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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Barbara Walden
City Clerk/Treasurer
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Municipalities – Competitive Bid Law –
Public Works Law – Conflicts of Interest –
Funds - Marshall County

The Boaz City Council may appropriate funds to a nonprofit organization for the renovation of a building for a community center if the council determines that a public purpose is served. If the project will be paid for entirely with private funds, it is not subject to the competitive bidding requirements of the Public Works Law.

A council member's mother-in-law may contract with the nonprofit organization to perform part of the renovation.

Dear Ms. Walden:

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

QUESTIONS

1. May the City of Boaz divide the restoration project into phases and bid each without bidding the entire project?
2. If so, must a phase be bid if its total cost is less than \$7500 as required by section 41-16-50(a) of the Code of Alabama?
3. May the mother-in-law of a city council member bid on a phase?

4. May the city return the funds raised by the Old Elementary School Exploratory Committee if the committee is an unincorporated nonprofit organization?

FACTS AND ANALYSIS

Your request provides the following information:

The City of Boaz owns approximately fourteen acres of land upon which is situated a building that was erected in the 1920s and was used until about 1988 as the Boaz Elementary School. The original structure has been added to a historic registry after demolition of portions that were added many years after the original construction. A committee of individuals appointed by the city council has recommended that the building be restored. The committee has set about to raise money for the building's restoration and has raised approximately \$40,000 to be used toward the restoration. The committee, with permission from the council, has used volunteer labor to gut the building and prepare parts of the structure for rehabilitation and restoration. Due to lack of funds, the council wishes to allow the restoration and rehabilitation of the building in phases or projects such as window refurbishment, plumbing, lighting and electrical wiring, restoration of hardwood floors, air conditioning, heating and ventilation, inside door refurbishment, installation of walls, etc.

This Office is further informed that the funds raised by the committee have been placed in a city account; the committee intends to raise more than \$50,000; and the building is being renovated for use as a community center.

There are two competitive bidding statutes regulating governmental contracts in Alabama. The Competitive Bid Law, codified at section 41-16-50, *et seq.*, of the Code of Alabama, applies generally to contracts of at least \$7500 for the purchase of materials, equipment, supplies, or other personal property. ALA. CODE § 41-16-50(a) (2000). The Public Works Law, found at section 39-2-1, *et seq.*, of the Code of Alabama, specifically applies to public works contracts for more than \$50,000. ALA. CODE § 39-2-2 (Supp. 2003). The 1997 amendment to section 39-2-1 specifically included municipalities as an awarding authority for purposes of conducting public works projects.

Contracts paid for entirely with private funds are not subject to the Competitive Bid Law or the Public Works Law. Opinions to Honorable Bobby Hayes, Mayor, City of Pelham, dated November 18, 2003, A.G. No. 2004-026; Honorable Barry D. Vaughn, Talladega County Attorney, dated November 2, 2001, A.G. No. 2002-052. When the committee transferred the funds to the city, however, they became public funds. Opinion to Honorable Roy W. Williams, Attorney, City of Cullman, dated February 4, 2004, A.G. No. 2004-067. The Public Works Law defines "public works" as "[t]he construction, repair, renovation, or maintenance of public buildings" ALA. CODE § 39-2-1(5) (Supp. 2003). Therefore, if the project is paid for with the funds held by the city, it will be subject to the requirements of the Public Works Law.

If the committee is a nonprofit organization, the city could transfer the funds to the committee, the funds would become private funds, and the Public Works Law would not apply to the project. Section 94 of the Constitution of Alabama, as amended by Amendment No. 112, prohibits a city from granting money or other thing of value in aid of a private individual, corporation, or association. ALA. CONST. art. IV, § 94; ALA. CONST. amend. 112. Section 94 is not violated when the funds of a governmental entity are appropriated for a public purpose. *Slawson v. Ala. Forestry Comm'n*, 631 So. 2d 953 (1994).

The determination of whether a public purpose will be served by an expenditure of public funds is a factual one that can only be made by the governing body of the local government making the expenditure. This Office has found no violation of section 94 in similar cases. Opinions to Honorable James W. Richardson, Mayor, City of Carbon Hill, dated October 10, 2002, A.G. No. 2003-008 (the City of Carbon Hill could sell real property to a nonprofit organization for construction of a community center); Honorable William T. Musgrove, Jr., City Attorney, City of Florence, dated January 25, 2000, A.G. No. 2000-071 (the City of Florence could appropriate funds to the Children's Museum of the Shoals to renovate a building on property leased by the city and sublease the building to the museum).

Regarding whether the councilmember's mother-in-law may contract to perform a part of the project, section 11-43-12 of the Code of Alabama prohibits a council member from being "directly or indirectly interested in any work, business or contract, the expense, price or consideration of which *is paid from the treasury* . . ." ALA. CODE § 11-43-12 (1989) (emphasis added). This section applies to contracts paid for with public funds, not funds of a private organization.

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CONCLUSION


The Boaz City Council may appropriate funds to a nonprofit organization for the renovation of a building for a community center if the council determines that a public purpose is served. If the project will be paid for entirely with private funds, it is not subject to the competitive bidding requirements of the Public Works Law.

A council member's mother-in-law may contract with the nonprofit organization to perform part of the renovation.

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

Sincerely,

TROY KING
Attorney General
By:


BRENDA F. SMITH
Chief, Opinions Division

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