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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Frank P. ("Skippy") White
Member, House of Representatives
1416 Elizabeth Avenue
Pollard, Alabama 36441

Municipalities – Private Property –
Funds – Public Purpose

The Town of Pollard may expend public funds to pay for debris and tree removal following Hurricane Ivan, even if it involves work done on private property, if the town council makes a determination that the work that was done served a legitimate public purpose. Absent such a finding, the town may assess the individual property owners for cleanup and tree removal performed on private lands where the debris constituted a health hazard and where the owners of the private property were unable to secure a private source to perform the service.

Dear Representative White:

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

QUESTION

May the Town of Pollard expend public funds to pay for debris and tree removal following Hurricane Ivan when a portion of the work performed was done on private property?

FACTS AND ANALYSIS

According to the information you provided to this Office, the Town of Pollard recently became a national disaster area, along with the rest of Escambia County, due to the effects of Hurricane Ivan. Roads were closed, cemeteries were blocked, and homes were endangered due to trees, debris, and other materials blown in the storm.

The Town of Pollard has a population of approximately 120 people and has no equipment to remove trees and debris to open roads or fix damage. Additionally, many homes were endangered by the aftermath of the storm. Immediately following the hurricane, the town did not know how or when it could take care of remedying the destruction. This Office understands that the mayor of Pollard took steps to have work performed that opened roadways and cleared debris. The mayor took these steps in the name of the Town of Pollard in an emergency situation before it was possible to have a town council meeting.

Citizens of Pollard voiced concerns that leaning trees posed threats to their homes and security. There was only one crew available to work in the Town of Pollard because of the emergency situation faced by the entire county, as well as other parts of the State. Because of this emergency situation, and to eliminate danger and inconvenience and to prevent possible injury or death to citizens threatened by leaning trees and other debris, the mayor authorized the crew to cut the trees posing threats, remove debris, and clear the cemeteries for funerals.

At a later date, the mayor called a meeting of the town council to authorize payment of the work performed pursuant to the mayor's directions. An objection to payment for the services was made by a member of the council with an assertion by the council member that public funds may not be expended on private property unless a public purpose is met by the expenditure. The information you provided to this Office indicates that some of the work was performed on private property where tasks involved removing a tree from private property that was leaning over a public road, clearing cemeteries, and removing leaning trees endangering a private home and electrical lines. You indicate that most of the work was performed on public lands.

Section 94 of the Constitution of Alabama provides, in pertinent part, that "[t]he legislature shall not have the power to authorize any county, city, town, or other subdivision of this state . . . to grant public

money or thing of value in aid of, or to any individual, association, or corporation whatsoever." ALA. CONST. art. IV, § 94. Section 94 has been interpreted as allowing the appropriation of public revenues in the aid of an individual, association, or corporation only when the appropriation is for a "public purpose." *Slawson v. Ala. Forestry Comm'n*, 631 So. 2d 953, 956 (Ala. 1994) (citing *Bd. of Revenue & Road Comm'rs of Mobile Co. v. Puckett*, 227 Ala. 374, 149 So. 850 (1933)).

In defining the parameters of what constitutes expenditure for a "public purpose," the Alabama Supreme Court has stated the following:

Generally speaking . . . it has for its objective the promotion of public health, safety, morals, security, prosperity, contentment, and the general welfare of the community. . . . 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. . . . [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.

Opinion of the Justices No. 269, 384 So. 2d 1051, 1053 (Ala. 1980) (citations omitted). Moreover, legislative bodies have broad discretion in determining whether expenditures are for a "public purpose." The Alabama Supreme Court has held that "[t]he Legislature has to a great extent the right to determine the question, and its determination is conclusive when it does not clearly appear to be wrong, assuming that we have the right to differ with them in their finding." *Puckett*, 227 Ala. at 377-78, 149 So. at 852 (1933).

This Office has repeatedly opined that a local government can only expend public funds to improve private property if the governing body of the local government first concludes that a public purpose will be met by the expenditure. The determination of whether such a public purpose will be served is a factual one that can only be made by the governing body of the local government. See, e.g., Opinion to Honorable Jeff Collier,

Mayor, Town of Dauphin Island, dated March 31, 1999, A.G. No. 99-00152 (concluding that the construction of a sand berm on Dauphin Island would help protect the town's sanitary sewer system, which serves all the town's inhabitants, and because all real property owners on the island have the right to use the west-end beach, public benefit is derived from contributing to the FEMA project); Opinion to Honorable Ronald L. Davis, Attorney for the City of Northport, dated April 12, 2002, A.G. No. 2002-211 (opining that if the City of Northport determines that cooperation with the Northwood Lake residents and any third-party contractors in an effort to remove siltation from a private lake would serve a "public purpose," the city may contribute funds or in-kind services to the siltation removal effort without violating section 94 of the Constitution of Alabama).

Traditionally, the governing body must make a determination that a public purpose exists before the expenditure of public funds. Because of the rare and extraordinary circumstances involved in this emergency situation, however, a prior determination was not made. The town council must therefore make a determination of the amount of costs expended on legitimate public purposes, as defined above, and may authorize payment of those costs that were spent on these public purposes.

Absent such a finding, section 11-47-117 of the Code of Alabama authorizes a city to prevent injury or annoyances from anything dangerous, offensive, or unwholesome and abate the nuisance, charging the cost of abatement to the property owner. ALA. CODE § 11-47-117 (1992). Based upon this provision, the Town of Pollard was authorized to remove trees and debris from private property if the damage constituted a health hazard, the private property owner was unable to obtain the services of a private person or company to remedy the damage, and the cost is assessed against the property owner. Opinion to Honorable Elizabeth S. Parsons, City Attorney, Town of Riverside, dated May 25, 2001, A.G. No. 2001-188; Opinion to Honorable John E. Adams, Attorney for Town of Grove Hill, dated November 4, 1982, A.G. No. 83-00065.

CONCLUSION

The Town of Pollard may expend public funds to pay for debris and tree removal following Hurricane Ivan, even if it involves work done on private property, if the town council makes a determination that the work that was done served a legitimate public purpose. Absent such a finding, the town may assess the individual property owners for cleanup and tree

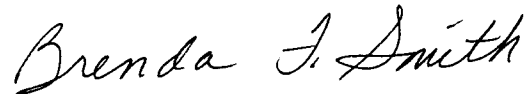
Honorable Frank P. ("Skippy") White
Page 5

removal performed on private lands where the debris constituted a health hazard and where the owners of the private property were unable to secure a private source to perform the service.

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

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/BHA
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