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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable David A. Sullivan
City Attorney, City of Midfield
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Suite 400D
1728 Third Avenue, North
Birmingham, Alabama 35203

DO NOT CITE – See Act 2013-117, which amends section 11-47-3 of the Code of Alabama (effective July 1, 2013).

Municipalities – Contracts – Franchises –
Constitutional Section 094 – Jefferson
County

There is no statutory authority for a city to
endorse a private business in marketing
services to its residents.

Dear Mr. Sullivan:

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

QUESTION

May the City of Midfield enter into a contract permitting a company to use the city's letterhead and seal to solicit residents to purchase a warranty for repairs to water and sewer lines?

FACTS AND ANALYSIS

Your request states as follows:

The City of Midfield is considering a proposed contract with a company called Utility Service Partners, Inc. ("USP"). The contract would require the city to allow USP to use the city's letterhead and seal on communications from USP to city residents soliciting the purchase of a warranty. The warranty provides that USP would pay for repairs made to any

broken or leaking water or sewer lines to a customer's residence after the resident signs the contract and pays a monthly fee. The city would also receive a royalty for each warranty contract made.

The long-accepted principle of Alabama law that a city may only engage in those activities that the Legislature has authorized is often referred to as the Dillon Rule, which may be stated as follows:

“It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: *First*, those granted in express words; *second*, those necessarily or fairly implied in or incident to the powers expressly granted; *third*, those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable.”

New Decatur v. Berry, 90 Ala. 432, 433, 7 So. 838, 838 (1890) (emphasis in original). No provision of state law authorizes a city to endorse a private business in marketing services to its residents. Accordingly, the city may not permit use of its letterhead and seal in connection with such marketing.

CONCLUSION

There is no statutory authority for a city to endorse a private business in marketing services to its residents.

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:



BRENDA F. SMITH
Chief, Opinions Division