



2015-040

STATE OF ALABAMA
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April 15, 2015

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Honorable William R. Justice
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Water Boards – Names – Certificates of
Incorporation – Amendments – Shelby
County

The Alabaster Water Board may not amend
its certificate of incorporation to change its
name to “Alabaster Water.”

The Alabaster Water Board may operate
under the assumed name “Alabaster Water”
without amending its certificate of
incorporation.

Dear Mr. Justice:

This opinion of the Attorney General is issued in response to your request
on behalf of The Alabaster Water Board.

QUESTIONS

(1) May the Alabaster Water Board, by amendment
to its certificate of incorporation, change its name to
“Alabaster Water”?

(2) May the Alabaster Water Board operate under
the name “Alabaster Water” without amending its
certificate of incorporation?

FACTS AND ANALYSIS

The Alabaster Water Board (“Board”) was formed in 1955 under the
provisions of what is now sections 11-50-310 through 11-50-324 of the Code of
Alabama. ALA. CODE §§ 11-50-310 to 11-50-324 (2008, Supp. 2014). The original

name of the Board was Alabaster Water and Gas Board. In 1995, the Board amended its certificate of incorporation and changed its name to “The Alabaster Water Board.” The Board now wishes to change its name to “Alabaster Water.”

Section 11-50-312(a) of the Code of Alabama states as follows:

(a) The certificate of incorporation of any corporation organized under this article shall state:

(1) The name of the corporation, which shall be a name indicating the system or systems for the operation of which the corporation is organized (e.g., “the waterworks and electric board of the City (or Town) of,” or “the utilities board of the City (or Town) of,”); . . .

ALA. CODE § 11-50-312(a) (2008) (parenthetical examples in statute). Further, the Alabama Court of Civil Appeals has noted that this section requires that “***the name of the corporation should include the term ‘board’*** and specify the particular city or town the corporation serves.” *Water & Wastewater Bd. of City of Madison v. City of Athens*, 17 So. 3d 241, 246 (Ala. Civ. App. 2009). Thus, the Board may not amend its certificate of incorporation to change its name to “Alabaster Water.”

With respect to your second question, you essentially ask whether the Board may do business under the assumed name of “Alabaster Water.”

It has been said that when a corporation comes into existence, it acquires a legal name by which it is known and identified and by which it conducts business. If the corporation is not authorized by law to conduct business under an assumed or fictitious name, its legal name is the only name that may be used by the corporation. ***In the absence of any legal prohibition or fraud, however, a corporation has the same freedom as an individual to adopt and use an assumed or fictitious name in conducting its business.*** Use of a fictitious business name does not create a separate legal entity. A corporation conducting business under an assumed or fictitious name must be authorized to do business in the state.

6 Fletcher Cyc. Corp. § 2442 (emphasis added). This Office finds no prohibition in Alabama law against the Board’s use of an assumed name. We note, however, that in a previous opinion to Honorable Walker Hobbie, Jr., this Office suggested that a corporation using an assumed name should file a notice stating such with the probate court to avoid a potential violation of section 13A-9-18 of the Code

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(criminal impersonation). Opinion to Honorable Walker Hobbie, Jr., Judge of Probate, Montgomery County, dated June 10, 1983, A.G. 83-00351.

CONCLUSION

The Alabaster Water Board may not amend its certificate of incorporation to change its name to "Alabaster Water."

The Alabaster Water Board may operate under the assumed name "Alabaster Water" without amending its certificate of incorporation.

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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