



2004 - 188

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

July 27, 2004

TROY KING
ATTORNEY GENERAL

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

Honorable Frank Alfano
Attorney, City of Bessemer
Emond, Vines, Gorham & Waldrep
Suite 305
1826 Third Avenue North
Bessemer, Alabama 35020

Municipalities - Compensation -
Employees, Employers, Employment -
Municipal Employees - Officers and
Employees - Discounts - Jefferson County

The city may allow employees to use the civic center at a discounted rate if the benefit is made part of the employees' annual compensation. The mayor and city council members may receive the benefit if made part of their compensation, which must be set at least six months before the next general municipal election.

Dear Mr. Alfano:

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

QUESTION

Would a Bessemer City Council policy allowing city employees and officials to use the Bessemer Civic Center at a discounted rate violate sections 68 and 94 of the Constitution of Alabama?

FACTS AND ANALYSIS

Section 68 of the Constitution of Alabama provides as follows:

The legislature shall have no power to grant or to authorize or require any county or municipal authority

to grant, nor shall any county or municipal authority have power to grant any extra compensation, fee, or allowance to any public officer, servant, or employee, agent or contractor, after service shall have been rendered or contract made, nor to increase or decrease the fees and compensation of such officers during their term of office. . . .

ALA. CONST. art. IV, § 68.

Section 94 of the Constitution of Alabama, as amended by Amendment 558, prohibits a municipality or county from granting money to a private person, corporation, or association. ALA. CONST. art. IV, § 94; ALA. CONST. amend. 558.

This Office has opined that municipalities may provide free or discounted services to city officials and employees without running afoul of sections 68 and 94 as long as the benefits are part of their annual compensation. Opinion to Honorable Rannel Presnell, Mayor, City of Citronelle, dated September 18, 1997, A.G. No. 97-00283; Opinion to Honorable C. L. Watson, Mayor, City of Lincoln, dated February 20, 1991, A.G. No. 91-00173. The *Presnell* opinion approved the free use of the city golf course by the mayor, city council members, and city employees. A.G. No. 97-00283. The *Watson* opinion approved water and cable television discounts for the mayor and city council members. A.G. No. 91-00173. *See, also*, opinion to Honorable Manley L. Cummins, III, Attorney, City of Daphne, dated December 13, 1995, A.G. No. 96-00065 (approving a contract in which the city would appropriate funds to the YMCA in exchange for memberships for city employees).

The policy authorizing discounted use of the civic center must be fully established before it is implemented. A.G. No. 97-00283. In addition, under sections 11-43-2 and 11-43-80 of the Code of Alabama, the compensation giving use of the civic center to the mayor and city council members must be set at least six months before the next general municipal election. *Id.*; A.G. No. 91-00173.

CONCLUSION

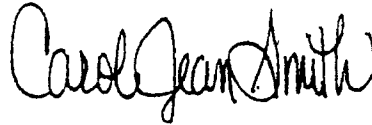
The city may allow employees to use the civic center at a discounted rate if the benefit is made part of the employees' annual compensation. The mayor and city council members may receive the benefit if made part of their compensation, which must be set at least six months before the next general municipal election.

Honorable Frank Alfano
Page 3

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:

A handwritten signature in black ink that reads "Carol Jean Smith". The signature is written in a cursive, flowing style.

CAROL JEAN SMITH
Chief, Opinions Division

TK/GWB
154539v1/67948