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Honorable Jay M. Ross
Office of Mobile County Attorney
Tenth Floor, South Tower
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Industrial Parks – County Commissions – Subdivisions – Building Permits

The subdivision regulations of Mobile County apply to the industrial park in the county containing the ThyssenKrupp plant.

The county may inspect facilities in the park to ensure they are being used for industrial purposes.

Additional facilities that locate in the park are not required to pay for building permits.

Dear Mr. Ross:

This opinion of the Attorney General is issued in response to your request on behalf of the Mobile County Commission.

QUESTIONS

(1) Is the Mobile County Commission authorized to apply subdivision regulations in the industrial park in the county containing the ThyssenKrupp plant?

(2) Is the county authorized to monitor the use of real property in the park through such regulations, and if not, in what manner should such usage be monitored?

> (3) May the county impose and collect building permits from entities located in the park that are not party to the ThyssenKrupp contract?

FACTS AND ANALYSIS

Your request states as follows:

> In November 2007, ThyssenKrupp Steel and Stainless USA, LLC ("TK") and other governmental entities entered into an economic development agreement for the construction of a steel plant located in an unincorporated area of Mobile County. In and by the terms of the contract, Mobile County agreed to designate a site as an industrial park, impose no zoning regulations on the site, and waive fees for certain building construction and completion permits.
>
> The industrial park is larger than the TK plant and related development. Other businesses wish to locate there. Questions have arisen as to the applicability of the county subdivision regulations and a waiver of permit fees for entities not directly a party to the TK contract.

A county commission may establish an industrial park pursuant to section 11-23-1, *et seq.*, of the Code of Alabama. ALA. CODE § 11-23-1 to 11-23-8 (2008). A park may be composed of territory wholly within the county boundaries and outside the boundaries of any municipalities. ALA. CODE § 11-23-1 (2008).

Regarding your first question, this Office considered a similar issue in an opinion to Honorable George A. Monk, Attorney, City of Anniston, dated March 13, 1987, A.G. No. 87-00106. That opinion construed a local act creating the Economic Development Council of Calhoun County ("Council") to promote industry in the county and its municipalities by acquiring land for industrial development. The *Monk* opinion concluded that property of the Council being held for use as an industrial park was subject to municipal subdivision regulations, reasoning that no exemption for the Council was included in the statutory authority for the regulation of subdivisions by municipalities. *See* ALA. CODE § 11-52-30 to 11-52-36 (Supp. 2011).

Sections 11-24-1 through 11-24-7 of the Code of Alabama address the regulation of subdivisions situated outside a municipality in the county. ALA. CODE § 11-24-1 to 11-24-7 (2008). Neither these statutes, nor the industrial park statutes, contain an exemption for a park. If the Legislature had intended such an exemption, it could have easily done so in either statutory scheme. For example, the Legislature did so for airport authorities with respect to zoning regulations, specifically stating that authorities "shall be exempt from all zoning laws, ordinances and regulations." ALA. CODE § 4-3-10 (1996).

Moreover, as this Office has observed, "the rights and responsibilities of the county commission concerning the industrial park are not diminished once an industrial park is created. ALA. CODE § 11-23-8 (2008)." Opinion to Honorable John Ben Jones, Attorney, City of Valley, dated September 20, 2010, A.G. No. 2010-104, at 5. Consistent with these authorities, industrial parks are subject to the subdivision regulations of the county commission.

Regarding your second question, section 11-23-4 of the statutes for industrial parks states that, after the county has established a park, "no facilities shall be thereafter located therein that are not industrial in character or reasonably related." ALA. CODE § 11-23-4 (2008). The *Jones* opinion further concluded that the county should monitor the park to ensure it is being used for industrial purposes because the county may abolish the park or a portion thereof under section 11-23-7 when the area is used for other purposes. ALA. CODE § 11-23-7 (2008). That opinion, however, did not address how the county should monitor the park.

Section 11-23-4 also governs enforcement of the industrial requirements, merely providing that "the county commission may resort to judicial process." ALA. CODE § 11-23-4 (2008). In the zoning context, an inspector "may be empowered to cause any building, structure or premises to be inspected and examined and to order in writing the remedying of any condition found to exist therein in violation of zoning regulations." McQuillin, *Municipal Corporations* § 25.255 (3rd ed. 2003). The grant of authority to the county to enforce land-use restrictions implies the power to inspect the property. *People ex rel. Foreman v. Sojourners Motorcycle Club, Ltd.*, 134 Ill. App. 3d 448, 480 N.E.2d 840 (1985) (county zoning officer could enter property despite no express provision for inspection in state statutes authorizing county zoning). The county may similarly monitor an industrial park by making inspections of the facilities.

Your third question is answered by the additional express language of section 11-23-4 "that no construction or installation permits shall be required." ALA. CODE § 11-23-4 (2008). Therefore, facilities that locate in the park after ThyssenKrupp are not required to pay for building permits.

CONCLUSION

The subdivision regulations of Mobile County apply to the industrial park in the county containing the ThyssenKrupp plant.

The county may inspect facilities in the park to ensure they are being used for industrial purposes.

Additional facilities that locate in the park are not required to pay for building permits.

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:

BRENDA F. SMITH
Chief, Opinions Division

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