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**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 Kevin Walding
Attorney, Houston County Board of Education
Hardwick, Hause, Segrest & Walding
Post Office Box 1469
Dothan, Alabama 36302

Education, Boards of – Public Works Law
– Real Property – Disclosure Requirements

The Houston County Board of Education may purchase real property upon which the successful bidder will construct or remodel a building by bidding in compliance with the Public Works Law.

Upon completion of the transaction, the Houston County Board of Education should comply with the disclosure requirements of section 9-15-100 of the Code of Alabama.

Dear Mr. Walding:

This opinion of the Attorney General is issued in response to your request on behalf of the Houston County Board of Education.

QUESTION

May the Houston County Board of Education (“Board”) advertise for bids for the purchase of real property where the successful bidder will either construct a new building or remodel an existing building to meet the specifications set forth in the solicitation for bids?

FACTS AND ANALYSIS

According to your request, the Board has determined that, to meet the needs of its students, it must construct a new Career & Technical Center (“Center”) that is centrally located between the five public schools that utilize

the Center. The project will exceed \$50,000 in cost. You question whether this project may be completed by letting bids wherein the bid solicitation includes the real estate upon which the Center will be located and either the remodeling of an existing building or the construction of a new building. Your request specifically questions whether such a procedure would violate the Competitive Bid Law, the Public Works Law, or the disclosure requirements codified in section 9-15-100 of the Code.

With respect to the Competitive Bid Law, in a previous opinion to the Honorable Patrick H. Boone, this Office addressed a similar question. Opinion to Honorable Patrick H. Boone, City Attorney, City of Vestavia Hill, dated June 23, 1987, A.G. No. 87-00220. In the *Boone* opinion, the City of Vestavia Hills sought guidance on whether the city could solicit bids for the construction of a fire station together with the land upon which it would be located. *Id.* This Office noted that the Competitive Bid Law did not apply to real estate purchases, and although not specifically addressing the Public Works Law, concluded that “nothing in the law prohibits such an action.” *Id.* at 2; *see also*, ALA. CODE § 41-16-50 (2013).

More recently, this Office issued an opinion to Honorable Andrew J. Rutens wherein this Office addressed whether the Public Works Law applied when a municipality would not formally purchase property until construction was completed on the subject property. Opinion to Honorable Andrew J. Rutens, Attorney, City of Saraland, dated December 15, 2014, A.G. No. 2015-019. There, this Office emphasized that, for purposes of the Public Works Law, public property includes property in which an awarding authority has a contractual right to purchase. ALA. CODE §§ 39-2-1 to 39-2-14 (2012, Supp. 2014); *Rutens* at 2. We also noted that the Public Works Law was intended to establish “impregnable barriers” to prevent the misuse of public funds without competitive bidding. *Rutens*, citing *Bessemer Water Serv. v. Lake Cyrus Dev. Co., Inc.*, 959 So. 2d 643, 649 (Ala. 2006).

Consistent with the *Boone* and *Rutens* opinions, it is the opinion of this Office that the Board may solicit bids for the purchase of real property upon which the successful bidder will construct a building or remodel an existing building on the property for use as the Center. In so doing, the Board should comply with the Public Works Law.

Finally, section 9-15-100 of the Code does not place any restriction on the purchase of real property. Rather, this section of the Code merely requires the disclosure of information concerning the purchase of real property by the state, county, municipality, or any other governmental entity or quasi-governmental entity after the purchase. ALA. CODE § 9-15-100 (Supp. 2014). The disclosure must include appraisal information, if any; all contracts related to the purchase; the source of all funds used in the purchase; and any other related materials. *Id.* The disclosure requirements are satisfied if the required information was

Honorable Kevin Walding
Page 3

disclosed in an open meeting of the purchasing entity during which the decision to purchase the property was made. *Id.*

CONCLUSION

The Houston County Board of Education may purchase real property upon which the successful bidder will construct or remodel a building by bidding in compliance with the Public Works Law.

Upon completion of the transaction, the Houston County Board of Education should comply with the disclosure requirements of section 9-15-100 of the Code.

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

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