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OFFICE OF THE ATTORNEY GENERAL

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Economic and Community Affairs,
Department of - Community
Development - Public Purpose -
Funds

A local government can only expend
public funds to improve private
property if the governing body of the
local government first concludes that
a public purpose will be met by the
expenditure.

The determination of whether a
public purpose will be served by an
expenditure of public funds is a
factual one that can only be made by
the governing body of the local
government making the expenditure.

Dear Mr. Harrison:

This opinion of the Attorney General is issued in response to your
request.

QUESTION

Whether a local unit of government can
pay for work and materials on private property if
it benefits the public, notwithstanding section 94
of article IV of the Constitution of Alabama.

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FACTS AND ANALYSIS

In your letter of request, you provide the following facts:

The Alabama Department of Economic and Community Affairs ["the Department"] administers the Community Development Block Grant ("CDBG") Program, which is a federal assistance program that provides funds for quality of life projects. These projects range from water to sewer to housing rehabilitation to economic development projects that create jobs.

In some instances (for example, water and sewer projects), the federal law provides that low and moderate income individuals may be connected to the water or sewer line using federal funds. The project area may include individuals who exceed the low or moderate threshold by a few thousand dollars per year. Federal funds cannot be used to connect those who exceed the federal threshold but who still cannot afford the cost or connection to the water or sewer line. All of these projects are for the benefit of the public; therefore, if the local unit of government used public funds on private property, it is still for the benefit of the public because people will have clean water instead of contaminated water or will not be dumping raw sewage on the ground, but it will be in a system where it is treated.

In pertinent part, section 94 of the Constitution of Alabama 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. 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 Co. v. Puckett*, 227 Ala. 374, 149 So. 850 (1933)).

In defining the parameters of what constitutes an expenditure for a "public purpose," the Alabama Supreme Court has stated:

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). Moreover, legislative bodies have broad discretion in determining whether an expenditure is for a "public purpose." The Alabama Supreme Court has held 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).

This Office has repeatedly opined that a local government can only expend public funds to improve private property if the governing body of the local government first concludes that a public purpose will be met by the expenditure. The determination of whether such a public purpose will be served is a factual one that can only be made by the governing body of the local government. *See, e.g.*, Opinion to Honorable Jeff Collier, Mayor, Town of Dauphin Island, dated March 31, 1999, A.G. No. 99-00152 (concluding that the construction of a sand berm on Dauphin Island would help protect the town's sanitary sewer system, which serves all the town's inhabitants, and because all real property owners on the island have the right to use the west-end beach, public benefit is derived from contributing to the FEMA project); Opinion to Honorable Ronald L. Davis, Attorney for the City of Northport, dated April 12, 2002, A.G. No. 2002-211 (opining that, if the City of Northport determines that cooperation with the Northwood Lake residents and any third-party contractors in an effort to remove siltation from a private lake would serve a "public purpose," the city may contribute funds or in-kind services to the siltation removal effort without violating section 94 of the Constitution of Alabama).

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CONCLUSION

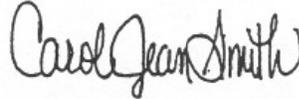
A local government can only expend public funds to improve private property if the governing body of the local government first concludes that a public purpose will be met by the expenditure.

The determination of whether a public purpose will be served by an expenditure of public funds is a factual one that can only be made by the governing body of the local government making the expenditure.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Carol Jean Smith of my staff.

Sincerely,

BILL PRYOR
Attorney General
By:



CAROL JEAN SMITH
Chief, Opinions Division

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