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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

January 19, 2005

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Honorable Jada R. Leo, Secretary Treasurer  
Huntsville-Madison County Marina and Port Authority  
Post Office Box 14250  
Huntsville, Alabama 35815

Public Works Law - Port Authorities -  
Competitive Bid Law - Funds - Loans -  
Madison County - Public Corporations

The Huntsville-Madison County Marina and Port Authority ("Authority") is a public corporation subject to the Competitive Bid Law. A public works project paid, in whole or in part, with public funds is subject to the Public Works Law.

The Authority may borrow money from standard commercial entities, such as a bank or credit union, for any corporate purpose.

The Authority may provide food and beverages at events promoting the Authority if the board of directors determines it is within its corporate powers to make the expenditure.

Dear Mr. Leo:

This opinion of the Attorney General is issued in response to your request on behalf of the Huntsville-Madison County Marina and Port Authority.

QUESTIONS

1. Is the Huntsville-Madison County Marina and Port Authority subject to competitive bidding, and if so, what exceptions apply?

2. May the Authority pay for food and beverages at an off-site dedication of a new facility?
3. May the Authority borrow money from standard commercial entities such as a bank or credit union?
4. What kind of entity is the Authority?

### FACTS AND ANALYSIS

This Office has stated on two occasions that the Huntsville-Madison County Marina and Port Authority is a public corporation created by Act 2050 (1971). Opinions to Honorable Billy G. Broach, President, Huntsville-Madison County Marina and Port Authority, dated March 3, 1998, A.G. No. 98-00103; Honorable W. Austin Hornbuckle, President, Board of Directors, Huntsville-Madison County Marina and Port Authority, dated January 12, 1990, A.G. No. 90-00096.

The powers of the Authority are set forth in section 7 of Act 2050. 1971 Ala. Acts No. 2050, 3280. Under section 7(1), it may "borrow money in such terms as are acceptable to the corporation for any corporate purpose." *Id.* at 3282. That section does not restrict the source from which funds may be borrowed.

The Competitive Bid Law, codified at section 41-16-20, *et seq.*, of the Code of Alabama, applies generally to contracts in an amount of at least \$7500 for labor, services, work, or for the purchase of materials, equipment, supplies, or other personal property. ALA. CODE § 41-16-20(a) (2000). This Office has stated that the Competitive Bid Law applies to public corporations. Opinion to Honorable H. A. Lloyd, Attorney, West Alabama Mental Health Board, dated October 30, 2002, A.G. No. 2003-017.

There is a second competitive bidding statute in Alabama. 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. 2004). This Office has stated that the Public Works Law applies to public corporations if, under section 39-2-1(5), the work is paid in whole or in part with public funds. A.G. No. 2003-017; Opinion to Honorable William R. Justice, Attorney, Water Works Board of the Town of Columbiana, dated February 27, 2002, A.G. No. 2002-152; Opinion to Honorable Sarah L. Tate, Housing Authority of the City of Fort Payne, dated November 13, 1997, A.G. No. 98-00031. *See also*, Opinion to Honorable Craig L. Williams, Attorney, Parris Water and Sewer Board, dated November 29, 2001, A.G. No. 2002-072; Opinion

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to Honorable Winston V. Legge, Jr., Attorney, Limestone County Water and Sewer Authority, dated March 30, 2001, A.G. No. 2001-139.

The Competitive Bid Law lists several exemptions from its requirements in section 41-16-21. The Public Works Law similarly exempts architectural, engineering, construction management, program management, or project management services in support of the work. ALA. CODE § 39-2-2(d) (Supp. 2004). There are no exemptions specifically applicable to the Authority.

Regarding providing food and beverages to promote the Authority, the minutes of the meeting of the board of directors accompanying your request reflect that this question refers to an expenditure that has already been made. This Office may issue an opinion only to advise a public body or official with respect to an official duty that requires immediate performance. ALA. CODE § 36-15-1(1)(c) & (d) (2001). For future events, however, this Office will address your question.

Section 93 of the Constitution of Alabama, as last amended by Amendment 58, and section 94, as last amended by Amendment 558, prohibits the state and a county, municipality, or other subdivision of the State from lending credit or money or granting public money in aid of a private person, association, or corporation. ALA. CONST. art. IV, § 93; ALA. CONST. amend. 58; ALA. CONST. art. IV, § 94; ALA. CONST. amend. 558. These constitutional provisions do not apply to public corporations. *Water Works Bd. of the City of Leeds v. Huffstutler*, 292 Ala. 669, 675, 299 So. 2d 268, 273 (1974).

Nonetheless, a public corporation is not authorized by statute or common law to exceed its corporate power. *Ala. Hosp. Ass'n v. Dillard*, 388 So. 2d 903, 905 (Ala. 1980). Any expenditures made must be within the corporate powers of the Authority and must be necessary, appropriate, and consistent with the purposes for which the Authority was formed. Opinions to Honorable Stephanie Lanier Weems, Attorney, Center Point Fire District, dated July 11, 2000, A.G. No. 2000-194; Honorable Bingham D. Edwards, Attorney, The State Products Mart Authority Located in Morgan County, Inc., dated June 20, 2000, A.G. No. 2000-177; Honorable Michael G. Graffeo, Attorney, Alabaster Water Board, dated October 24, 1997, A.G. No. 98-00018. This determination must be made by the board of directors. Questions concerning the State Ethics Law should be addressed to the Alabama Ethics Commission.

### CONCLUSION

The Huntsville-Madison County Marina and Port Authority is a public corporation subject to the Competitive Bid Law. A public works project paid, in whole or in part, with public funds is subject to the Public Works Law.

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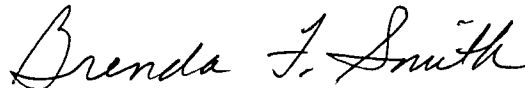
The Authority may borrow money from standard commercial entities, such as a bank or credit union, for any corporate purpose.

The Authority may provide food and beverages at events promoting the Authority if the Board of Directors determines it is within its corporate powers to make the expenditure, provided doing so does not violate the Ethics Act.

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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