



2015-019

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

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

Honorable Andrew J. Rutens
Attorney, City of Saraland
Galloway, Wettermark, Everest,
Rutens & Gaillard
Post Office Box 16629
Mobile, Alabama 36616-0629

Municipalities – Public Works Law – Real
Property – Competitive Bid Law –
Construction – Mobile County

Because the City of Saraland will possess a contractual right to purchase the property upon which the City Hall Complex will be built, the construction thereof is a public works project subject to bidding pursuant to sections 39-2-1 through 39-2-14 of the Code of Alabama.

Dear Mr. Rutens:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Saraland (“City”).

QUESTION

Does the construction of a new city hall complex qualify as a public work pursuant to section 39-2-1 of the Code of Alabama when the complex will be constructed on property owned by a private entity that will not be paid for, purchased, or owned by the City until after its completion?

FACTS AND ANALYSIS

According to your request, the City owns approximately 25 percent of the Plaza North Shopping Center (“Plaza”) and utilizes said property for City offices. A private entity has approached the City and expressed its desire to construct a City Hall Complex (“Complex”) on the privately owned portion of

the Plaza. Under the proposed agreement, the private entity would transfer the Complex to the City upon completion. Pursuant to the contract, the City, in return, would deed its property in the Plaza to the private entity and further pay an additional amount up to fair market value for the Complex. The total cost of the project to the City will exceed \$50,000.

The City questions whether the construction of the Complex is subject to the public works bid law because the City would not purchase the Complex until construction was completed. Moreover, the location the Complex is of great value and interest to the City.

Alabama's Public Works Law requires that "[b]efore entering a contract for a public work involving an amount in excess of \$50,000, the awarding authority shall advertise for sealed bids." ALA. CODE § 39-2-2(a) (Supp. 2014). "Public Works" is defined in the Code as follows:

The 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 to be constructed, installed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise.

ALA. CODE § 39-2-1(6) (2012) (emphasis added). For purposes of the Public Works Law, "public property" is defined as "***[r]eal property which the state, county, municipality, or awarding authority thereof owns or has a contractual right to own or purchase, including easements, rights of way, or otherwise.***" ALA. CODE § 39-2-1(5) (2012) (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). Moreover, the Alabama Supreme Court has noted that the Legislature intended strict compliance with the provisions of the Public Works Bid Law and intended to erect "impregnable barriers" to prevent the misuse of public funds without competitive bidding. *Bessemer Water Serv. v. Lake Cyrus Dev. Co., Inc.*, 959 So. 2d 643, 649 (Ala. 2006).

Honorable Andrew J. Rutens
Page 3

CONCLUSION

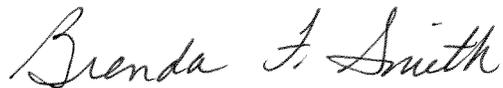
Because the City of Saraland will possess a contractual right to purchase the property upon which the City Hall Complex will be built, the construction thereof is a public works project subject to bidding pursuant to sections 39-2-1 through 39-2-14 of the Code.

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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