2012-035

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February 8, 2012

Honorable Melton Potter
Mayor, City of Scottsboro
316 South Broad Street
Scottsboro, Alabama 35768

Municipalities – Park and Recreation Board – Boards of Directors – Impeachment – Removal from Office – Public Corporations – Jackson County

The Public Park and Recreation Board of the City of Scottsboro ("Board") is a public corporation. As such, the Board is an entity separate from the City of Scottsboro. Members of the Board may only be removed by impeachment for the causes set forth in section 36-11-1 of the Code of Alabama.

The provisions of section 11-43-160 of the Code do not apply to members of an incorporated public park and recreation board.

The removal of officers from a public corporation is not subject to the provisions of section 10A-3-2.22 of the Code.

A public park and recreation board cannot sell or close a recreational facility for which it does not hold legal title. The public park and recreation board and the city should work together to determine the appropriate action to take with regard to property on which the city holds the mortgage.

A municipality may not compel an independent public park and recreation

board to operate its facilities at or during certain hours or certain times. Section 11-60-8 of the Code authorizes a park and recreation board to maintain and/or manage the programs or projects of the board.

Dear Mayor Potter:

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

QUESTIONS

(1) Is an incorporated public park and recreation board a political subdivision of the city, or is it an entity separate from the city?

(2) May a member of an incorporated public park and recreation board be removed from the board during that member's term of office?

(3) If so, for what reasons and by whom?

(4) Can a member of an incorporated public park and recreation board be removed from the board by action of the city council during that member's term of office?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that the City of Scottsboro has had an incorporated park and recreation board for more than 40 years. This board was created pursuant to section 11-60-1, *et seq.*, of the Code of Alabama. ALA. Code §§ 11-60-1 to 11-60-20 (2008). Your question relates to the management practices of the Board and its relationship with the city, i.e., Scottsboro City Council ("Council").

Initially, you inquire as to the proper identity, classification, or designation of the Public Park and Recreation Board of the City of Scottsboro. Because the Board is organized pursuant to section 11-60-1, *et seq.*, it is a public corporation. The Supreme Court of Alabama has previously ruled that

public corporations created under similar statutes are separate entities from the county, city, or town. A public corporation is not the alter ego or agent of the municipality in which it is organized and is not a subdivision of the state. *Ala. Hosp. Ass'n v. Dillard*, 388 So. 2d 903 (Ala. 1980); *Smith v. Indus. Dev. Bd. of the City of Andalusia*, 455 So. 2d 839 (Ala. 1984); opinion to Honorable Jimmy S. Calton, Sr., Attorney for City of Eufaula, dated July 10, 2000 A.G. No. 2000-191.

Pursuant to section 11-60-7 of the Code, the City of Scottsboro appoints the members of the Board. These persons serve a six-year term of office. Nothing in this section or any other provision of chapter 60 of title 11 relating to the Board provides for the removal of members of the Board.

This Office has previously found that officers of public corporations may be removed by impeachment under the provisions of section 36-11-1 of the Code. Opinion to Honorable Rebecca Narmore, Attorney, Cherokee Waterworks and Gas Board, dated February 25, 2011, A.G. No. 2011-040. An officer or director may be impeached and removed from office based upon the following causes:

> (1) Willful neglect of duty;
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> (2) Corruption in office;
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> (3) Incompetency;
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> (4) Intemperance in the use of intoxicating liquors or narcotics to such an extent in view of the dignity of the office and importance of its duties as unfits the officer for the discharge of such duties; or
>
> (5) Any offense involving moral turpitude while in office or committed under color thereof or connected therewith.

ALA. Code § 36-11-1(b) (2001); *see also*, ALA. CONST. art. VII, § 173 (amends. 328, 580).

Generally, impeachment proceedings are filed in the circuit court or other courts of like jurisdiction. *Day v. Andrews*, 279 Ala. 563, 565, 188 So. 2d 523, 526 (1966). Impeachment proceedings may be initiated in two ways. One way is by a grand jury and prosecuted by the district attorney as specified in section 36-11-4 of the Code. The second is by five resident taxpayers who must post

bond as required by section 36-11-6 of the Code. Opinion to Honorable H. C. Wiley, Jr., Attorney, Walker County Commission, dated September 10, 1997, A.G. No. 97-00276. Because there is no specific provision authorizing the Council to remove members of the Board, any action for removal must conform to the aforementioned guidelines.

CONCLUSION

Based upon the foregoing, the Public Park and Recreation Board of the City of Scottsboro is a public corporation. As such, the Board is an entity separate from the City of Scottsboro. Members of the Board may only be removed by impeachment for the causes set forth in section 36-11-1 of the Code.

QUESTION

> (5) Do the provisions of section 11-43-160 of the Code apply to members of an incorporated public park and recreation board?

FACTS AND ANALYSIS

Section 11-43-160 of the Code appears within article 8 of title 11 of the Code. The caption or title of this particular section of the Code is "Removal or Impeachment of Municipal Officers." This particular section reads, in pertinent part, as follows:

> (a)(1) Any person appointed to office in any city or town may, for cause, after a hearing, be removed by the officer making the appointment.
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> (2) The council of the municipality may remove, by a two-thirds vote of all those elected to the council, any person in the several departments for incompetency, malfeasance, misfeasance, or nonfeasance in office and for conduct detrimental to good order or discipline, including habitual neglect of duty.

ALA. CODE § 11-43-160 (Supp. 2011).

As noted earlier, members of the Board are not municipal officers. As such, it is the opinion of this Office that section 11-43-160 does not apply to the removal of an officer of a public corporation because such an entity is separate and apart from the municipality.

CONCLUSION

The provisions of section 11-43-160 of the Code do not apply to members of an incorporated public park and recreation board.

QUESTIONS

> (6) Do the provisions of section 10-3A-42 of the Code apply to members of an incorporated public parks and recreation board?
>
> (7) Do the provisions of section 10A-3-2.22 of the Code apply to members of an incorporated public parks and recreation board?

FACTS AND ANALYSIS

Section 10-3A-42 has been recodified as section 10A-3-2.22. This section relates to the removal of officers of nonprofit corporations. ALA. Code § 10A-3-2.22 (2010). As noted earlier, the Board is a public corporation, and the removal of the Board's officers is done pursuant to section 36-11-1 of the Code.

CONCLUSION

The removal of officers from a public corporation is not subject to the provisions of section 10A-3-2.22 of the Code.

QUESTIONS

> (8) Can a public park and recreation board sell or close a recreational facility on which the city holds the mortgage without the city's permission?

> (9) May a municipality compel a public park and recreation board to operate the board's facilities at or during certain hours or certain times?

FACTS AND ANALYSIS

Your final questions touch on the delicate balance that should be reached between the Board and the Council. Section 11-60-8 of the Code sets forth the authority of a parks and recreation board that is established pursuant to section 11-60-1, *et seq.*, of the Code of Alabama. This section states, in pertinent part, as follows:

> (a) The corporation shall have the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated:
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> . . .
>
> (4) To acquire, whether by purchase, construction, exchange, gift, lease, or otherwise to improve, maintain, equip, furnish, own, and operate one or more projects, including all real and personal properties which the board of directors of the corporation may deem necessary in connection therewith, regardless of whether or not any such projects or any part thereof shall then be in existence;
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> . . .
>
> (6) To adopt and enforce rules and regulations relative to the use or occupancy of any of its facilities or services;
>
> . . .
>
> (8) To sell, exchange and convey, to contract to sell, exchange, and convey and to grant options to acquire any or all of its properties whenever its board of directors shall find any such action to be in furtherance of the purposes for which the corporation was organized;

> (9) To lease to others for a period not to exceed 40 years any or all of its projects or any part thereof, including public accommodation facilities, and to charge and collect rent therefor and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof;
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> . . .
>
> (17) To cooperate with the United States of America, any agency or instrumentality thereof, the state, any person or any combination of any of the foregoing;
>
> (18) To enter into a management agreement or agreements with any person for the management of any or all of its projects or part thereof; and
>
> (19) To accept gifts, grants, bequests, and devises.

ALA. CODE § 11-60-8 (2008).

Although this section grants extensive authority to the Board, the power given in this section does not make the Board completely autonomous. The authority of a Board to sell, lease, or close a facility is dependent on whether such property has been deeded to the authority. *See, generally,* opinion to Honorable Scott Donaldson, Attorney, Tuscaloosa County Park and Recreation Authority, dated February 24, 1994, A.G. No. 94-00088. Without proper title to the property, the Board should work together with the Council to develop a general consensus regarding the manner such property may best be used to benefit the public interest.

Finally, you question the ability of the Council to compel the Board to set certain hours of operation for the Board's facilities. There is no statutory authority that authorizes the Council to impose conditions upon the Board in this manner. Pursuant to section 11-40-1, a municipality is authorized to purchase, sell, and maintain property. Arguably, a municipality that maintains title to property that has been assigned to a park and recreation board may reassign such property. *See, generally*, opinion to Honorable John F. Porter, III, Attorney, Jackson County Commission, dated May 3, 2011, A.G. No. 2011-057.

Although the Council may have the authority to reassign property that it owns, the Board is in control of the management aspects of the property. *See* opinion to Honorable Carole D. Marks, President, Hueytown City Council, dated April 9, 2007, A.G. No. 2007-076. Thus, the Board has the authority to determine reasonable operating hours that best suit the interests of the community, but should work in conjunction with the Council to make those determinations.

CONCLUSION

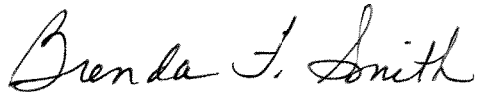
A public park and recreation board cannot sell or close a recreational facility for which it does not hold legal title. The public park and recreation board and the city should work together to determine the appropriate action to take with regard to property on which the city holds the mortgage.

A municipality may not compel an independent public park and recreation board to operate its facilities at or during certain hours or certain times. Section 11-60-8 of the Code authorizes a park and recreation board to maintain and/or manage the programs or projects of the board.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
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