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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

May 2, 2005

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Education, Boards of – Roads, Highways  
and Bridges – Right-of-Way – Schools –  
Funds

The county commission, not the county board of education, has the duty to maintain a public road. The board of education has no duty to contribute to the costs of making changes to a road, including acquiring realty.

The Lawrence County Board of Education (“Board”) may contribute to the cost of a traffic study to be used by the county to address traffic congestion in the vicinity of the East Lawrence schools if the Board determines that the expenditure is beneficial to its interests or serves a public purpose related to education.

A deed of realty by the Board must be for adequate consideration, even if the consideration is nonmonetary. The Board must determine the value of any nonmonetary consideration.

Dear Mr. Thompson:

This opinion of the Attorney General is issued in response to your request on behalf of the Lawrence County Board of Education.

### QUESTIONS

1. May the Lawrence County Board of Education contribute to the cost of a traffic study to be used by the Lawrence County Commission to address traffic congestion in the vicinity of the East Lawrence schools?

2. In the event that an additional right-of-way is needed for the improvement of roads to reduce congestion and enhance the safety of students as buses and private cars approach the facility, may the Board convey a right-of-way to the county at no cost?

3. In the event that an additional right-of-way must be purchased from adjacent landowners by the county, does the Board have any duty to contribute to the costs?

4. In the event that the county roads that abut the school property require redesign, engineering, or upgrade or modification, does the Board have any duty to contribute to said costs?

### FACTS AND ANALYSIS

Your request states as follows:

The East Lawrence schools were opened in 1977. Since that time, the East Lawrence community has become the fastest growing area of Lawrence County. A new East Lawrence Elementary School was opened a few years ago. The roads are inadequately designed to accommodate the daily traffic generated by the elementary school, East Lawrence Middle School, and East Lawrence High School, which has enrollment of approximately 2000 students.

This Office has stated that the county has the duty, under section 23-1-80 of the Code of Alabama, to maintain a public road in a reasonably safe condition for travel. Opinion to Honorable Bill English, Chairman, Lee County Commission, dated February 25, 2002, A.G. No. 2002-146. The county has the authority to condemn property, under section 23-1-82 of the Code of Alabama, in furtherance of that duty, and the responsibility to pay for any private property taken. Opinion to Honorable J. E. Turner, Member, House of Representatives, dated July 25, 2001, A.G. No. 2001-230. Therefore, the Board has no statutory duty to contribute to the costs of making changes to a road, including acquiring realty. There may be circumstances, however, in which the Board finds it necessary to contribute to such costs. This Office has also stated that the county sets priorities for road projects. Opinion to Honorable Barry L. Mullins, Attorney, Tuscaloosa County Commission, dated March 28, 2001, A.G. No. 2001-134. Mindful of this fact, the Board may cooperate with the county to ensure that the safety needs of those served by its schools are met.

Although there is no specific authority for the Board to maintain public roads, this Office has opined that "because of the broad grant of powers given to local boards of education, implied authority can be found to engage in activities not specifically provided for by statute." Opinion to Honorable Bradley E. Byrne, Member, Alabama State Senate, dated June 28, 2004, A.G. No. 2004-169, at 4 (authority to pay the training expenses of potential board members). Courts have long held that local boards of education may prescribe reasonable methods of raising funds, employ, supervise, consolidate, build, insure, transfer school children, and transport them in providing and operating a uniform and effective system of public schools throughout the counties of the state. *Vincent v. County Bd. of Educ.*, 222 Ala. 216, 131 So. 893 (1931); *Bd. of Educ. v. State ex rel. Kuchins*, 222 Ala. 70, 131 So. 239 (1930); *Kennedy v. County Bd. of Educ.*, 214 Ala. 349, 107 So. 907 (1926); *Bryant v. Whisenant*, 167 Ala. 325, 52 So. 525 (1910). In addition to supervision and administration, local boards shall seek, in every way, to promote the interest of the schools under its jurisdiction. ALA. CODE § 16-8-9 (2001).

In addition to the general powers given to the Board, section 94 of the Constitution of Alabama, as amended, has been interpreted as allowing the use of public funds in aid of an individual, association, or corporation if the expenditure serves a public purpose and that purpose is related to the authority granted to the Board or entity expending the funds. *Slawson v. Ala. Forestry Comm'n*, 631 So. 2d 953 (1994). This Office has determined that "granting public funds to public entities is allowable as the purpose of those entities or agencies is a public one." Opinion to Honorable Jimmy F. Carnes, Attorney,

Marshall County, dated July 22, 2002, A.G. No. 2002-289, at 2 (holding that the county commission may process and handle the payroll for public agencies). A public purpose is served if the objective is to promote public health, *safety*, morals, security, prosperity, contentment, and the general welfare of the community. *Slawson*, 631 So. 2d at 953. The Board must determine whether the expenditure of funds for the traffic study meets this public-purpose test and is in accordance with the authority granted to the Board relating to education. Accordingly, if the Board determines that that the expenditure is beneficial to its interests, or that the expenditure serves a public purpose related to education, it may expend public funds for the study.

Regarding the deeding of real property to the county, section 9-15-70, *et seq.*, of the Code of Alabama generally requires that the State and its agencies submit the sale or lease of any real property to a competitive bid process. ALA. CODE § 9-15-70 (2001). Section 9-15-82, however, provides, in pertinent part, that this article shall not apply to the sale or lease of any real property, or interest therein, by a county or municipal board of education. ALA. CODE § 9-15-82 (2001). Therefore, this provision of Alabama law does not apply to the proposed transfer by the Board.

This Office has repeatedly stated that the transfer of interest in real property requires that a county or city board of education must receive fair and adequate consideration for the real property sold or leased by it and that the proceeds of the transaction must be used for school purposes. See the following opinions:

- Honorable James H. Carter, Superintendent, Selma City Schools, dated March 26, 2004, A.G. No. 2004-105;
- Honorable Leslie M. Klasing, Attorney, Birmingham Board of Education, dated December 13, 2001, A.G. No. 2002-094;
- Honorable Fred K. Granade, Attorney, Baldwin County Board of Education, dated August 6, 2001, A.G. No. 2001-245;
- Honorable Broox G. Garrett Jr., Attorney, Escambia County Board of Education, dated September 6, 2000, A.G. No. 2000-228;
- Honorable Stanley E. Munsey, Attorney, Colbert County Board of Education, dated April 10, 2000, A.G. No. 2000-122;

- Honorable W. Gregory Ward, Attorney, Chambers County Board of Education, dated January 10, 1995, A.G. No. 95-00085;
- Honorable Carl E. Johnson, Jr., Attorney at law, dated June 22, 1989, A.G. No. 89-00335;
- Honorable Roy W. Johnson, Speaker Pro-Tem, House of Representatives, dated February 8, 1985, A.G. No. 85-00199.

The fair and adequate consideration required may be monetary or in the form of benefits to the Board. *Id.* Any nonmonetary benefit should relate to school purposes. *Id.* The Board should determine the value of any nonmonetary benefits. Fair and adequate consideration is not determined by the Attorney General, but by the parties involved. *See* A.G. Opinion Nos. 2004-105, 2002-094. The question of the nonmonetary value is to be determined by what value, if any, the improvements made by the county to the roads in the vicinity of the East Lawrence schools would benefit the schools. Increased safety for the traffic generated by the schools would certainly be relevant in that analysis.

#### CONCLUSION

The county commission, not the county board of education, has the duty to maintain a public road. The board of education has no duty to contribute to the costs of making changes to a road, including acquiring realty.

The Lawrence County Board of Education may contribute to the cost of a traffic study to be used by the county to address traffic congestion in the vicinity of the East Lawrence schools if the Board determines that the expenditure is beneficial to its interests or serves a public purpose related to education.

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Honorable H. Jerome Thompson  
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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:

A handwritten signature in cursive script that reads "Brenda F. Smith". The signature is written in black ink and is positioned below the typed name.

BRENDA F. SMITH  
Chief, Opinions Division

TK/GWB

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