Act, which is codified in sections 9-15-70 through 9-15-84 of the Code, applies to the sale of public land by the state. In this matter, however, the Authority does not seek to sell any real property. Instead, the Authority seeks to sell personal property. The statutory authority for the Competitive Bid Law is found in sections 41-16-50 through 41-16-63 of the Code. This particular statutory authority is inapplicable because the Competitive Bid Law applies to the procurement of goods and services.

CONCLUSION

The sale of certain electrical distribution facilities to a public utility by the Montgomery Public Educational Building Authority is not subject to the Competitive Bid Law or the Land Sales Act.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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