



2005 - 087

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March 10, 2005

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Counties – Public Health – Ad Valorem
Taxes - Animals – Pest Control

The Marshall County Commission may use surplus Amendment 72 tax proceeds for the construction and operation of an animal shelter. These funds may be used for the construction, lease, purchase, maintenance, and operation of facilities used in animal control and mosquito control.

Dear Mr. Carnes:

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

QUESTION

Can Marshall County legally use surplus funds from the four-mill tax collected for public health purposes, pursuant to Amendment 72 of the Constitution of Alabama, for the construction and/or operation of an animal shelter and for animal control and mosquito control?

FACTS AND ANALYSIS

Amendment 72 of the Constitution of Alabama, as follows, authorizes certain counties in the State, including Marshall County, after approval by the voters of the county, to:

levy and collect, in addition to all other taxes authorized by law, a special county tax, not exceeding four

mills on each dollar of taxable property in the county to be used solely for acquiring, by purchase, lease, or otherwise, constructing, operating, equipping, or maintaining county hospitals, or other hospitals, non-profit hospitals and public health facilities.

ALA. CONST. amend. 72.

The proceeds of the tax authorized by Amendment 72 are to be used for hospitals and public health facilities. Opinion of the Attorney General to Honorable Joe Stewart, Chairman, Fayette County Commission, dated April 27, 2000, A.G. No. 2000-130. Public health facilities are not defined in the amendment. *Stewart* at 2. The tax levied under Amendment 72 may be expended for public health facilities as the county governing body deems to be in the public interest. *In re Opinion of the Justices* No. 93, 252 Ala. 194, 198, 41 So. 2d 559, 563 (1949); opinion to Honorable Hobson Manasco, Jr., Attorney, Winston County Commission, dated May 31, 1979, A.G. No. 79-00216.

The Legislature, in proposing Amendment 72, intended to allow counties in the state to levy a tax to provide funds for appropriations to facilities that provide services promoting public health. *Stewart* at 3. It was determined in that opinion that Fayette County could not use Amendment 72 proceeds to directly provide potable water to an area of the county where contagious disease existed. The county could, however, provide Amendment 72 tax proceeds to a facility or facilities that would provide potable drinking water. *Stewart* at 3. The opinion further stated that Amendment 72 tax proceeds could be used to install or expand public water systems to the areas where the threat of contagious diseases existed in the county. *Stewart* at 3.

The Attorney General determined in an opinion to Honorable Hobson Manasco, Jr., Attorney at Law, City of Haleyville, dated June 11, 1992, A.G. No. 92-00318, that Winston County could use surplus Amendment 72 tax proceeds to construct and operate an animal shelter. That opinion stated, in pertinent part, as follows:

The requirements for county control of the rabies program, including the county pound, are found at Code of Alabama 1975, §3-7A-1 *et seq.* The provisions of this Act speak to the duties and responsibilities of the county health officer and county rabies officer in immunizing dogs and cats against rabies, impounding dogs and cats which lack immunization, and the quarantining of dogs or cats which bite human beings. All of these duties are directed at the protection of the public health from rabies. Hence, the facilities used in

administering this section of Alabama law may be construed to be "public health facilities."

Manasco at 2. As stated in the *Manasco* opinion on page 2, facilities used in the county's control of rabies, including a county pound, are "public health facilities."

Section 22-27-4(c) of the Code of Alabama is found in the solid waste disposal statute for counties and municipalities in the state. It provides that "[r]odents and insects of public health importance, as rats, flies, mosquitoes and the like, shall be controlled in a manner satisfactory to the Health Department. . . ." ALA. CODE §22-27-4(c) (1997). The county, therefore, has the responsibility to control mosquitoes in the county and to comply with the regulations of the State Health Department regarding this matter.

In summary, although the tax proceeds from Amendment 72 cannot directly be expended for animal control and mosquito control, facilities used for these purposes would be considered public health facilities for which Amendment 72 tax proceeds can be spent.

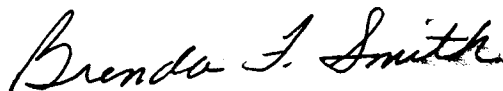
CONCLUSION

The Marshall County Commission may use surplus Amendment 72 tax proceeds for the construction and operation of an animal shelter. These funds may be used for the construction, lease, purchase, maintenance, and operation of facilities used in animal control and mosquito control.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division