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Honorable Kathy S. LeCroix  
Executive Director  
Board of Heating and Air Conditioning  
Contractors  
Suite 630  
100 North Union Street  
Montgomery, Alabama 36130

Heating and Air Conditioning Board  
– Performance Bonds

A city's requirement of a performance bond in addition to the bond required in the Alabama Heating and Air Conditioning Act violates section 34-31-28(d) of the Code of Alabama.

Dear Ms. LeCroix:

This opinion of the Attorney General is issued in response to your request on behalf of the Board of Heating and Air Conditioning Contractors ("Board").

QUESTION

Does a city's requirement of a performance bond in addition to the bond required in the Alabama Heating and Air Conditioning Act violate section 34-31-28(d) of the Code of Alabama?

FACTS AND ANALYSIS

According to the information you provided to this Office, several cities in Alabama are requiring heating and air conditioning contractors to acquire a performance bond before beginning work. This is in addition to

the \$10,000 performance bond already required by the Board of Heating and Air Conditioning Contractors to obtain certification in the State of Alabama. Several licensees have complained to the Board about the cities' bonding requirements.

The purpose of sections 34-31-18 through 34-31-35 of the Code of Alabama is to "certify qualified contractors on a state-wide basis in order to protect the public by identifying those contractors who have the knowledge and ability to install or service and repair heating and air conditioning systems." ALA. CODE § 34-31-19 (2002). Pursuant to the Code, the Board is authorized to "require a performance bond in the amount of ten thousand dollars (\$10,000) per year for certified contractors *who, upon valid complaint and investigation by the board, are found to have performed substandard installation, service and repair work.*" ALA. CODE § 34-31-28(c) (2002) (emphasis added). Also, section 34-31-30 authorizes the Board to "require applicants for certification to post bond for the purpose of insuring performance by the certified contractor of any contract agreement into which he may enter." ALA. CODE § 34-31-30 (2002). It is plain that the Legislature has given the Board the authority to require a performance bond as a requirement for certification for the purpose of insuring performance by the certified contractor of *any* contract, and to protect the public.

Section 34-31-28(d) of the Code of Alabama states that "[c]ounties, municipalities, or other local entities are hereby prohibited from requiring any further local testing *or other requirements of certified contractors*, subject to the payment of any applicable local privilege, license, or business fees or charges." ALA. CODE § 34-31-28(d) (2002) (emphasis added).

The Legislature has determined that the only additional requirements that a county, a municipality, or other local entity, can place on a heating and air conditioning contractor are local privilege, license or business fees, or charges. The decision of whether to require a performance bond has been given to the Board of Heating and Air Conditioning Contractors. A city may not require an additional performance bond.

### CONCLUSION

A city's requirement of a performance bond in addition to the bond required in the Alabama Heating and Air Conditioning Act violates section 34-31-28(d) of the Code of Alabama.

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

Sincerely,

TROY KING  
Attorney General

By:

A handwritten signature in cursive script, appearing to read "Carol Jean Smith".

CAROL JEAN SMITH  
Chief, Opinions Division

TK/BHA

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