



2016-020

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

January 19, 2016

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Honorable John F. Porter, III
Attorney, Jackson County Commission
The Porter Law Group
Northside Courthouse Square
123 East Laurel Street
Scottsboro, Alabama 35768

THIS OPINION HAS BEEN OVER-
RULED BY AN OPINION ISSUED TO
HONORABLE RONALD L. JONES,
CHIEF EXAMINER, EXAMINERS OF
PUBLIC ACCOUNTS, DATED JULY
26, 2016, A.G. NO. 2016-046.

Privilege Tax - Funds - County
Commissions - Corporate Shares Tax

Absent statutory authority to the contrary,
the ultimate use and distribution of the
Alabama Business Privilege and Corporate
Shares Tax received by Jackson County is
left to the discretion of the Jackson County
Commission.

Dear Mr. Porter:

This opinion of the Attorney General is issued in response to your request
on behalf of the Jackson County Commission ("County Commission").

QUESTION

Is the ultimate use and distribution of the
Alabama Business Privilege and Corporate Shares Tax
received by Jackson County left to the discretion of the
County Commission?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that Jackson County
receives an annual payment to its general fund from the Alabama Department of
Revenue. These funds are a remittance of the county's portion of the Business
Privilege and Corporate Shares Tax. This Office understands that prior to 1999,
the Business Privilege and Corporate Shares Tax did not exist. Instead, the
Alabama Revenue and Taxation Code contained a Corporate Franchise Tax,

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which was codified at section 40-14-40, *et seq.*, of the Code of Alabama, and a Corporate Shares Tax, which was codified at section 40-14-70, *et seq.*, of the Code of Alabama. In 1999, the Corporate Franchise and the Corporate Shares tax provisions were repealed and replaced with the Alabama Business Privilege Tax Act of 1999, section 40-14A-21 *et seq.*, of the Code of Alabama.

As noted in your request, neither the pre-1999 tax provision, nor the post-1999 tax provision, contained a formula or direction to the county regarding the division or distribution of funds to any particular county tax recipient, agency, or fund. The County Commission has historically authorized the distribution of funds from the county portion of the tax to municipalities, school systems, and other public agencies within the county. Your current inquiry, however, questions whether the previous practice is appropriate.

Section 11-8-3 of the Code of Alabama authorizes the county commission to adopt a budget for the fiscal year. In so doing, the county commission is required by law to furnish the various department heads and officers of the county with sufficient funds within the county budget to operate their offices. Opinion to Honorable Bobby M. Junkins, Etowah County Probate Judge, dated June 8, 1989, A.G. No. 89-00294, at 3. In *Geneva Cty. Comm'n v. Tice*, 578 So. 2d 1070 (Ala. 1991), the Supreme Court of Alabama stated that "the true intent of the legislature was to place in the county governing body, which body appropriates the public monies, the final say-so in the disposition of such funds, and thus centralize in the legislative body a function lawfully and traditionally delegated to that body by the legislature." *Tice*, 578 So. 2d at 1075.

Determining the proper expenditure of funds is a legislative function that, on the county level, has been bestowed on the county commission. Absent clear statutory authority setting forth the manner in which certain tax monies are to be expended or distributed, it is the opinion of this Office that the county commission has the ultimate authority to determine the use and distribution of monies received by the county commission. Accordingly, the use and distribution of the Alabama Business Privilege and Corporate Shares Tax received by Jackson County is left to the discretion of the Jackson County Commission.

CONCLUSION

Absent statutory authority to the contrary, the ultimate use and distribution of the Alabama Business Privilege and Corporate Shares Tax received by Jackson County is left to the discretion of the Jackson County Commission.

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I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General

By:

A handwritten signature in black ink, appearing to read "G. Ward Beeson, III". The signature is written in a cursive style with a prominent flourish at the end.

G. WARD BEESON, III
Chief, Opinions Section

LS/MMG
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