



2004 - 152

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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305 South Lawrence Street
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Ambulances - Emergency Medical Services
- Transportation Services

In selecting an ambulance company to provide emergency medical treatment and transportation service for citizens who live outside of the City of Montgomery but within Montgomery County, the county commission must follow the competitive bid requirement of Alabama law.

Dear Mr. Gallion:

This opinion of the Attorney General is issued in response to your request on behalf of the Montgomery County Commission.

QUESTION

Under the Constitution of Alabama, may the Montgomery County Commission select an emergency medical treatment and transportation service for citizens who live outside of the City of Montgomery but within the boundaries of Montgomery County by a request for proposal, or must this service be put out for bid under the Alabama Competitive Bid Law?

FACTS AND ANALYSIS

In your request, you state that the Montgomery County Commission does not desire to get into the emergency medical treatment and transportation service but feels an obligation under the Constitution of Alabama to attempt to

provide whatever is necessary for the health, education, and the welfare of its citizens.

In the pertinent language of section 22 of the Constitution of Alabama, this Office finds that “no . . . law . . . making any . . . exclusive grants of special privileges . . . shall be passed by the legislature. . . .” ALA. CONST. art. I, § 22.

In considering a similar question and the application of the above-quoted constitutional section, the Alabama Supreme Court states as follows:

As the Court held in Franklin Solid Waste Service v. Jones, 354 So.2d 4 (Ala. 1978), compliance with the bid law will generally satisfy the constitutional proscription against the government’s “exclusive grants of special privileges.” Indeed, not only are these two laws -- one organic and one statutory -- legally compatible, but the minimum *constitutional* requisite for upholding the instant franchise consists substantially in its compliance with the *statutory* requisites.

Stated otherwise, under these circumstances, the City’s [here County] grant of an exclusive contract for wrecker service that does not substantially comply with the bid law necessarily violates the constitutional proscription of § 22. Primarily, this is true because competitive bidding of the contract is a fundamental requirement for compliance with either law. In order to escape its “exclusive grants of special privileges,” proscriptions, our organic law mandates that governmental grants of “exclusive” franchises be subjected to a free, open, and competitive market.

Kennedy v. City of Pritchard, 484 So. 2d 432, 433-34 (Ala. 1986). This case is also instructive in answering your question as to the “expenditure of funds” requirement as a missing element of the Competitive Bid Law that the Supreme Court held to be irrelevant as the inquiry is not limited to an analysis of the

*The prohibition of this language applies to counties and municipalities, as well as to the Legislature. *In re Opinion of the Justices*, 42 So. 2d 56 (Ala. 1949); *Birmingham & Pratt Mines St. Ry. Co. v. Birmingham St. Ry. Co.*, 79 Ala. 465 (1885).

Competitive Bid Law alone. The Court also noted that the governmental entity seeking services has the right and duty to require that prospective bidders meet minimum standards.

Certainly, the city has the right (and, indeed, the duty) to require that prospective bidders meet minimum standards, e.g., adequate equipment, availability and accessibility of facilities to render the specified services. . . . When contracts of this nature are agreed upon without proper competitive bidding, the Constitution is violated:

“The monopoly which is obnoxious to the law, or the special exclusive privilege under the ban of the Constitution, is a privilege farmed out to the highest bidder, or conferred because of favoritism to the donee, and not one awarded to the lowest bidder, and for the convenience and benefit of the public.” *Dickinson v. Cunningham*, 140 Ala. 527 at 533-534, 37 So. 345 at 349 (1903).

Kennedy, 484 So. 2d at 434.

A previous opinion of the Attorney General issued to Honorable Michael W. Haley, discusses the requirement for the Alabama Department of Corrections to comply with the Competitive Bid Law when contracting for medical services to be provided to inmates. Opinion to Michael W. Haley, Commissioner, Department of Corrections, dated February 1, 2001, A.G. No. 2001-089. This opinion concludes that, under the facts stated, the medical services contract proposed by the Department of Corrections is exempt from the Competitive Bid Law. This conclusion was reached under the wording of the Competitive Bid Law wherein it exempts “[c]ontracts for the securing of services of . . . physicians . . . or other individuals possessing a high degree of professional skill where the personality of the individual pays a decisive part.” ALA. CODE § 41-16-21(a) (2000). Your proposal is not for a contract between the county commission and a supplier of emergency medical treatment and transportation services for persons living in Montgomery County but is, rather, a grant of a franchise to a supplier for your stated purposes. As set out in your request resolution, “[t]he Montgomery County Commission will not be responsible for any of the operations of whoever submits the best proposal and/or bid. . . .” The Resolution continues as follows:

Whereas, the Montgomery County Commission will not pay nor will it receive any monies under this agreement

and is participating in this matter, in order to have whatever ambulance company provides the best proposal and will commit to provide this service. There will be no expenditures by the taxpayers of Montgomery County under any circumstances.

Resolution of the Montgomery, Ala., County Commission (Apr. 19, 2004). This is the granting of a franchise, and the Alabama Supreme Court holds that this can only be done through the competitive bid process.

CONCLUSION

In choosing a supplier of emergency medical treatment and transportation services for persons living in Montgomery County but not within the City of Montgomery, the Montgomery County Commission must comply with the provisions of the Alabama Competitive Bid Law.

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

TK/WST/kh

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