



2005 - 057

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

January 31, 2005

TROY KING
ATTORNEY GENERAL

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

Honorable Joseph K. Roberson
Mayor, Town of Ohatchee
Post Office Box 645
Ohatchee, Alabama 36271

Municipalities – Libraries – Funds –
Senior Citizens – Calhoun County

The Town of Ohatchee can produce a history of the town and distribute it to public, school, and university libraries. The town cannot sell the history directly or indirectly through a nonprofit organization. A group of citizens may form an organization to produce and sell the town's history and donate the proceeds from the sale to the senior center, the library, or to the town.

Dear Mayor Roberson:

This opinion of the Attorney General is issued in response to your request on behalf of the Town of Ohatchee.

QUESTION

Can the Town of Ohatchee produce a written history of the town and sell copies to the public with the proceeds from the sale to be earmarked to the Ohatchee Senior Center and the public library building fund?

FACTS AND ANALYSIS

Your request also states that after the debt of the library and senior center is retired, the sale proceeds would go into the town general fund.

Cities and towns are political subdivisions of the state, created by sovereign power in accordance with sovereign will, exercising only such power as are conferred upon it by law. *Alexander v. State* 274 Ala. 441, 443, 150 So. 2d 204, 206 (1963). Municipalities in this state are authorized to establish and furnish facilities and programs for senior citizens of the city. ALA. CODE § 11-80-5 (1994). Cities and towns may establish, maintain, and aid free public libraries. ALA. CODE § 11-90-1 (1994).

City and county governing bodies in the state are authorized to promote education by research into the history of the state and its counties and municipalities and may compile and publish the data for distribution to public, school, and university libraries in the state. ALA. CODE § 16-42-1 (2001). Municipal and county funds can be appropriated for this purpose. ALA. CODE § 16-42-2 (2001). To carry out this function, cities and counties can contract with corporations, foundations, and associations that are duly incorporated in this state. ALA. CODE § 16-42-3 (2001). In construing these provisions, the Attorney General previously concluded that a county is authorized to expend funds for the writing and publication of its history and developments for free distribution to public, school, and university libraries within the state. 118 Op. Att'y Gen. 12 (1965). That opinion further stated that there was no authority by which a county could sell the published history or sell it indirectly by permitting a nonprofit organization to sell it. *Id.* at 16. A municipality is not authorized to engage in private enterprise by selling the publications of its history. *See* opinion of the Attorney General to Honorable J. Edward Yeagan, Mayor, City of LaFayette, dated May 19, 1981, A.G. No. 81-00383.

This Office has, however, on several occasions, considered the raising of funds by independent auxiliary groups for the town library or the town's volunteer fire department. *See* opinions to Honorable James L. Banks, Mayor, Town of Odenville, dated March 27, 1997, A.G. No. 97-00151; to Honorable James Hagood, Mayor, Town of Rogersville, dated November 30, 1995, A.G. No. 96-00051; and to Honorable Naomi D. Flurry, Mayor, Town of Killen, dated November 24, 1993, A.G. No. 94-00063. In the *Banks* opinion, it was concluded that the Town of Odenville Library could accept donations from auxiliary library members who operate a second-hand or antique shop for the purpose of raising funds for the library. A.G. Opinion No. 97-00151 at 3. The funds could be donated to the city or to the library board. *Id.* at 2. Municipal or library board property or funds could not, however, be used in this endeavor. *Id.* at 3.

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In the case at hand, the best practice is that a group of residents of the Town of Ohatchee form an organization for the purpose of compiling and selling a written history of the town to the public. The group could then donate the funds to the town for the senior center or the public library building fund, or the funds could be directly given to the senior center or the library building fund and then to the city when the debt is retired.

CONCLUSION

The Town of Ohatchee is authorized to produce a written history of the town for distribution to public, school, and university libraries in the state. The town is not authorized to sell copies of the history to the public directly or indirectly through a nonprofit organization. A group of citizens may form an organization to produce and sell the town's history, and proceeds from the sale may be donated to the senior center, the library building fund, or to the town.

I hope this opinion answers your question. 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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