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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Municipalities – Public Purpose –
Drains and Drainage – Walker
County

The determination of whether a city may expend funds to improve drainage on private property must be made by the city governing body based on whether the improvement will serve a public purpose, and the city must have an easement on the land. A public purpose is served if the expenditure confers a direct public benefit of a reasonably general character, and this must be determined by the city governing body on a case-by-case basis.

Dear Mr. Robertson:

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

QUESTION

Can you provide a distinct and objective standard as a “safe harbor” for determining whether a public purpose exists to justify a given project, particularly with respect to storm water runoff problems?

FACTS AND ANALYSIS

Your request states that the City of Jasper receives numerous requests to perform work to relieve storm water runoff problems throughout the city. The city council would like to establish a firm policy to use in analyzing each request in an objective fashion. You provided examples of the types of requests that the city receives. For instance, a single landowner with runoff problems caused by a development on the neighbor's property would seem to fail to meet the public-purpose requirement, in that only one landowner would be impacted by the work and the problem is of a private nature between the landowner and the developer. On the other extreme, a large group of landowners affected by a problem created by the city would seem to meet the public-purpose requirement, in that the benefit to be gained is spread across a greater portion of the public, and the city is able to avoid potential litigation and liability for the problem it created. You state that most of the requests fall between these two factual extremes.

Section 94 of the Alabama Constitution provides 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; ALA. CONST. amend. 558. 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 County v. Puckett*, 227 Ala. 374, 149 So. 850 (1933)).

Section 11-47-170 of the Code of Alabama specifically allows a city to acquire necessary lands or rights, easements, or interests therein for public purposes. This Office has held that the acquisition of an easement for the purpose of providing a public storm drainage system is an appropriate public purpose. Opinion to Honorable Manley L. Cummins, III, Attorney, City of Daphne, dated January 6, 1995, A.G. No. 95-00078. This Office has also opined that a city or town may expend municipal funds to improve or change the location of a municipally maintained drainage ditch located on private property if the town has an easement on the land and the improvements provide a benefit to the town or the improvements will prevent damage to the private property caused by the drainage ditch. Opinion to Honorable Fred K. Granade, Attorney, Town of Loxley, dated December 14, 1995, A.G. No. 96-00069.

Your request seeks a definition of what constitutes a public purpose. The Alabama Supreme Court has addressed this question, and therefore, this Office defers to the standards set by the Court. In defining the parameters of what constitutes an 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.

Opinion of the Justices No. 269, 384 So. 2d 1051, 1053 (Ala. 1980) (citations omitted).

The Alabama Supreme Court has held that legislative bodies have broad discretion in determining whether an expenditure is for a "public purpose," stating 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). The determination as to whether a public purpose is served must be made by the city council on a case-by-case basis. This Office cannot make that determination. This Office has stated that simply because a project would provide a greater benefit to some residents of the city does not prevent the city from finding that a public purpose is served. Opinion to Honorable Ronald L. Davis, Attorney, City of Northport, dated April 12, 2002, A.G. No. 2002-211. There must, however, be a benefit of some significant part to the public. A city may, however, expend funds to prevent damage to private property caused by the city.

CONCLUSION

The determination of whether a city may expend funds to improve drainage on private property must be made by the city governing body based on whether the improvement will serve a public purpose, and the

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expenditure confers a direct public benefit of a reasonably general character, and this must be determined by the city governing body on a case-by-case basis.

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:

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

BRENDA F. SMITH
Chief, Opinions Division

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