

OFFICE OF THE ATTORNEY GENERAL

96-00086



JEFF SESSIONS
ATTORNEY GENERAL
STATE OF ALABAMA

JAN - 8 1996

TO THE EXTENT THERE IS A CONFLICT, THIS OPINION HAS BEEN OVERRULED BY THE OPINION ISSUED TO HON. RYAN ROBERTSON, CLEBURNE COUNTY JUDGE OF PROBATE, DATED 12/12/2011, A.G. NO. 2012-016.

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (334) 242-7300

Honorable Seth Hammett
Member, House of Representatives
P. O. Box 1776
Andalusia, AL 36420

Volunteers - Volunteer
Programs - Fire Departments -
Counties

Discussion of the status and
distribution of fire protec-
tion funds provided for by
Amendment No. 564.

Dear Representative Hammett:

This opinion is issued in response to your request for
an opinion from the Attorney General.

QUESTION 1

Can volunteer fire departments located
in adjacent counties which provide coverage
in Covington County receive a full share or
a pro rata share of available funds based
upon their coverage area?

FACTS, LAW AND ANALYSIS

Amendment No. 564 to the Constitution of Alabama 1901
provides for fire protection and a special fire protection
property tax in Covington County. The pertinent portion of
Amendment No. 564 reads:

"(b) The County Commission of Covington
County shall levy and collect a spe-
cial property tax, in addition to all

other taxes now or hereafter provided by law, of three mills on each one dollar's worth of taxable property as assessed for the state ad valorem taxation during the preceding year. The proceeds of the additional taxes levied by this amendment shall be used exclusively for fire, emergency medical, and rescue services.

"(c) The Revenue Commissioner of Covington County shall assess the tax herein provided for, and shall collect the fire tax in the same manner and method that other ad valorem taxes are collected. The proceeds of the tax shall be paid into a special county fund. Within thirty days of payment into the special fund, the county commission shall allocate the funds among the eligible fire departments and rescue squads. The funds shall be divided equally among the eligible fire departments and rescue squads.

"(d) An eligible fire department, for purposes of this amendment, means a fire department in Covington County that maintains an ISO-approved rating of at least Class 9, is certified under the Alabama Forestry Commission guidelines, and is a member in good standing of the Covington County Firefighters Association. An eligible rescue squad, for purposes of this amendment, means a rescue squad that is certified by the Alabama Association of Rescue Squads or Emergency Medical Services."

The fundamental rule of statutory construction is to ascertain and give effect to the intent of the Legislature in enacting a statute. This intent should be gathered from the language of the statute whenever possible. Clark v. Houston County Commission, 507 So.2d 902 (Ala. 1987).

It is stated in section (d) of Amendment No. 564, "An eligible fire department for purposes of this amendment means a fire department in Covington County. . . ." It is clear for this provision, as well as from reading the amendment as a whole, that only those fire departments and rescue squads

located within the boundaries of Covington County are to be recipients of Amendment No. 564 fire protection tax proceeds.

CONCLUSION

Volunteer fire departments located in adjacent counties which provide coverage in Covington County are not authorized to receive funds from Amendment No. 564 fire protection tax proceeds.

QUESTION 2

Are organizations receiving Amendment No. 564 funds required to follow the competitive bid laws on equipment purchases?

FACTS, LAW AND ANALYSIS

Code of Alabama 1975, § 41-16-50 requires that the purchase or lease of personal property or services, not otherwise exempted, by counties and municipalities and instrumentalities thereof be by open and competitive bid.

It is axiomatic that tax-funded revenues are public funds. Opinion of the Attorney General to Honorable Henry R. Caton, Mayor, Town of Harpersville, dated January 14, 1994, A.G. No. 94-00083. The Legislature in Section (a) of Amendment No. 564 recognized that fire departments and rescue squads which received funds pursuant to this amendment are organizations which are public in nature.

Funds received and collected by a volunteer fire department or rescue squad which is sanctioned by a municipality become municipal funds. Opinion to Honorable Henry R. Caton, supra. Therefore, pursuant to Code of Alabama 1975, § 41-16-50, purchases of equipment by a municipally sanctioned volunteer fire department or rescue squad must be by competitive bid.

If a volunteer fire department or rescue squad is not sanctioned by a municipality, it does not in effect become a municipal instrumentality and generally its funds do not become municipal funds. However, it is strongly urged that these volunteer fire departments or rescue squads follow the competitive bid law when purchasing equipment

because of the use of public funds. If the volunteer fire department or rescue squad receives municipal, county or state funds, the purchases of equipment must be by competitive bid. Opinion of the Attorney General to Honorable Miles Prater, Mayor, Town of Millport, dated February 17, 1984, A.G. No. 84-00168.

CONCLUSION

Purchases of equipment by a municipally sanctioned fire department or rescue squad must be by competitive bid. Purchases of equipment by a fire department or rescue squad not sanctioned by a municipality should be by competitive bid unless purchases are made with state, county or municipal funds, in which case purchase must be by competitive bid.

QUESTION 3

Can the Covington County Commission require organizations receiving funding to maintain a board of directors or other official governing body?

FACTS, LAW AND ANALYSIS

I can find no authority for the Covington County Commission to require organizations receiving funds to maintain a board of directors or other official governing body.

Code of Alabama 1975, § 9-3-17(a)(1) requires a certified fire department to be organized and incorporated under the laws of the state as a nonprofit organization or as an authority of a legal subdivision. As such, the fire department or rescue squad should have a board of directors or other governing body.

Furthermore, if a volunteer fire department or rescue squad is sanctioned by a municipality the fire department or rescue squad is subject to supervision by city officials. Opinion of the Attorney General to Honorable Hulon Newton, Mayor, Town of Anderson, dated October 6, 1992, A.G. No. 93-00014.

CONCLUSION

There is no specific authority for the Covington County Commission to require volunteer fire departments and rescue squads receiving funding under Amendment No. 564 to maintain a board of directors or governing body.

QUESTION 4

Are volunteer fire departments and rescue squads subject to audit by the Examiners of Public Accounts?

FACTS, LAW AND ANALYSIS

Regarding the audit of funds of a volunteer fire department or rescue squad sanctioned by a municipality, it was stated in the opinion of the Attorney General to Honorable Henry R. Caton, supra:

"An Attorney General's opinion, 85-00129, dated October 18, 1984, to Ms. C. Eleanor Byrd, Town Clerk-Treasurer of the Town of Silverhill, opined: 'If the Town of Silverhill Volunteer Fire Department is recognized or sanctioned by the Town of Silverhill then funds collected by that agency become municipal funds. . . . If the conclusion is that these funds are municipal funds, then these monies would be included in the written financial report of the Mayor to the Town Council and would be audited with other municipal funds.' Pursuant to Section 11-43-85, Code, the Mayor, ' . . . at least once a year, shall appoint an independent public accountant or the Department of Examiners of Public Accounts to conduct an examination in accordance with generally accepted auditing standards of all books and accounts of the city or town since the preceding examination. . . .'"

Thus, if a volunteer fire department or rescue squad is sanctioned by a municipality its funds are subject to audit with other municipal funds.

Code of Alabama 1975, § 41-5-6(8) allows the Examiners of Public Accounts to audit the accounts of all persons

receiving public funds. Thus, if a volunteer fire department or rescue squad receives public funds, the Examiners of Public Accounts are authorized to audit their accounts, even if such volunteer fire department or rescue squad is not sanctioned by the municipality.

Section (e) of Amendment No. 564 provides in pertinent part:

"After receiving funds, the fire departments and rescue squads shall keep accurate records to verify that the funds were properly expended. By September 15 of each year, the fire departments and rescue squads shall file a financial statement with the Covington County Commission detailing the expenditure of all funds received from this amendment during the previous twelve months. The filing shall also account for all unspent funds and whether the unspent funds have been obligated."

All volunteer fire departments and rescue squads in Covington County which receive fire protection tax proceeds under Amendment No. 564 must file the financial statement with the county commission as required by section (e), quoted above.

CONCLUSION

If a volunteer fire department or rescue squad is sanctioned by a municipality its funds are subject to audit with other municipal funds. If a volunteer fire department or rescue squad receives public funds, the Examiners of Public Accounts are authorized to audit its accounts although such fire department or rescue squad is not sanctioned by a municipality.

QUESTION 5

Can the Andalusia Fire Department obtain funding under Amendment No. 564 although it is a paid fire department and not technically certified by the Alabama Forestry Commission?

FACTS, LAW AND ANALYSIS

Section (d) of Amendment No. 564 defines an eligible fire department for purposes of that amendment as follows:

"An eligible fire department, for purposes of this amendment, means a fire department in Covington County that maintains an ISO-approved rating of at least Class 9, is certified under the Alabama Forestry Commission guidelines, and is a member in good standing of the Covington County Firefighters Association. An eligible rescue squad, for purposes of this amendment, means a rescue squad that is certified by the Alabama Association of Rescue Squads or Emergency Medical Services."

The Alabama Forestry Commission generally certifies volunteer fire departments as provided under Code of Alabama 1975, § 9-3-17. Certification by the Forestry Commission under § 9-3-17 is not required for paid fire departments such as the Andalusia Fire Department. However, you enclosed in your request a letter from the Alabama Forestry Commission which states that the Forestry Commission certifies that the Andalusia Fire Department has met or exceeded all requirements set forth in § 9-3-17. This is sufficient to make the Andalusia Fire Department eligible to receive funds under Amendment No. 564.

Furthermore, this office has ascertained that it was the intent of the Legislature that the Andalusia Fire Department receive a share of the funds provided by Amendment No. 564.

It was concluded in an opinion of the Attorney General to Honorable D. Milburn Gross, Jr., Assistant City Attorney, City of Andalusia, dated May 19, 1995, A.G. No. 95-00221, that according to the language of Act No. 94-346 (Amendment No. 564), proceeds from the fire protection tax levied thereby are to be distributed by determining the number of eligible fire departments and eligible rescue squads in Covington County and dividing the proceeds on a "share and share alike" basis. The Andalusia Fire Department is to be included in this distribution.

Honorable Seth Hammett
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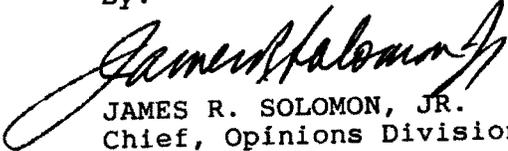
CONCLUSION

The Andalusia Fire Department is to share in the distribution of funds under Amendment No. 564.

I hope this sufficiently answers your questions. If our office can be of further assistance, please contact James R. Solomon, Jr., of my staff.

Sincerely,

JEFF SESSIONS
Attorney General
By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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