



2012-092

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

September 27, 2012

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Honorable Jeff Wyatt
Fire Chief
McAdory Area Fire District
5548 Eastern Valley Road
McCalla, Alabama 35111

Fire Hydrants – Fire Districts – Water
Authorities – Fire Protection – Competitive
Bid Law – Contracts – Jefferson County

The McAdory Area Fire District (“District”) may contract with the Warrior River Water Authority (“Authority”) for the use, installation, and maintenance of fire hydrants. The Authority and District should cooperate to enable the District to provide the most effective fire protection for a reasonable cost for its residents.

If the District enters into a contract that requires the District to install and maintain the hydrants, the District is subject to the Public Works Law.

The contract between the District and the Authority is not required to be competitively bid.

Dear Chief Wyatt:

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

QUESTIONS

Is it legal and ethical for the McAdory Area Fire District to use fire district service charges for the installation or maintenance of fire hydrants within its

district boundaries when the hydrants are the property of the Warrior River Water Authority?

If so, is the Authority or the District responsible for maintenance of hydrants installed on the water line?

If the District installs or maintains hydrants, is the project subject to competitive bidding?

FACTS AND ANALYSIS

Your request states that the Warrior River Water Authority operates the water supply system for the McAdory Area Fire District. You further state that a large percentage of the fire hydrants on the Authority's water lines are in need of repair or replacement, increasing the insurance rates of residents. The Authority turns these hydrants off, causing the District to sometimes go a longer distance to access a working hydrant. The District has been informed by the Authority that it must pay to fix any broken hydrant, despite that other entities regularly use the hydrants in addition to the District.

This Office understands that the District has an informal agreement with the Authority to use its system's water to fight fires. The District tracks the amount of usage during a fire, submits that number to the Authority later, and pays the cost the Authority states that it owes. This Office further understands that no similar agreement, formal or informal, is in place regarding the installation or maintenance of hydrants.

This Office has previously observed that the Authority is incorporated as a public corporation pursuant to section 11-88-1, *et seq.*, of the Code of Alabama. Opinion to Honorable V. Edward Freeman, II, Attorney, Warrior River Water Authority, dated December 19, 2001, A.G. No. 2002-097. Your request also states that the District is incorporated as a public corporation pursuant to Act 79 of the 1966 Special Legislative Session. 1966 Ala. Acts No. 79, 106.

Section 11-88-7 of the Code provides for the powers of a water authority. ALA. CODE § 11-88-7 (2008). Section 11-88-7(a)(20) specifically authorizes the Authority to cooperate with other entities, providing as follows:

(20) *To cooperate with* the United States of America, any agency or instrumentality thereof, the state, any county, municipality, or other political

subdivision of the state and *any public corporation organized under the laws of the state and to make such contracts with them* or any of them as the board may deem advisable to accomplish the purposes for which the authority was established. . . .

ALA. CODE § 11-88-7(a)(20) (2008) (emphasis added).

This Office has stated that a sewer authority could cooperate with a planning commission in the adoption of mutually agreeable subdivision regulations. Opinion to Honorable Richard L. Chancey, Attorney, Russell County Sewer Authority, dated March 9, 2009, A.G. No. 2009-049. This Office has also stated that a fire protection authority could cooperate with a municipality and volunteer fire departments and agree not to provide fire protection services to parts of its service area already receiving such services. Opinion to Honorable William L. Nix, Attorney, Huguley Water, Sewer, and Fire Protection Authority, dated October 19, 2007, A.G. No. 2008-008.

Act 79 (1966) authorized the establishment of a district for fighting fires or garbage disposal, not water, by any governing body located in Jefferson County. 1966 Ala. Acts No. 79, 106. Among other powers, section 11 of the act grants the District the power “[t]o acquire, own, operate, maintain, and improve a system or systems.” *Id.* at 110. Section 2 defines “district for fighting fires” as “a district created under the Act for establishing and maintaining a system for *fighting or preventing fires.*” *Id.* at 107 (emphasis added). Those powers do not include the provision of water. Section 12 of Act 79 provides for the service charges of the Fire District, stating they shall be levied to pay for “[t]he expense of establishing and maintaining a district.” 1966 Ala. Acts No. 79, 110.

Clearly, the District needs water and available hydrants to fight fires. This Office has recognized that fire hydrants are equipment useful for fire protection services. Opinions to Honorable Larry Bennich, Chairman, Morgan County Commission, dated March 1, 1995, A.G. No. 95-00130; Honorable Edward Crouch, Mayor of Hodges, dated July 20, 1992, A.G. 92-00348. The *Bennich* opinion construed language similar to that of Act 79 (1966) in an act authorizing the expenditure of ad valorem monies for “fire protection,” concluding that volunteer fire departments could use the monies to purchase hydrants. The District is dependent upon the Authority, as the sole water service provider in the district, for an adequate source of water for the District to fulfill its purpose of fighting fires. Thus, the service charges levied by the District may be spent to obtain water and fire hydrants.

The Authority and the District could enter into a written agreement for the District to purchase water and use fire hydrants, and in exchange, the District would pay the Authority for the water and to install and maintain the hydrants. The Authority and the District should cooperate to enable the Fire District to provide the most effective fire protection for a reasonable cost for its residents.

Your final question is whether the District is subject to the Competitive Bid Law if it contracts with a vendor to install and maintain the fire hydrants. The better practice would be for the District to contract with the Authority, as stated above, wherein the District would use the hydrants that belong to the Authority and, in exchange for that use, the District would pay a monetary amount to the Authority that it would use to install and maintain the fire hydrants.

If the District enters into a contract that requires the District to install and maintain the hydrants, the District is subject to the Public Works Law. The Public Works Law, codified at section 39-2-1, *et seq.*, of the Code of Alabama, controls all public works contracts that exceed \$50,000 and requires that such contracts be competitively bid. ALA. CODE §§ 39-2-1 to 39-2-14 (1992 & Supp. 2011). The definition of “awarding authority” specifically includes “[a]ny governmental board, commission, agency, body, authority, *instrumentality*, department, or subdivision *of the* state, its *counties* and municipalities.” ALA. CODE § 39-2-1(1) (Supp. 2011) (emphasis added). A fire district is an instrumentality of the county. Opinion to Honorable Martha S. Geyer, President, North Shelby County Fire and Emergency Medical District, dated February 16, 1990, A.G. No. 90-00148.

Section 39-2-1(6) defines “public works” as “[t]he construction, *installation*, repair, renovation, or *maintenance of* public buildings, structures, sewers, *waterworks*, roads, curbs, gutters, side walls, bridges, docks, underpasses, and viaducts as well as any other improvement.” ALA. CODE § 39-2-1(6) (Supp. 2012) (emphasis added). This Office has concluded that a water authority’s contract for construction, renovation, repair, or maintenance of the waterworks falls under this definition of “public works.” Opinion to Honorable Winston V. Legge, Jr., Attorney, Limestone County Water and Sewer Authority, dated March 30, 2001, A.G. No. 2001-139. Consistent with these authorities, if the contract exceeds \$50,000, it is subject to the bidding requirements of the Public Works Law.

The contract between the District and the Authority is not required to be competitively bid. This Office has consistently stated that contracts between public entities are not required to be competitively bid. Opinions to Honorable William E. Shinn, Jr., County Attorney, Morgan County, dated June 11, 2008,

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A.G. No. 2008-093; Honorable Bill Curtis, Executive Director, East Central Alabama Solid Waste Disposal Authority, dated May 6, 1994, A.G. No. 94-00183; Honorable William C. Gullahorn, Jr., Albertville City Attorney, dated February 5, 1982, A.G. No. 82-00174 (gas district).

CONCLUSION

The McAdory Area Fire District may contract with the Warrior River Water Authority for the use, installation, and maintenance of fire hydrants. The Authority and District should cooperate to enable the District to provide the most effective fire protection for a reasonable cost for its residents.

If the District enters into a contract that requires the District to install and maintain the hydrants, the District is subject to the Public Works Law.

The contract between the District and the Authority is not required to be competitively bid.

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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