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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Kenneth W. Ellis
Sheriff of Hale County
1001 Main Street, Suite 18
Greensboro, Alabama 36744

Sheriffs – Funds – Law Enforcement –
County Commissions – Loans – Debt –
Jails – Ad Valorem Taxes

Excess funds from the additional ad valorem tax levied for the new county jail in Hale County may be used to repay debt incurred in funding the sheriff's office if the Hale County Commission adopts a resolution determining that these expenditures are for law enforcement purposes.

Expenditures are not subject to a review process other than the normal audit process of the Department of Examiners of Public Accounts.

Dear Sheriff Ellis:

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

QUESTIONS

(1) May the Hale County Commission ("Commission") use funds collected from Act 2011-310 to pay off county loans made as a result of the sheriff's office exceeding its budgets from 2005-2010?

(2) Does the Commission have to prove the loans were used solely for the operation of the sheriff's office and jail from 2005-2010?

FACTS AND ANALYSIS

Act 2011-310 proposed a local constitutional amendment for Hale County. 2011 Ala. Acts No. 2011-310. The amendment was submitted to the voters on August 9, 2011, and proclaimed ratified on August 29, 2011. The amendment addresses the additional ad valorem tax levied for the new county jail, which was to end when the costs of the jail were paid, under Act 92-565, enacted in the 1992 Regular Session of Alabama Legislature. 1992 Ala. Acts No. 92-565, 1177-78. Section 1 of Act 2011-310 states as follows:

(a) The amount of *funds in excess* of the amount of funds utilized for the jail pursuant to Act 92-565 of the 1992 Regular Session (Acts 1992, p. 1177), authorizing the Hale County Commission to levy an additional ad valorem tax in the amount of three mills pursuant to subsection (f) of Amendment 373 to the Constitution of Alabama of 1901, shall be deposited in the Hale County General Fund and distributed for *law enforcement purposes only*.

(b) After the costs of planning, constructing, and equipping a new county jail are fully paid or when all bonds, warrants, or other obligations have been retired pursuant to Act 92-565, the additional ad valorem tax in the amount of three mills shall continue to be collected and distributed pursuant to subsection (a).

(c) This constitutional amendment shall have retroactive effect to May 21, 1992.

2011 Ala. Acts No. 2011-310 (emphasis added).

This Office has consistently recognized that funds designated for a specific purpose may be used to repay debt incurred in fulfilling that purpose. In an opinion issued to Honorable Earnest Summerville, Chairman, Pickens County Commission, dated August 17, 2000, A.G. No. 2000-216, this Office concluded that funds from gasoline and fuel taxes designated for “constructing, reconstructing, maintaining and repairing of public roads and bridges” under section 23-1-84 of the Code of Alabama could not be used by the county to satisfy the principal and interest payments on a building debt.

In reaching that conclusion, the *Summerville* opinion explained, as follows, when similar funds could be used to pay off a loan:

In the case of *Ramage, Parks & Co. v. Folmar*, 214 Ala. 661, 108 So. 580 (1926), the Supreme Court of Alabama held that monies derived from a special tax authorized by section 215 of the Constitution of Alabama to pay “for the erection of necessary public buildings, bridges or roads” could be transferred from a county’s road fund to a county’s general fund to pay for debt incurred in constructing public buildings, bridges, and roads. *Id.* at 663, 108 So. at 582 (quoting ALA. CONST. art. XI, § 215 (amended 1962)).

Summerville at 2.

This Office has also stated that the county may sell and issue warrants to obtain funds for road resurfacing, restoration, and rehabilitation in anticipation of receiving proceeds from the four cent gasoline tax collected for those purposes under Act 80-427, now codified as section 40-17-224 of the Code of Alabama. Opinion to Honorable H. B. Wise, Probate Judge of Geneva County, dated June 30, 1980, A.G. No. 80-00433. Based on that opinion, this Office similarly held that a town could use the proceeds from the four cent gasoline tax to pay a note for monies borrowed to resurface the town’s main street. Opinion to Honorable Martha F. Kelley, Clerk, Town of West Blocton, dated January 26, 1982, A.G. No. 82-00155.

More recently, this Office determined that a municipality could use money from the Municipal Capital Improvement Fund designated for capital improvements and renovation of same under section 11-66-6 of the Code to repay debt incurred for the purpose of renovating city hall. Opinion to Honorable Dennis Stripling, Mayor, City of Brent, dated December 22, 2008, A.G. No. 2009-025. Accordingly, funds from the three mill ad valorem tax may be used to pay off loans used to cover law enforcement purposes of the sheriff’s office. Funds from the ad valorem tax may not be used to repay debt unrelated to law enforcement purposes. Because the funds from the ad valorem tax may only be used for law enforcement purposes, the Hale County Commission should adopt a resolution determining which expenditures are for law enforcement purposes.

Regarding your second question, this Office has considered a similar question involving additional court fees in municipal court for construction of a new county jail authorized by a local act. Opinion to Honorable Duane

Mitchell, Mayor, Town of Gordo, dated October 22, 1999, A.G No. 2000-013. That opinion concluded that the act did not authorize the Town of Gordo to require a monthly accounting from the county on the expenditure of the funds. Likewise, Act 2011-310 does not provide a review procedure for expenditures. As the *Mitchell* opinion observed, “[t]hese funds, along with other county funds, are subject to audit by the Department of Examiners of Public Accounts. ALA. CODE § 41-5-6(9) (1991).” *Id* at 3.

CONCLUSION

Excess funds from the additional ad valorem tax levied for the new county jail in Hale County may be used to repay debt incurred in funding the sheriff’s office if the Hale County Commission adopts a resolution determining that these expenditures are for law enforcement purposes.

Expenditures are not subject to a review process other than the normal audit process of the Department of Examiners of Public Accounts.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division