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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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TROY KING
ATTORNEY GENERAL

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

Honorable John I. Cottle, III, Attorney
Tallasse City Board of Education
Bowles & Cottle
2 South Dubois Avenue
Post Office Box 780397
Tallasse, Alabama 36078

Education, Boards of – Public Purpose –
Municipalities – Competitive Bid Law

The Tallasse City Board of Education (“Board”) and TerraSouth may enter into a contract with benefits to each party. If the proposed project between the Board and the computer services company is an exclusive franchise, it must be competitively bid.

Dear Mr. Cottle:

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

QUESTION

Whether the Tallasse City Board of Education may legally proceed with the planned joint commercial venture with TerraSouth to create and maintain a potentially profitable Internet advertising website?

FACTS AND ANALYSIS

Your request states that a company by the name of TerraSouth, L.L.C., has approached the Tallasse City Board of Education with a proposal to enter into a joint commercial venture with the school system. The proposal is for TerraSouth to create and maintain an Internet website known as

Shoptallasseefirst.com. The plan is for the venture to be a profit-making enterprise with profits to be realized through the sale of advertisement space on the website.

The role of students in this project would be to offer the ads for purchase to local businesses, create the ads and place them on the website, and update the ads per each business's request. The goal is that students will gain experience with computers and web design.

A large portion of the revenues from this project would be returned to the school. The proposal is that one-third of the funds would go directly to the school with no strings attached. The second third would go toward administrative expenses such as maintaining the equipment and purchasing new equipment for the project. If these administrative expenses are less than a third of the total revenues generated (and it is anticipated that they will be), TerraSouth will use them to fund scholarships for graduates of Tallassee High School. The final one-third of revenues will go to TerraSouth.

The administration and supervision of school systems is the responsibility of county and city boards of education. *Hargett v. Franklin County Bd. of Educ.*, 374 So. 2d 1352 (Ala. 1979). Courts have long held that local boards of education may prescribe reasonable methods of raising funds, employ, supervise, consolidate, build, insure, transfer school children and transport them in providing and operating a uniform and effective system of public schools throughout the counties of the state. *Vincent v. County Bd. of Educ.*, 222 Ala. 216, 131 So. 893 (1931); *Board of Educ. v. State ex rel. Kuchins*, 222 Ala. 70, 131 So. 239 (1930); *Kennedy v. County Bd. of Educ.*, 214 Ala. 349, 107 So. 907 (1926); *Bryant v. Whisenant*, 167 Ala. 325, 52 So. 525 (1910). In addition to supervision and administration, local boards shall seek, in every way, to promote the interest of the schools under its jurisdiction. ALA. CODE § 16-8-9 (2001). In addition, all legal intendments are indulged in favor of the orders of the city or county boards of education, and the orders are to be upheld unless the invalidity of the order is clearly shown. *Clark v. Jefferson County Bd. of Educ.*, 410 So.2d 23, 26 (Ala. 1982).

The Board has the authority to enter into a contract with mutual benefits to each party. In an opinion to Manley L. Cummins, III, City Attorney of Daphne, dated December 13, 1995, A.G. No. 96-00065, this Office opined that the restrictions of section 94 of the Constitution of Alabama, as amended by Amendment 112, are "not applicable to a contract with mutual benefits to each party and a consideration on both sides," citing *Rogers v. City of Mobile*, 277 Ala 261, 169 So.2d 282 (1964); *Dothan Area Chamber of Commerce v. Shealy*,

561 So.2d 515 (Ala. 1990). The *Cummins* opinion addressed a contract between the City of Daphne and the Mobile Metropolitan YMCA. The City would appropriate \$40,000 for consideration that included services to handicapped residents and free memberships for city employees. According to the facts in this case, the proposed joint commercial venture provides mutual benefits to both parties and a consideration on both sides. The school stands to receive revenue and hopes that the students will gain experience in interacting with community businesses, as well as experience with computers and web design. Graduates of the school may receive scholarships. TerraSouth also stands to receive revenues, as well as the sponsorship of a possible scholarship fund for graduates of Tallassee High School.

The Alabama Supreme Court has determined that the granting of an exclusive contract or a franchise, which does not comply with the Competitive Bid Law, constitutes an exclusive grant of special privileges in violation of section 22 of the Constitution. *Kennedy v. City of Prichard*, 484 So.2d 432 (Ala. 1986). Although the Board, in this fact situation, is not "expending funds," the Supreme Court has held that the Competitive Bid Law applies in similar cases. *Id.* The Supreme Court further stated that the application of the Competitive Bid Law could not be avoided where there was no "expenditure of funds" because the services in question were not paid for by the city. *Id.* at 433. Accordingly, if the contract grants an exclusive franchise, the project must be competitively bid under section 41-16-50 of the Code of Alabama.

Although state law does not prohibit the Board from participating in this project, this Office has been advised by the Alabama Department of Labor that, under the facts presented, any minors involved may be employees of both the Board and TerraSouth; if so, they must be paid employees, and the Board and TerraSouth will have to obtain work permits and comply with all applicable state and federal child labor laws. You are advised to consult with the officials at the Labor Department to make sure all applicable child labor laws are followed.

CONCLUSION

The Tallassee City Board of Education and TerraSouth may enter into a contract to create and maintain a website with benefits to each party. If the proposed project between the Board and the computer services company is an exclusive franchise, it must be competitively bid.

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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:



BRENDA F. SMITH
Chief, Opinions Division

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