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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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Honorable Stephen K. Winters  
Attorney, Town of Butler  
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Butler, Alabama 36904

Municipalities – Law Enforcement Officers  
– Contracts – Police Protection – Private  
Work – Choctaw County

The Town of Butler (“Town”) may not contract with a private entity to provide extra police protection to property owned by the private entity.

Dear Mr. Winters:

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

QUESTION

May the Town of Butler contract with a private entity to provide extra police protection to property owned by a private entity?

FACTS AND ANALYSIS

According to your request, a private entity that owns and operates a local apartment complex has approached the Town with a proposal whereby the private entity would agree to help fund the salary of a newly hired police officer in exchange for an agreement by the Town that the police officer would patrol the apartments owned by the private entity for a minimum amount of hours per week. The Town currently responds to reports of incidents occurring on the property.

“Neither the police power of the state itself nor that delegated by it to a municipality is subject to limitation by private contract; nor is the exercise of

such power to be alienated, surrendered or limited by any agreement or device.” Opinion to Honorable Anthony Clark, Sheriff, Covington County Sheriff’s Department, dated December 21, 1999, A.G. No. 2000-050, *quoting Hale v. Osborn Coal Enterprises*, 729 So. 2d 853, 854 (Ala. Civ. App. 1997); *Hass v. City of Mobile*, 289 Ala. 16, 19, 265 So. 2d 564, 566 (1972).

Although municipalities may contract with each other for the performance of law enforcement duties, no such authority exists for a contract between a municipality and a private entity. ALA. CODE § 11-102-1 (2008); opinion to Honorable Terry Clark, Mayor, City of East Brewton, dated April 8, 2013, A.G. No. 2013-041. “[I]f the ability of the municipality to act is subject to reasonable doubt, the power does not exist.” Opinion to Honorable Brenda Gale Blalock, City Clerk, City of Montgomery, dated October 9, 2012, A.G. No. 2013-005, *quoting* opinion to Honorable George Andrew Monk, Anniston City Manager, dated April 6, 2007, A.G. No. 2007-074.

Additionally, this Office has opined that, “under the equal protection clause of the Constitution, if any area in the police jurisdiction is receiving [police] services, then all areas must receive the same service.” Opinion to Honorable Graves Musgrove, Mayor, Town of Riverside, dated May 6, 1987, A.G. No. 87-00171. The scenario described in your request could result in greater police protection for the private entity over that provided to the general public in other areas of the municipality and may be impermissible.

### CONCLUSION

The Town of Butler may not contract with a private entity to provide extra police protection to property owned by the private entity.

I hope this opinion answers your question. 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