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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Planning Commission – Municipalities –
Counties – Subdivisions – Jurisdiction

The Houston County Commission may exercise jurisdiction over subdivisions only in areas in which the Dothan City Commission has agreed with the county to reduce the extraterritorial jurisdiction of the Dothan Planning Commission and the agreement has been published as required by section 11-24-6 of the Code of Alabama.

Dear Mr. Sherrer:

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

QUESTIONS

1. Pursuant to section 11-24-6 of the Code of Alabama, may the Dothan City Commission agree with the Houston County Commission as to the exercise of jurisdictional authority over proposed subdivisions within the extraterritorial jurisdiction of the Dothan Planning Commission and thereby reduce that jurisdiction so that the county is authorized to exercise jurisdiction for subdivision regulation within what would have otherwise been the jurisdiction of the planning commission?

2. May the planning commission agree with the county to reduce its jurisdiction?

3. Because the city commission creates the planning commission, may the city commission, and not the planning commission, reduce the planning commission's jurisdiction, and if so, may the city commission do so without the planning commission's consent?

4. If the city commission has not reduced the planning commission's jurisdiction and the planning commission has informed the county on a case-by-case basis that it is not going to exercise its authority to regulate one or more subdivision developments, may the county, without an agreement with the city commission, exercise jurisdiction over those developments?

FACTS AND ANALYSIS

You ask this Office to consider your questions in the light of our opinions to Honorable James B. Rossler, Attorney, Mobile City Council, dated April 10, 2003, A.G. No. 2003-126; Honorable Gerald Allen, Member, House of Representatives, dated April 4, 1997, A.G. No. 97-00158; Honorable Steve McMillan, Member, House of Representatives, dated February 28, 1996, A.G. No. 96-00144; and to Honorable Sam E. Loftin, Attorney, City of Phenix City, dated November 1, 1988, A.G. No. 89-00021.

Section 11-52-30(a) of the Code of Alabama provides for the extraterritorial jurisdiction of a planning commission as follows: "The territorial jurisdiction of any municipal planning commission over the subdivision of land shall include all land located in the municipality and ***all land lying within five miles of the corporate limits*** of the municipality. . . ." ALA. CODE § 11-52-30(a) (1994) (emphasis added).

The *Rossler* and *McMillan* opinions concluded that the municipal governing body, not the planning commission, may reduce the planning commission's extraterritorial jurisdiction and that it may do so without the planning commission's consent. Those opinions relied on sections 11-24-5 and 11-24-6 of the Code of Alabama, which specifically provide for regulatory control over subdivisions in the planning commission's extraterritorial jurisdiction by the planning commission and the county. Those opinions explained that, ordinarily, the

county has no jurisdiction in the planning commission's jurisdiction, unless there is an explicit agreement between the county and the city.

Section 11-24-5 of the Code states the general rule: "No county shall exercise jurisdiction under provisions of this chapter within the jurisdiction of any municipal planning commission. . . ." ALA. CODE § 11-24-5 (1989). Section 11-24-6 supplies the only way for the planning commission's jurisdiction to be reduced and for the county to obtain jurisdiction, stating as follows:

It is the intent of the legislature that all proposed subdivisions be subject to regulation, and counties and municipalities affected by provisions of this chapter shall have authority to reach and publish agreement as to exercise of jurisdictional authority over proposed subdivisions, which agreement shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county and affected municipality and such agreement shall thereafter have the force and effect of law.

ALA. CODE § 11-24-6 (1989).

The *Rossler* and *McMillan* opinions are also supported by case law. In *City of Robertsdale v. Baldwin Co.*, 538 So. 2d 33 (Ala. Civ. App. 1988), the Alabama Court of Civil Appeals considered the county's exercise of jurisdiction within the planning commission's extraterritorial jurisdiction in the absence of an agreement. The Court noted that, in section 11-24-6 of the Code, the "legislature obviously envisioned cooperation between county governments and municipal governments in the regulation of land use," but that, "when that cooperation is not forthcoming, the legislature has provided a statutory scheme for resolution of disputes." 538 So. 2d at 37. Therefore, the Court held that the county was precluded from exercising jurisdiction under section 11-24-5. The Court further gave as a basis for its decision that, under section 11-52-36 of the Code of Alabama, "once a municipal planning commission assumes jurisdiction over the subdivision of land as provided in § 11-52-31, that jurisdiction is exclusive." *Id.* at 35.

In contrast, the *Allen* and *Loftin* opinions concluded that the planning commission itself may unilaterally reduce its jurisdiction. The *Allen* opinion relied on *Loftin*, which, in turn, relied on opinions of this Office that predated enactment of sections 11-24-5 and 11-24-6 and that did not discuss section 11-52-31. Because those opinions do not reflect the current state of the law, they

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are overruled to the extent that they conflict with the *Rosslar* and *McMillan* opinions.

CONCLUSION

The Houston County Commission may exercise jurisdiction over subdivisions only in areas in which the Dothan City Commission has agreed with the county to reduce the extraterritorial jurisdiction of the Dothan Planning Commission and the agreement has been published as required by section 11-24-6 of the Code of Alabama.

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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