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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Municipalities – Assessments –
Attorneys Fees – Demolition –
Chambers County

A municipality may assess reasonable attorney's fees and clerical costs as part of the costs of demolition of an unsafe structure under section 11-40-33 of the Code of Alabama.

Dear Mr. Jones:

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

QUESTION

In addition to actual demolition costs, do the costs to be assessed in connection with the demolition of dilapidated buildings or structures by a city under section 11-40-33 of the Code of Alabama also include attorney's fees and other clerical costs incurred by the city in connection with the processing of the action against the property?

FACTS AND ANALYSIS

The demolition of unsafe buildings and structures by a municipality is authorized pursuant to section 11-40-30, *et seq.*, of the Code of

Alabama. ALA. Code §§ 11-40-30 to 11-40-36 (2008, Supp. 2011). Section 11-40-30 states as follows:

Any incorporated municipality of the state may, after notice as provided herein, move or demolish buildings and structures, or parts of buildings and structures, party walls, and foundations when found by the governing body of the municipality to be unsafe to the extent of being a public nuisance from any cause.

ALA. CODE § 11-40-30 (2008).

The costs of such demolition are assessed against the property pursuant to section 11-40-33, which states as follows:

Upon demolition of the building or structure, the appropriate municipal official shall make a report to the governing body of the cost thereof, and the governing body shall adopt a resolution *fixing the costs which it finds were reasonably incurred in the demolition* and assessing the costs against the property. . . . The fixing of the costs by the governing body shall constitute a special assessment against the lot or lots, parcel or parcels of land upon which the building or structure was located, and thus made and confirmed shall constitute a lien on the property for the amount of the assessment. The lien shall be superior to all other liens on the property except liens for taxes, and shall continue in force until paid. A certified copy of the resolution shall also be filed in the office of the judge of probate of the county in which the municipality is situated. Upon filing, the tax collector or revenue commissioner of the county shall add the amount of the lien to the ad valorem tax bill on the property and shall collect the amount as if it were a tax and remit the amount to the municipality.

ALA. CODE § 11-40-33 (2008) (emphasis added).

Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997); *State Dep't of Transp. v. McLelland*, 639 So. 2d 1370, 1371 (Ala. 1994). Webster's Third New International Dictionary defines "cost" as "the expenditure or outlay of money, time, or labor." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 515 (2002). The statute does not limit the costs that may be assessed except to the extent that they are unreasonable.

This Office has addressed a similar issue under the Open Records Law, concluding that a public entity may recoup reasonable costs incurred in providing public documents, including staff research, preparation, and time. Opinion to Honorable Tim Parker, Jr., Member, House of Representatives, dated June 12, 1998, A.G. No. 98-00161. Section 36-12-40 of the Code of Alabama is the Open Records Law, and it provides that "[e]very citizen has a right to inspect and take a copy of any public writing of this State, except as otherwise expressly provided by statute." ALA. CODE § 36-12-40 (Supp. 2011). The *Parker* opinion relied on section 36-12-41, which provides that every public officer having custody of a public writing that a citizen has a right to inspect is required to provide the citizen with a certified copy thereof upon the payment of the "legal fees" therefor. ALA. CODE § 36-12-41 (2001).

It is noted that the *Parker* opinion additionally stated that reasonable costs could not include an attorney's time in reviewing potentially confidential documents. That opinion reasoned as follows:

Most records are open to the public. The exceptions are rare and should be strictly construed in favor of public access. . . . Assessing legal fees against a citizen to enable the custodian to decide whether his or her records are public would seriously restrict access to public records.

Parker, at 4. In contrast, no such consideration is present here. Based on these authorities, it is the opinion of this Office that a municipality may assess reasonable attorney's fees and clerical costs as part of the costs of demolition of an unsafe structure.

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CONCLUSION

A municipality may assess reasonable attorney's fees and clerical costs as part of the costs of demolition of an unsafe structure under section 11-40-33 of the Code of Alabama.

I hope this opinion answers your question. 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

LS/GWB

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