



2005 - 021

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

November 23, 2004

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Honorable George A. Monk  
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Anniston, Alabama 36202

Municipalities - Funds - Public  
Purpose - Calhoun County

If the Anniston City Council finds that expending funds for the acquisition of a monument to memorialize the former existence of a public educational institution serves a public purpose, such expenditure is consistent with Section 94, as amended by Amendment 558, of the Constitution of Alabama.

Dear Mr. Monk:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Consistent with Section 94, as amended by Amendment 558, of the Constitution of Alabama, may public funds be permissibly expended for the acquisition of a monument to memorialize the former existence of a public educational institution?

FACTS AND ANALYSIS

From your request, this Office understands that several past graduates of an elementary school (which previously served a community within the city, but was closed and torn down many decades ago) have made a request of the Anniston City Council. That request was for the City of

Anniston to expend public funds to acquire and erect a memorial of the school in the form of a monument for placement at the former school site with the city being responsible for future maintenance. You are aware of the opinion of this Office issued to the Honorable Hank Sanders, Alabama State Senator, dated October 20, 1999, A.G. No. 2000-008, authorizing a county commission's approval for the placement of a monument upon its property and its assumption of future responsibility for maintenance thereof. You are unaware, however, of any opinion authorizing the expenditure of public funds for the acquisition of such a monument.

Section 94 of the Constitution of Alabama, as amended by Amendment No. 558, prohibits a city from granting money or other thing of value in aid of a private individual, corporation, or association. It was concluded in *Slawson v. Ala. Forestry Comm'n*, 631 So. 2d 953 (Ala. 1994) that Section 94, as amended, is not violated when the funds of a subject governmental entity are appropriated for a "public purpose." Quoting from that decision:

*In Opinion of the Justices No. 269*, 384 So.2d 1051, this Court was asked whether the appropriation of state funds to nonstate agencies and organizations was for a 'public purpose' and, thus, did not violate 93 and 94 of our constitution. . . . [G]enerally speaking, a public purpose 'has for its objective the promotion of public health, safety, morals, security, prosperity, contentment, and the general welfare of the community.' 384 So.2d at 1053 (citations omitted).

"The paramount test should be whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit. . . . The trend among the modern courts is to give the term 'public purpose' a broad expansive definition."

*Id.* "[T]he question of whether or not an appropriation was for a public purpose [is] largely within the legislative domain rather than within the domain of the courts."

*Slawson*, 631 So. 2d at 956 (Ala. 1994).

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As stated by the Alabama Supreme Court, whether or not an appropriation is for a public purpose is legislative in nature. Therefore, the Anniston City Council must determine if the appropriation of funds to acquire, erect, and maintain a memorial of the former school in the form of a monument is for a "public purpose" under the guidelines set out in the above-quoted portion of *Slawson*. If the Anniston City Council concludes that the appropriation is for a "public purpose," the city may lawfully make such an appropriation.

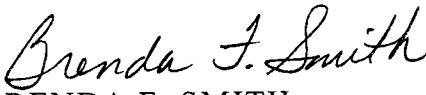
CONCLUSION

If the Anniston City Council finds that expending funds for the acquisition of a monument to memorialize the former existence of a public educational institution serves a public purpose, such expenditure is consistent with Section 94, as amended by Amendment 558, of the Constitution of Alabama.

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

Sincerely,

TROY KING  
Attorney General  
By:

  
BRENDA F. SMITH  
Chief, Opinions Division

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