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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Post Office Box 310  
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Private Property – Roads, Highways  
and Bridges – Municipalities –  
County Commissions – Public  
Purpose – Industrial Development

The Winston County Commission, under section 11-3-11(19) of the Code of Alabama, can provide materials and in-kind services to the City of Haleyville to assist in preparing a roadway on private property to promote industry by preventing the potential loss of industry and jobs in the city. The county commission must also determine that a public purpose will be served and a public benefit is provided by furnishing the services and materials.

Dear Mr. Manasco:

This opinion of the Attorney General is issued in response to your request on behalf of the Winston County Commission.

QUESTIONS

(1) Can the Winston County Commission provide materials and in-kind services to the City of Haleyville to assist in preparing a roadway on private property to prevent the potential loss of an industry and jobs in the city if the county has deemed the need a “public purpose”?

(2) Can the Winston County Commission provide materials and in-kind services to the City of Haleyville to assist in preparing a roadway on private property to prevent the potential loss of an industry and jobs in the city if the city has deemed the need a "public purpose" to insure the prosperity and general welfare of the community?

### FACTS AND ANALYSIS

Your request states as follows:

WHEREAS, the City of Haleyville has requested that Winston County provide base for a road and paving inside the gate of Project Maverick in connection with an expansion of the manufacturing facility of Project Maverick and the creation of additional jobs and employment (approximately 40 jobs). . . .

Section 11-3-11(a)(19) of the Code of Alabama authorizes a county, among other things, "[t]o set aside, appropriate and use county funds . . . for the purpose of locating and promoting agricultural, industrial and manufacturing plants and other industries in the county. . . ." ALA. CODE § 11-3-11(a)(19) (1989).

The Attorney General has concluded that a local government can only expend public funds to improve private property if the governing body of the local government first determines that a public purpose will be met by the expenditure. Opinion of the Attorney General to Honorable John Harrison, Director, Alabama Department of Economic and Community Affairs, dated February 3, 2003, A.G. No. 2003-074. This conclusion was based on the ruling of the Supreme Court of Alabama in *Slawson v. Ala. Forestry Comm'n*, 631 So. 2d 953 (1994). Section 94 of the Constitution of Alabama, as amended by Amendment 558, prohibits the Legislature from empowering a municipality, county, or other subdivision of the State from granting public money or any other thing of value in aid of an individual, corporation, or association. ALA. CONST. art IV, §94; ALA. CONST. amend 558. The Alabama Supreme Court stated in *Slawson* that section 94, as amended, is not violated when a public purpose is served by the granting of money or other thing of value to an individual, corporation, or association. *Slawson* at 956. The Court set down the following guidelines as to what constitutes a "public purpose":

Quoting Clifford v. City of Cheyenne, 487 P.2d 1325, 1329 (Wyo.1971), we stated that, generally 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.*

*Slawson*, 631 at 956, quoting *Clifford* at 1329.

The question of whether an appropriation is for a public purpose is largely within the legislative domain. *Id.* It is, therefore, a determination to be made by the Winston County Commission as to whether a public purpose is served if the county provides materials and in-kind services to the City of Haleyville to assist in preparing a roadway on private property to prevent the potential loss of industry and jobs in the city. The county commission is to decide if providing materials and services for a private business, under the circumstances presented, provides a public benefit, as opposed to a benefit for only a particular group of individuals.

This Office concluded that the City of Hartselle could donate land or lease land for less than adequate consideration to a private business only if the city decided that a public purpose would be served. Opinion to Honorable Clifton P. Knight, Mayor, City of Hartselle, dated May 24, 2001, A.G. No. 2001-187. The courts have held, however, as a matter of law, if the sole reason for the expenditure is for the creation or increase of tax revenue for the city, a public purpose is not served. *Opinion of the Justices* No. 119, 254 Ala. 343, 346, 48 So. 2d 757, 759 (1950); Opinion to *Knight* at 3.

CONCLUSION

The Winston County Commission, under section 11-3-11(19) of the Code of Alabama, can provide materials and in-kind services to the City of Haleyville to assist in preparing a roadway on private property to promote industry by preventing the potential loss of industry and jobs in the city. The county commission must also determine that a public purpose will be served and a public benefit is provided by furnishing the services and materials.

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

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

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