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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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**SEE ACT 2012-224 BEFORE  
RELYING ON THIS OPINION.**

Honorable Joseph C. Rogers, Jr.  
Executive Secretary  
Alabama Licensing Board for General Contractors  
2525 Fairlane Drive  
Montgomery, Alabama 36116

Storm Shelters – Alabama Manufactured  
Housing Commission – General  
Contractors Licensing Board – Jurisdiction  
– Rules and Regulations

The Alabama Manufactured Housing  
Commission and the Alabama Licensing  
Board for General Contractors have  
concurrent jurisdiction to regulate the  
installation of nonresidential, prefabricated  
buildings and storm shelters that are  
permanently attached to real property  
where the cost of the undertaking is  
\$50,000 or more.

Dear Mr. Rogers:

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

QUESTION

Do the Alabama Manufactured Housing  
Commission and the Alabama Licensing Board for  
General Contractors have concurrent jurisdiction to  
regulate the installation of nonresidential, prefabricated  
buildings where the cost of the undertaking meets the  
statutory threshold of section 34-8-1(a) of the Code of  
Alabama?

FACTS AND ANALYSIS

In your letter of request, you informed this Office of the following:

The Alabama Licensing Board for General Contractors ("Board") regulates the "construction, alteration, maintenance, repair, rehabilitation, remediation, reclamation, or demolition of any building, highway, sewer, structure, site work, grading, paving or project or any improvement in the State of Alabama where the cost of the undertaking is fifty thousand dollars (\$50,000) or more. . . ." ALA. CODE § 34-8-1(a) (2010). This statute has been interpreted by the Board to include the installation, attachment, integration, or affixture of equipment, machinery, materials, structures, etc., that become permanent improvements to real property when the statutory threshold for the cost of the undertaking is met. *See, e.g.,* the opinion issued to Honorable J.T. Waggoner, Member, Alabama State Senate, dated June 22, 1999, A.G. No. 99-00233 (installation of sound equipment is a permanent improvement requiring a general contractor's license).

The installation of prefabricated storm shelters includes foundation excavation, the construction of a concrete foundation, and the construction of a generator enclosure. It includes the operation of a backhoe for excavation and a crane for setting the shelter in place. The shelter and generator enclosure are bolted to the foundation and the shelter and seats must be grounded. Also included is the installation of interior electrical wiring, breaker box and switches, florescent lights, backup emergency lights, and fan hookups. The shelters can be connected to outside utility services, but do not have to be.

. . . The Board has already issued one license in this specialty in October 2011.

This Office has confirmed that the "Alabama Manufactured Housing Commission has the authority to regulate the construction, transportation, site location, and manufacturing standards of a manufactured building. Therefore, the Alabama Manufactured Housing Commission has the authority to regulate the sale and installation of storm shelters." Opinion to Honorable Art Faulkner,

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Director, Alabama Emergency Management Agency, dated December 8, 2011,  
A.G. No. 2012-013.

Section 24-6-2 of the Code of Alabama states that the Alabama Manufactured Housing Commission was created to function “as the principal executive branch agency with powers to provide for a comprehensive manufactured and modular housing and building program with respect to construction, transportation, site location, or manufacturing standards for such structures.” ALA. CODE § 24-6-2 (Supp. 2011).

Section 24-6-4(i), however, includes the following: “This chapter shall not prevent an agency or department of state government from administering the program for which they are responsible.” ALA. CODE § 24-6-4(i) ( 2007). Thus, the jurisdiction of the Alabama Manufactured Housing Commission over the installation of nonresidential, prefabricated buildings and storm shelters is not exclusive where another state agency is charged with regulating the same activity.

Section 34-8-1(a) defines a “general contractor” who must be licensed as follows:

[O]ne who, for a fixed price, commission, fee, or wage undertakes to construct or superintend or engage in the construction, alteration, maintenance, repair, rehabilitation, remediation, reclamation, or demolition of any building, highway, sewer, structure, site work, grading, paving or project or any improvement in the State of Alabama where the cost of the undertaking is fifty thousand dollars (\$50,000) or more. . . .

ALA. CODE § 34-8-1(a) (2010).

Administrative Rule 230-X-1-.17 for the Licensing Board for General Contractors provides that “[a] license is required for the installation of machinery or equipment that becomes affixed to a structure.” ALA. ADMIN. CODE r. 230-X-1-.17 (2008).

This Office has opined that the installation of a sound system results in a permanent improvement to real property and requires a general contractor’s license. *Waggoner*, at 1. The test for whether a general contractor’s license is required is whether the item becomes a permanent fixture. *Id.* A fixture is “an article which was once a chattel, but which, by being physically annexed or affixed to the realty, has become accessory to it and part and parcel of it.” *Milford v. Tennessee River Pulp & Paper Co.*, 355 So. 2d 687, 689-90 (Ala.

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1978), quoting *Farmers & Merchants Bank v. Sawyer*, 26 Ala. App. 520, 522, 163 So. 657, 658 (1935).

Thus, a company that merely manufactures and/or delivers prefabricated buildings is considered a manufacturer or a vendor by the Board and, therefore, is not required to maintain a general contractor's license. A company, however, that installs a nonresidential, prefabricated building by permanently attaching it to a foundation on real property, where the cost of the undertaking is \$50,000 or more, must maintain a general contractor's license. Thus, the Licensing Board for General Contractors has the authority to regulate the installation of nonresidential, prefabricated storm shelters where the cost of the undertaking is \$50,000 or more.

Section 34-8-7(a) sets out the exemptions from regulation by the General Contractors Licensing Board. No exemption, however, applies to the installation of nonresidential, prefabricated buildings or storm shelters.

#### CONCLUSION

The Alabama Manufactured Housing Commission and the Alabama Licensing Board for General Contractors have concurrent jurisdiction to regulate the installation of nonresidential, prefabricated buildings and storm shelters that are permanently attached to real property where the cost of the undertaking is \$50,000 or more.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

LUTHER STRANGE  
Attorney General

By:



BRENDA F. SMITH  
Chief, Opinions Division

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