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Honorable Charles E. Hyland, Jr., Director
Board of Water and Sewer Commissioners
of the City of Mobile
Post Office Box 2368
Mobile, Alabama 36652-2368

Water and Sewer Boards – Real Property – Reporting Requirements – Easements – Open Meetings Act of 2005 – Disclosure Requirements – Mobile County

The purchase of a temporary or permanent easement or right-of-way with public funds is subject to public disclosure under section 9-15-100 of the Code of Alabama. The purchase of same without public funds is not subject to disclosure.

The acquisition by purchase, but not by condemnation, in eminent domain, of land in fee simple or a temporary or permanent easement or right-of-way, is subject to public disclosure.

Disclosure is not required if the decision to purchase was made at an open meeting of the purchasing entity for which notice was given under the Open Meetings Act and the minutes include the information required by section 9-15-100(b).

Dear Mr. Hyland:

This opinion of the Attorney General is issued in response to your request on behalf of the Board of Water and Sewer Commissioners of the City of Mobile.

QUESTIONS

(1) Does section 9-15-100 of the Code of Alabama apply to the acquisition of permanent easements for

> consideration by the Board of Water and Sewer Commissioners of the City of Mobile ("Board")?
>
> (2) Does this section apply to permanent easements obtained at no cost?
>
> (3) Does this section apply to temporary easements or rights-of-way whether consideration is paid or not?
>
> (4) Does this section apply to fee-simple title to lands or permanent or temporary easements acquired through the exercise of the Board's power of eminent domain?

FACTS AND ANALYSIS

This Office has previously observed that the Board of Water and Sewer Commissioners of the City of Mobile is incorporated as a public corporation pursuant to section 11-50-340, *et seq.*, of the Code of Alabama. Opinion to Honorable Jacqueline M. McConaha, Attorney, Board of Water and Sewer Commissioners of the City of Mobile, dated January 3, 2007, A.G. No. 2007-028.

Section 9-15-100 of the Code provides for the public disclosure of certain acquisitions of real property. ALA. CODE § 9-15-100 (Supp. 2014). Section 9-15-100(a) sets forth the qualifying acquisitions as follows:

> (a) The state, a county, a municipality, any other governmental entity, or any quasi-governmental entity, following the ***purchase of any real property with public funds*** for any reason, shall disclose information concerning the purchase within 60 days following the purchase. If the purchase is tied to a specific economic development project, disclosure is not required until 60 days following the announcement of the project. If the purchase is tied to an acquisition for public utility or public works purposes as a part of a single project or the ***acquisition of rights-of-way***, disclosure is not required until 60 days following the acquisition of the last parcel of property needed for the particular public utility or public works project or ***right-of-way*** line for which the purchases are made.

ALA. CODE § 9-15-100(a) (Supp. 2014) (emphasis added).

Under the well-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); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997); *State Dep't of Transp. v. McLelland*, 639 So. 2d 1370, 1371 (Ala. 1994). The statute does not define "real property" or any other terms used therein. Section 9-15-100(a) plainly states, however, that the disclosure requirement applies to "rights-of-way."

Black's Law Dictionary definition of "easement" explains that one of "[t]he primary recognized easements" is "a right-of-way." BLACK'S LAW DICTIONARY 622 (10th ed. 2014). "Rights-of-way," as used in the statute, is not qualified. Therefore, public disclosure of the purchase of an easement or right-of-way must be made whether the easement or right-of-way is permanent or temporary. Because the statute limits its application to purchases "with public funds," disclosure need not be made unless funds change hands.

As the statute also limits its application to "purchases," your final question regarding eminent domain requires a closer analysis. The Alabama Eminent Domain Code is found in section 18-1A-1, *et seq.*, of the Code of Alabama. ALA. CODE §§ 18-1A-1 to 18-1A-311 (2007). It provides for the acquisition of property by purchase or condemnation. This Office has stated, as follows, about these two types of acquisitions:

> Sections 18-1A-21 and -22, Code of Alabama 1975, require the condemnor . . . to cause the property to be appraised to determine the amount that would constitute a just compensation for its taking and before commencing a condemnation action, is to submit an offer to acquire the property for the appraised amount.

Opinion to Honorable Alma S. Leak, Mayor, City of Wetumpka, dated November 24, 1993, A.G. No. 94-00064. In fact, the legislative purpose for acquisition by purchase states that it encourages "acquisition of property by agreement, to avoid litigation" by condemnation. ALA. CODE § 18-1A-20(a) (2007). The commentary to section 18-1A-22 specifically refers to the initial offer as an "offer to purchase." ALA. CODE § 18-1A-22 (2007). Acquisition by condemnation, on the other hand, is governed by section 18-1A-70, *et seq.*, of the eminent domain statutes. ALA. CODE §§ 18-1A-70 to 18-1A-311 (2007). Accordingly, acquisitions by purchase, but not by condemnation, are subject to the disclosure requirement.

It is noted that an exception is provided in section 9-15-100(d). This section states that disclosure is not required if the decision to purchase was made at an open meeting for which notice was given under the Open Meetings Act of 2005 and the minutes include the information required by section 9-15-100(b).

CONCLUSION

The purchase of a temporary or permanent easement or right-of-way with public funds is subject to public disclosure under section 9-15-100 of the Code. The purchase of same without public funds is not subject to disclosure.

The acquisition by purchase, but not by condemnation, in eminent domain, of land in fee simple or a temporary or permanent easement or right-of-way, is subject to public disclosure.

Disclosure is not required if the decision to purchase was made at an open meeting of the purchasing entity for which notice was given under the Open Meetings Act and the minutes include the information required by section 9-15-100(b).

I hope this opinion answers your questions. 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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