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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL
May 25, 2004

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Municipalities – Roads, Highways
and Bridges – Public Purpose –
Private Property – Walker County

The City of Jasper may pave a roadway adjacent to a public street wherein the city acquires the roadway for a public purpose by, for example, a dedication, transfer of deed, or acquisition by prescription.

Dear Mr. Robertson:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Jasper.

QUESTION

Whether the paving of a roadway, by the city, adjacent to a public street within the City of Jasper would violate section 94 of the Constitution of Alabama.

FACTS AND ANALYSIS

In your letter of request, you provide the following facts:

The road in question is not currently serviced by the City of Jasper. It extends from the end of Sunshine Drive, which has a cul-de-sac, to serve parcels of property owned by two different

landowners within the City of Jasper. Before the city council decides whether to authorize the paving and/or other necessary work on the property, it wants to have, in hand, an opinion concerning whether the same would be permissible in light of the restrictions of section 94 of the Alabama Constitution. It is the understanding of the council that performing work on the road would probably result in its becoming a city street and that the obligation to maintain the street would be a continuing one.

The City of Jasper is aware of the opinions from the Office of Attorney General stating that the city council is the body responsible for determining whether the project satisfies the "public purpose" requirement. The question is whether, as a matter of law, a project that would *primarily* benefit only the two landowners abutting the road in question, but indirectly benefiting all citizens of the city in that they would have additional good roadways to travel, could be found to satisfy the public purpose requirement.

This Office has issued opinions on numerous occasions providing that "a local government can only expend public funds to improve private property if the governing body of the local government first concludes that a public purpose will be met by the expenditure." See Opinion to Honorable John Harrison, Director, Alabama Department of Economic and Community Affairs, dated February 3, 2003, A.G. No. 2003-074. Section 94 of the Constitution of Alabama provides that "[t]he legislature shall not have power to authorize any county, city, town, or other subdivision of this state to lend its credit, or to grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever . . ." ALA. CONST. art. IV, § 94.

A public purpose may be accomplished in several ways, including: (1) dedication to the city of the property and the city's acceptance by establishing a public street; (2) transfer by deed of the private property to the city for public use; or (3) acquisition of the property by prescription. See, Opinion to Marrel Dixon, Mayor, Sardis City, dated November 21, 1979, A.G. No. 80-00093 and Opinion to Honorable Barry L. Mullins,

Attorney, Tuscaloosa County Commission, dated July 25, 2001, A.G. No. 2001-231. "Whether a particular street has been dedicated and accepted as a public street is a factual question that must be addressed by the town council. If a street has been accepted as a public street, the town has a duty to keep the street in a reasonably safe condition for travel, but that does not necessarily require that the town pave the street." Opinion to Honorable J. David Stout, Mayor, City of Fort Payne, dated January 5, 1990, A.G. No. 90-00082.

CONCLUSION

The City of Jasper may pave a roadway adjacent to a public street if the city acquires the roadway for a public purpose by dedication, transfer of deed, or acquisition by prescription. Otherwise, the city has no authority to pave or repair a private roadway or drive.

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

Sincerely,

TROY KING
Attorney General
By:



CAROL JEAN SMITH
Chief, Opinions Division

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