

POLICY NO. 10 (OBTAINING SIDE DRAIN PIPE AND
INSTALLATION ON ST. CLAIR CO.
MAINTAINED ROADS)

1. Individuals desiring to work on county right-of-way or to construct driveways on county roads must obtain a permit before work starts. The County Engineering Department or respective Commissioner will determine pipe size and length and issue the permit.
2. County equipment and labor will install the pipe and place a maximum of 28 C.Y. of fill over the pipe as soon as equipment is working in the general area.
3. Individuals may obtain pipe from the County, upon reimbursement to the County of the cost of the pipe but said reimbursement must be received before the pipe is installed.

Adopted this 14th day of February, 1995.

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November 12, 1993

St. Clair Commission
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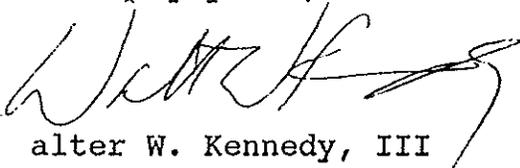
Re: Policy #9 (Purchasing Side Drain Pipe and Installation on St. Clair County-maintained Roads)

Gentlemen:

In response to your request for an opinion under date of November 4, 1993, it is our opinion that changes must be made in policy #9 insofar as the policy refers to the "purchase" of pipe by individuals working on or accessing county roads by constructing driveways. The county may not sell property, including pipe owned by the county, to individuals in the absence of a finding that the property is not needed for public purposes. Thus, I believe that the terminology of policy #9 must be changed to omit any reference to the term "purchase."

As I understand it, the county is merely recouping the cost of the pipe that is being installed upon county rights of way. Presumably, once the pipe is used in connection with the public property, it becomes a part of the property and thus falls within the realm of the commission's general authority over the public roads in the county. I believe that an argument could be made that the county is not "selling" anything, in that the pipe is incorporated into a public road and that it is not, after installation, owned by the individual who has installed it. There is no direct authority on that issue. Our suggestion is to revise the policy so as to read that all individuals will be required to reimburse the county for the cost of the pipe. Paragraph three should be revised to read that individuals may obtain pipe from the county upon reimbursement to the county of the cost of the pipe, but said reimbursement must be received before the pipe is installed. Due to the lack of specific authority dealing with this precise issue, I think it would be appropriate to request an attorney general's opinion.

Sincerely yours,



alter W. Kennedy, III

WWK/jb

OFFICE OF THE ATTORNEY GENERAL



93-00145

JIMMY EVANS
ATTORNEY GENERAL
STATE OF ALABAMA
MAR - 2 1993

*File of
Pipe*

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Honorable Robert Stephens
Chairman, Coffee County Commission
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Counties - Roads, Highways
and Bridges - Churches -
Private Work - Pipe and
pipelines

1. The county has no authority to perform private work at no cost to a church.
2. The county has no authority to sell pipe to a church unless there is need to dispose of it as surplus property.

Dear Mr. Stephens:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION 1

Can Coffee County install pipe and cover it with dirt at no cost to a church off the county right-of-way?

FACTS AND ANALYSIS

The request for an opinion presents the following fact situation:

Honorable Robert Stephens
Page 2

On a county-maintained, paved road there is a cross-drain that drains across a county road through a church yard. This is a natural drain and erosion is taking place in the church yard. The road and pipe have been in place for at least twenty (20) years.

The questions presented here are also based on the presumption set forth in the request that: "All of the above work [is] to be performed by County forces at no charge to the Church and the County will not receive any benefit from the project."

Code of Alabama 1975, § 23-1-80 provides that county commissions have general superintendence of the public roads and bridges in the county and the authority to build, construct, make, improve, and maintain these roads and bridges. Thus, counties are authorized to do work on and expend county funds on public roads within the county. "Public roads" are those roads which the county has constructed or built for public use, and roads acquired by the county by prescription. Opinion of the Attorney General to Ronald L. Myers, dated December 16, 1988, A.G. No. 89-00089. There is no authority granted in § 23-1-80 for the county to do work on private property.

Section 94 of the Alabama Constitution of 1901 prohibits a county from granting public money or thing of value to any individual, association, or corporation whatsoever. Although a church is generally associated with philanthropic causes in the community, it is nonetheless a private institution within the meaning of the constitutional provision. The county may not contribute to the maintenance of church property. Opinion to Rosa St. John, dated October 1, 1981, A.G. No. 82-00003.

The work that is described in the opinion request would be done on private church property on which the county has no right-of-way. The county would not be reimbursed for its costs and would not receive any benefit from the work. The county has no authority to conduct such work or repairs under these circumstances. Opinion of the Attorney General to Gary C. Shearer, dated September 2, 1987, A.G. No. 87-00307.

This opinion is based on the assumption that the county has no liability in this matter. If the county were at fault in causing the erosion by not maintaining the cross-drain or

Honorable Robert Stephens
Page 3

For some other reason, then the county has the authority to make necessary repairs.

CONCLUSION

Coffee County has no authority to perform maintenance work or repairs on private church property at no cost to the church.

QUESTION 2

Can the Coffee County Commission sell pipe to a church or citizen in the county at a 20¢ mark-up where the pipe will be installed off the right-of-way and deliver the pipe at no cost for delivery?

FACTS AND ANALYSIS

A county is a subdivision of the state created by the sovereign power of the legislature and can only exercise the power conferred upon it by law. Alexander v. State ex rel. Caver, 274 Ala. 441, 150 So.2d 204 (1963). The county can only exercise the authority given to it by statute or the constitution. A county has no authority to engage in private enterprise.

A county, like a city, has no authority to sell pipe to a church or private citizen unless there is a need to dispose of its surplus property. See Attorney General's Opinions to George Thomas, dated August 29, 1986, A.G. No. 86-00349; to J. David Stout, dated November 16, 1984, A.G. No. 85-00072; and to J. Edward Yeargan, dated May 19, 1981, A.G. No. 81-00383. The county may not purchase pipe for the purpose of selling it to a church or other private group. Therefore, the answer to your question is no.

CONCLUSION

The county has no authority to sell pipe to a church unless there is need to dispose of it as surplus property.

Honorable Robert Stephens
Page 4

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

JE/JLB/jho

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