



2014-062

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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May 30, 2014

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Honorable Fred D. Gray, Attorney  
City of Tuskegee/The Utilities Board  
of the City of Tuskegee  
Gray, Langford, Sapp, McGowan, Gray,  
Gray and Nathanson  
Post Office Box 830239  
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Municipalities – Utility Boards –  
Drains and Drainage – Easements –  
Public Purpose – Private Property –  
Municipal Funds – Macon County

The City of Tuskegee may appropriate funds to a private property owner where damage to the property resulted from city work on a drainage easement.

The Utilities Board of the City of Tuskegee (“Board”) may make a similar expenditure if the Board determines it is within its corporate powers to make the expenditure.

Dear Mr. Gray:

This opinion of the Attorney General is issued in response to your requests on behalf of the City of Tuskegee and the Utilities Board of the City of Tuskegee.

QUESTION

May the City of Tuskegee and the Utilities Board of the City of Tuskegee use their funds to assist in solving the described drainage problem?

FACTS AND ANALYSIS

Your requests state that for decades the City of Tuskegee experienced flooding in the middle of U.S. Highway 80 in downtown Tuskegee. This Office understands that the water ran off into the water system operated by the Utilities Board of the City of Tuskegee, jeopardizing the water supply for residents. Your request states that the state maintains a drainage pipe running under and from one to the other side of the highway. The pipe connected to a ditch on one side running through private property. To alleviate the flooding, the city obtained easements from the property owners for installation of a storm drain pipe from the state's right-of-way across part of the property owned by Freeman Investments, LLC ("Freeman").

This Office understands that the city and Board jointly installed the pipe, with the city providing labor and the Board providing equipment. The city and Board have joint responsibility for the pipe, which is part of the Board's water system. Your request states that the city subsequently covered the pipe and filled in the area.

Your request also states that Freeman constructed a building, part of which was over the pipe. This Office understands that the pipe failed, flooding the area and causing damage to that portion of the building to the extent that it had to be demolished. The city, Board, and state jointly corrected the problem, obtaining easements for each from other private property owners for the installation of multiple drainage pipes, with the city obtaining grant funding from the state, and the state bidding the work to a private contractor. Your request states that this work corrected the flooding problem, which involved abandoning the pipe at issue, but did not stabilize and void the pipe.

This Office understands that the stabilizing process involves pumping concrete into voids in the ground around the pipe so that the ground will not sink. Your request states that Freeman has asked the city and Board to share in the stabilizing cost so that it may reconstruct its building. An estimate for the work from an engineering firm in the amount of \$58,225 accompanies your request. The city and Board each wish to provide \$15,000 to Freeman toward remedying this problem. A letter from Freeman stating that it will cover the balance also accompanies your request.

Section 93 of article IV of the Recompiled Constitution of Alabama prohibits the state from lending money or credit in aid of a private person, association, or corporation. ALA. CONST. art. IV, § 93 (amends. 1, 12, 58). Section 94 of article IV of the Recompiled Constitution of Alabama likewise prohibits a municipality or county from granting money or other thing of value in aid of a private individual, corporation, or association. ALA. CONST. art. IV, § 94 (amends. 112, 558).

This Office has addressed a city's correction of drainage problems on private property under section 94. *E.g.*, opinions to Honorable Al Kelley, Mayor, City of Millbrook, dated August 4, 1997, A.G. No. 97-00249; Honorable Fred K. Granade, Attorney, Town of Loxley, dated December 14, 1995, A.G. No. 96-00069; Honorable G. William Noble, Mayor, City of Gardendale, dated April 26, 1994, A.G. No. 94-00154. These opinions emphasize that the city has a duty to maintain its drainage pipes and ditches.

The city may make repairs on private property to prevent damage to the property if it has an easement. *Granade; Noble* (pipe in danger of failing due to sinking ground). Moreover, a city may correct damage to private property that it has caused without violating section 94. *Kelley*; opinion to Honorable Martha A. Elrod, City Clerk/Treasurer, City of Gadsden, dated October 11, 1994, A.G. No. 95-00018 (erosion to resident's property caused by construction of city street on slope above resident's house). The city may perform the corrective work, or it may permit the property owner to do the work. *Id.*

Consistent with these opinions, because the drainage pipe installed by the City of Tuskegee and Board failed, causing damage that led to the destruction of a building on private property, the city may appropriate funds to the owner to stabilize the ground around the now abandoned pipe so that the building may be rebuilt. In addition, the *Elrod* opinion cautioned that, where the city attempts to remedy damage to private property, it should enter into a written contract with the property owner. Here, the contract should specifically provide how the funds will be used to stabilize the pipe.

As to the Board's financial contribution to this project, this Office stated in a previous opinion to the Board that it is incorporated as a public corporation pursuant to section 11-50-310, *et seq.*, of the Code of Alabama. Opinion to Honorable Milton C. Davis, Attorney, Utilities Board of Tuskegee, dated July 26, 2004, A.G. No. 2004-186. Such a board is not subject to section 94. Opinions to Honorable Tommy Gibson,

Honorable Fred D. Gray  
Page 4

Chairman, Gas Board of the City of Boaz, dated April 28, 2006, A.G. No. 2006-090; Honorable Norman J. Gale, Jr., Attorney, Board of Directors of South Alabama Utilities, dated March 4, 1999, A.G. No. 99-00129; Honorable Michael G. Graffeo, Attorney, Alabaster Water Board, dated October 24, 1997, A.G. No. 98-00018.

Nonetheless, a public corporation is not authorized by statute or common law to exceed its corporate power. *Ala. Hosp. Ass'n v. Dillard*, 388 So. 2d 903, 905 (Ala. 1980). Any expenditures made must be within the corporate powers of the Board and must be necessary, appropriate, and consistent with the purposes for which the Board was formed. *Gibson; Graffeo*; opinions to Honorable Stephanie Lanier Weems, Attorney, Center Point Fire District, dated July 11, 2000, A.G. No. 2000-194; Honorable Bingham D. Edwards, Attorney, The State Products Mart Authority Located in Morgan County, Inc., dated June 20, 2000, A.G. No. 2000-177. This determination must be made by the Board.

#### CONCLUSION

The City of Tuskegee may appropriate funds to a private property owner where damage to the property resulted from city work on a drainage easement.

The Utilities Board of the City of Tuskegee may make a similar expenditure if the Board determines it is within its corporate powers to make the expenditure.

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

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