



2014-035

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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January 10, 2014

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Honorable Lucinda Cockrell
Administrator, Sumter County Commission
Post Office Box 70
Livingston, Alabama 35470

County Commissions – Hazardous Waste
Disposal – Fees – Funds

Discussion of relevant local and state laws
dealing with waste disposal fees in Sumter
County.

Dear Ms. Cockrell:

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

QUESTIONS

Whether funds may be distributed from the Sumter County Trust Fund.

Whether the \$.40 per-ton tax should be expended for health purposes? If so, should the \$.40 per ton allocated for health purposes be distributed prior to allocating funds to various entities, cities, and towns within Sumter County in the amounts and percentages set forth in the original tax legislation, as amended.

FACTS AND ANALYSIS

Your request concerns the proper expenditure of hazardous waste disposal proceeds. In the last legislative session, the Legislature amended the provisions set forth in sections 22-30-4, 22-30B-2, 22-30B-2.1, 22-30B-4 and 22-30B-4.1 of the Code of Alabama. 2013 Ala. Acts No. 2013-174. Although there were plans to have companion local laws passed regarding these general laws, the

local legislation failed to pass. The current legislation drastically reduced the funding being received and, hence, the amount of funds available for distribution. Since the amendment of the general laws, no distributions have been made to any of the governmental agencies or entities that had previously relied on such funding. Your current inquiry seeks guidance regarding whether a distribution may be made from The Sumter Trust for the Future ("Trust"). In responding to your inquiry, this Office will discuss the current local laws that are applicable to the hazardous waste fees that are currently at issue.

Sumter County is authorized to receive a hazardous waste disposal fee pursuant to both general law and local act. The initial local Act applicable to hazardous waste disposal fees in Sumter County was Act 81-229, as amended by Act 81-916. 1981 Ala. Acts No. 81-229, 307; 1981 Ala. Acts No. 81-916, 1981. This act was subsequently amended by Act 83-480. 1983 Ala. Acts No. 83-480, 672. All references have subsequently been to Act 83-480, as amended. *Id.* Since 1983, this provision has been amended four times: Act 86-338 amended sections 4 and 5 of Act 83-480; Act 87-409 amended section 2 of Act 83-480; Act 95-723 amended section 4 of Act 83-480; and Act 99-195 again amended section 4 of Act 83-480. 1986 Ala. Acts No. 86-338, 512; 1987 Ala. Acts No. 87-409, 594; 1995 Ala. Acts No. 95-723, 1546; 1999 Ala. Acts No. 99-195, 231.

Subsection 4 of Act 83-480 sets out the manner of distribution of funds received pursuant to the local legislation. Amendments since 1983 have changed the distribution matrix in one manner or another. Regardless, waste disposal fees that are collected pursuant to Act 83-480, as amended, should be distributed pursuant to the latest distribution matrix set forth in section 4 of Act 83-480, as amended. The latest amendment to section 4 of Act 83-480 appears in Act 99-195. 1999 Ala. Act 99-195, 231.

In addition to the local acts that directly amend Act 83-480, there are five local acts that set forth the manner in which funds received pursuant to chapter 30b of title 22 of the Code are to be distributed. Specifically, Act 90-612, which was amended by Act 94-700, sets forth the manner of distribution of fees received pursuant to section 22-30B-2 of the Code. Act 94-531 sets forth the manner of distribution of fees received pursuant to section 22-30B-4(b) of the Code. Act 95-171 sets forth the manner of distribution of fees received pursuant to section 22-30B-2.1 of the Code. In particular, this provision states that funds received pursuant to section 22-30B-2.1 of the Code are to be distributed pursuant to Act 83-480, as amended. Act 97-189 slightly amends Act 95-171 by instituting a temporary appropriation of certain fees received pursuant to section 22-30B-2.1(d), and section 22-30B-4(a) and (b). This amendment was for the fiscal year ending on September 30, 1998. As such, it is the opinion of this Office that any future distribution of funds, after the fiscal

year ending on September 30, 1998, returned to the manner set forth in Act 95-171.

Because there have not been any distribution of funds since the implementation of the latest legislation, you question whether funds may be distributed from The Sumter Trust for the Future. Act 90-612, as amended by Act 94-700, created The Sumter Trust for the Future. This provision authorized 40 percent of the waste disposal fees received pursuant to section 22-30B-2 of the Code to be placed in an irrevocable trust. This act, as amended, states, in pertinent part, as follows:

(a) Forty percent shall be placed in an irrevocable trust fund named "The Sumter Trust for the Future." After the trust and interest accrued has reached a balance of seven million dollars, the trustees of the trust may distribute sums to the Sumter County Board of Education and the County Commission as long as the balance in the trust does not decrease below seven million dollars. Provided, however, if the monies from hazardous waste disposal fees to various agencies in Sumter County decrease to less than one-half the sums received in the year preceding April 1, 1990, the trustees may distribute, in their discretion, to any Sumter County Agency receiving monies from hazardous waste disposal fees generated in Sumter County regardless of the sum in the trust fund. There shall be three trustees to administer the trust fund created by this act. The trustees shall be appointed by the legislative delegation representing Sumter County to staggered three year terms.

1994 Ala. Acts No. 94-700, 1354.

Based upon the foregoing, the funds retained in the Sumter Trust for the Future may be distributed to various agencies and entities, if those entities are receiving less than one-half the sum previously received by those entities in April 1989. The administration of this Trust, however, is to be handled by the trustees as set out in the act and not by the county administrator. The amount to be distributed to any entity is within the discretion of the trustees. Further, a withholding of the distribution of funds would not be sufficient to trigger the provisions of Act 94-700. The trustees have the authority, at any time, to distribute funds to various entities if those entities are receiving less than one-half the sums disbursed in 1989. If the amounts to be distributed by the county

administrator are less than one-half of the distribution amounts previously received in 1989, then the trustees would be justified in making distributions.

You next question whether the \$.40 per ton should be distributed, and if so, whether such funds should be distributed prior to any other fees. The fee that you reference is cited in section 22-30B-4 of the Code, which states as follows:

(a) From the funds guaranteed to any county as set forth in Section 22-30B-2.1, \$.40 per ton shall be expended for health purposes and the remainder for such purposes as may be appropriated by local act.

(b) It is further provided that all provisions relating to the state fee including date of payment, required reporting, penalties, interest, property liens, record keeping, recovery of overpayment, and prosecution for violations shall also apply to the county fees levied by this section.

ALA. CODE § 22-30B-4 (Supp. 2013).

Previously, there was approximately \$2.40 in waste disposal fees that were collected pursuant to section 22-30B-4 of the Code. A portion of that amount, \$.50, was distributed pursuant to Act 94-531 and Act 97-189. This Office notes that Act 94-531 is impliedly repealed because section 22-30B-4 no longer has a subsection (b) by which waste disposal fees may be collected. Also, as noted earlier, Act 97-189 is also repealed because this particular act was effective for only one year. Section 22-30B-4, however, no longer states that a certain fee should be collected. Instead, section 22-30B-4 now sets forth a limitation on the use of funds received pursuant to section 22-30B-2.1. Specifically, section 22-30B-4(a) requires that \$.40 per ton of the amount received as guaranteed funds will be expended for health-care purposes. ALA. CODE § 22-30B-4 (Supp. 2013). The remainder of these funds is to be distributed in accordance with the local act.

Even though new local legislation was not passed with respect to the waste disposal fees in Sumter County, the distribution of such fees should be made in accordance with applicable local law that has not been either expressly or impliedly repealed. The guaranteed amount referenced in section 22-30B-4 is as a result of monies received pursuant to section 22-30B-2.1(b) of the Code. Thus, it is the opinion of this Office that such funds should be distributed in accordance with Act 83-480. These funds should be distributed for health-care

purposes prior to following the matrix distribution set forth in local law, Act 83-480, as amended.

Section 22-30B-2.1 of the Code sets forth a distribution schedule with respect to the amount Sumter County may expect in funds from the state. Nothing in this statute prohibits a distribution of funds in accordance with current local laws that are still in effect. Section 22-30B-2.1(a) sets forth the distribution of funds received pursuant to section 22-30B-2 of the Code. Subsections (b), (c), (d), and (e) of section 22-30B-2.1 all discuss a "guaranteed" amount that may be disbursed by the state to the county.

As noted earlier, Act 95-171 states that funds received pursuant to section 22-30B-2.1 of the Code are to be distributed pursuant to Act 83-480, as amended. Further, Act 94-700 sets forth the manner of distribution of funds when those funds are received as a result of the fees implemented pursuant to section 22-30B-2. Because funds received pursuant to section 22-30B-2 are distributed pursuant to section 22-30B-2.1(a), it is the opinion of this Office that fees received pursuant to section 22-30B-2.1(a) are to be distributed by Sumter County in accordance with Act 94-700. Moreover, funds received pursuant to section 22-30B-2.1(b) of the Code are to be distributed pursuant to the distribution matrix set forth in section 4 of Act 83-480, as amended, in accordance with Act 95-171.

If any monies are distributed from the Trust, these monies are not subject to the restriction set forth in section 22-30B-4 of the Code because: (1) funds in the Trust are not "guaranteed" funds as referenced in section 22-30B-2.1 of the Code, and (2) funds in the Trust are subject to distribution only by the trustees.

CONCLUSION

Funds in the Sumter Trust for the Future may be distributed to governmental agencies and entities that are receiving less than one-half of the distributions received in 1989. Any such distributions would be as a result of a decision made by the trustees.

A change in the law does not automatically interrupt the distribution of funds being received. Funds should continue to be disbursed in accordance with all applicable laws that are still in effect.

Funds distributed from the Trust are not subject to the provisions of section 22-30B-4 of the Code.

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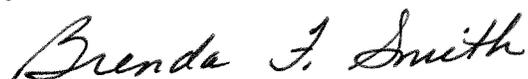
Funds received pursuant to section 22-30B-2.1(b) of the Code are required to be distributed pursuant to Act 83-480, as amended. Prior to any such distribution, pursuant to section 22-30B-4 of the Code, \$.40 per ton of the guaranteed funds received is to be distributed for health-care purposes.

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

Sincerely,

LUTHER STRANGE
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

LS/MMG

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