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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

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ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Barry D. Vaughn
Attorney, Talladega County Commission
Post Office Box 2129
Sylacauga, Alabama 35150-2129

Municipalities - Counties - Roads,
Highways and Bridges - Maintenance -
Mutual Aid Agreements

A county has the authority to maintain a road in a municipality with the agreement of the city. The city does not have the authority to maintain a road in the county. The county and city may, however, enter into an agreement by which each will maintain roads in the jurisdiction of the other if the contract is executed as provided for in sections 11-102-2 and 11-102-3 of the Code of Alabama.

Dear Mr. Vaughn:

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

QUESTION

Can the Talladega County Commission and each city in the county enter into an agreement wherein the county would maintain certain roads and each city would maintain certain roads, regardless of whether the roads were inside or outside the city limits, but ensuring that the city did not maintain any more public roads than were previously located within the city limits?

FACTS AND ANALYSIS

Your request states that it is more economical for the county and a city to maintain an entire road than it is for each to maintain parts of a road crossing in and out of their respective jurisdictions. You question whether the decision of this Office, on a similar issue, that a city may not maintain a road outside its corporate limits [Opinion to Honorable Jay M. Ross, Attorney, Town of Mt. Vernon, dated November 3, 1999, A.G. No. 2000-023] is affected by the fact that, in the scenario represented, the city would spend no more on roads outside its limits than it was spending on roads inside its limits.

This issue is determined, not by the facts of the case, but by the express language of the Legislature. The Legislature has specifically authorized the county to maintain a road in a municipality. Section 23-1-86 of the Code of Alabama provides as follows:

The county commission of any county, with the consent or permission of the city council or governing body of any municipality, may establish, construct and maintain any road, street or bridge within the corporate limits of such municipality except in cases where the State Department of Transportation has jurisdiction over such road, street or bridge.

ALA. CODE § 23-1-86 (2000).

The Legislature similarly has not seen fit to authorize the city to maintain a road in the county. Therefore, as was stated in the *Ross* opinion:

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable.

A.G. Opinion No. 2000-023 at 2 (quoting *Decatur v. Berry*, 7 So. 838 at 838 (Ala. 1890)).

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The Legislature has, however, authorized counties and municipalities to enter into written contracts for the joint exercise of their powers or services. ALA. CODE § 11-102-1, *et seq.* (Supp. 2003); *see also* ALA. CODE § 11-49-80(e) (Supp. 2003). Any agreement or contract between the county and the municipality must meet the specifications and approval requirements of sections 11-102-2 and 11-102-3 of the Code of Alabama. This Office has concluded that, under this statute, a county can contract with another county office for the sheriff to provide law enforcement services across county lines. Opinion to Honorable Edmund M. Sexton, Sr., Tuscaloosa County Sheriff, dated March 20, 2003, A.G. No. 2003-106.

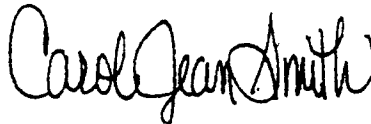
CONCLUSION

A county has the authority to maintain a road in a municipality with the agreement of the city. The city does not have the authority to maintain a road in the county. The county and city may, however, enter into an agreement by which each will maintain roads in the jurisdiction of the other if the contract is executed as provided for in sections 11-102-2 and 11-102-3 of the Code of Alabama.

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

Sincerely,

TROY KING
Attorney General
By:



CAROL JEAN SMITH
Chief, Opinions Division

TK/GWB

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