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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

December 20, 2013

Honorable Regina B. Edwards
Attorney, City of Wetumpka
109 East Bridge Street
Wetumpka, Alabama 36092

Municipalities – Annexations – Elections – Roads, Highways and Bridges – County Commissions – Right-of-Way – Streets – Elmore County

The area comprising public streets and rights-of-way should be included in the total property to be annexed for purposes of calculating whether the owners of 60 percent of the property to be annexed have joined in and consented to the petition for annexation as required by section 11-42-2(10) of the Code of Alabama.

The owner of the acreage comprising the public streets and rights-of-way may consent to annexation. If the county is determined to be the owner, the commission chairman, upon approval of the county commission, may execute the appropriate consent.

Dear Ms. Edwards:

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

QUESTIONS

(1) Should the area comprising public streets and rights-of-way be included in the total property to be annexed for purposes of calculating whether the owners of 60 percent of the property to be annexed have joined in and consented to the petition for

> annexation as required by section 11-42-2(10) of the Code of Alabama?
>
> (2) If so, who is authorized to execute the necessary consent?

FACTS AND ANALYSIS

According to your request, the City of Wetumpka ("City") is considering an annexation based upon the petition of a portion of the residents of a nearby subdivision. The petition has been filed with the City pursuant to the provisions of section 11-42-2(10) of the Code. A question has arisen as to whether the acreage comprising the public streets and rights-of-way within the subdivision should be included in the total acreage for purposes of arriving at the requisite percentage, the owners of which must consent to annexation, necessary for the judge of probate to order an election on the issue of annexation.

Section 11-42-2(10) of the Code states as follows:

> The plat or map filed with the certified copy of the resolution as required in subdivision (1) of this section, shall show accurately the territory proposed to be embraced within the corporate limits, including all subdivisions into lots, blocks, streets, and alleys within such territory, if any, and an accurate description by metes and bounds of the boundary of such territory, which territory must be contiguous to the boundary of and form a homogeneous part of the city or town and may extend to or around the boundary line of any other city or town, but is not to embrace any territory within the corporate limits of another municipality. ***No platted or unplatted territory shall be included within such boundary unless there are at least two qualified electors residing, according to a government survey, on each quarter of each quarter section or part thereof of such platted or unplatted land who assent thereto in writing by signing said petition, together with the consent of the persons, firms, or corporations owning at least 60 percent of the acreage of such platted or unplatted land, such consent to be signified by their signing said petition.*** Proof of residence and qualification as electors of petitioners and of persons affected shall be made to the judge of probate by affidavit or otherwise, as he may direct. When determining the ownership of the land within such

> boundary, the persons, firms, or corporations assessing the same for taxation shall be accepted by the probate judge as prima facie the owners thereof.

ALA. CODE § 11-42-2(10) (2008) (emphasis added).

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000). The statute clearly requires the consent of the persons, firms, or corporations owning at least 60 percent of the acreage in question.

Additionally, this Office has previously determined that, for purposes of an annexation brought pursuant to section 11-42-21 of the Code, the State of Alabama is an "owner" whose consent was required to perfect the annexation of a state highway. Opinion to Honorable William M. Bouldin, Attorney, City of Russellville, dated October 15, 1997, A.G. No. 98-00009; *see*, *City of Prattville v. City of Millbrook*, 621 So. 2d 267, 271 (Ala. 1993) (chairman of the county commission is the proper person to sign section 11-42-21 annexation petition of public roadway); *see also, Town of Elmore v. Town of Coosada*, 957 So. 2d 1096, 1101 (Ala. 2006) (county commission's consent to annexation of roadway was ineffectual because county only had an easement in the annexed roadways).

For purposes of annexations brought pursuant to section 11-42-21, "owner" is defined as "the person in whose name the property is assessed for ad valorem tax purposes in the absence of proof to the contrary." ALA. CODE § 11-42-20 (2008). This Office has concluded that this section does not mean that property that is not assessed ad valorem taxes has no owner. *Bouldin* at 4. Rather, "[o]wnership can be established by other means, and the owner, whether a person, corporation, or ***governmental entity***, can execute a petition pursuant to the statute." *Id.* (emphasis added).

Section 11-42-2(10) of the Code similarly provides that "[w]hen determining the ownership of the land within such boundary, the persons, firms, or corporations assessing the same for taxation shall be accepted by the probate judge as prima facie the owners thereof." ALA. CODE § 11-42-2(10) (2008). "[W]here a clause or phrase relating to the 'same object or subject matter' is repeated throughout an act, such clause or phrase should receive a consistent construction throughout the act"). *Ex parte Jackson*, 625 So. 2d 425, 428 (Ala. 1992). Accordingly, the acreage comprising the roadways and rights-of-ways within the area sought to be annexed pursuant to section 11-42-2(10) of the Code should be included in the computation to determine the necessary acreage, the owners of which must consent to annexation.

It is unclear from your request whether the roadways and rights-of-way in question are owned by the county, or whether the county merely enjoys an easement to operate a roadway on the land. *See Town of Elmore v. Town of Coosada*, 957 So. 2d 1096, 1101 (Ala. 2006) (county's prescriptive easement did not amount to ownership). Such a determination is a question of fact that this Office may not answer. The Attorney General makes determinations of law and not of fact. ALA. CODE § 36-15-1(1)(a) & (b) (Supp. 2013). Should it be determined that the county is the owner, the commission chairman, upon approval of the county commission, may execute the appropriate consent.

CONCLUSION

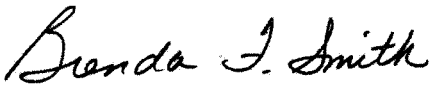
The area comprising public streets and rights-of-way should be included in the total property to be annexed for purposes of calculating whether the owners of 60 percent of the property to be annexed have joined in and consented to the petition for annexation as required by section 11-42-2(10) of the Code.

The owner of the acreage comprising the public streets and rights-of-way may consent to annexation. If the county is determined to be the owner, the commission chairman, upon approval of the county commission, may execute the appropriate consent.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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