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Honorable Billy R. Weathington Jr.
City Attorney
Weathington & Moore, P.C.
819 Parkway Drive, SE
Leeds, Alabama 35094

St. Clair County – Fire Protection
Tax – Ad Valorem Taxation –
County Commissions

Pursuant to Amendment No. 652 to the Constitution of Alabama, the St. Clair County Commission may pay part of the funds from the fire protection trust fund only to certified fire departments that have fully operational fire stations located within St. Clair County.

The St. Clair County Commission and the Forestry Commission should work together to ensure that all fire departments on the list certified by the Forestry Commission are located within St. Clair County.

The St. Clair County Commission may disburse the funds in the fire protection trust fund to the eligible fire departments on a biannual basis.

Each fire department in St. Clair County is responsible for the filing and accuracy of its own expenditure report.

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Dear Mr. Weathington:

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

QUESTION ONE

Pursuant to the provisions of Act No. 97-459, is the St. Clair County Commission (“Commission”) authorized to pay a part of the fire tax funds to fire departments whose services, fireplugs, and coverage are located and operated in St. Clair County and which serve the citizens of St. Clair County who are paying the fire tax if these fire departments are certified by the Alabama Forestry Commission?

FACTS AND ANALYSIS

Your opinion request states:

In accordance with subsection (c) of Act No. 97-459 (“the Act”), the Alabama Forestry Commission (“the Forestry Commission”) certified to the Commission a list of eligible fire departments among which the Commission is authorized to divide the funds. . . . The Forestry Commission certified twenty-five fire departments eligible to receive a full share of the funds and five out-of-county fire departments eligible to receive a percentage of one share of the funds. While the out-of-county fire departments may not actually have a fire station located in St. Clair County, their services, fireplugs, and coverage are located and operated in St. Clair County and serve the citizens of St. Clair County who are paying the fire tax.

The Act, now codified as Amendment No. 652 to the Constitution of Alabama, provides in pertinent part:

(a) In addition to all other ad valorem taxes levied, the St. Clair County Commission may levy on an annual basis, commencing with the tax year beginning October 1, 1997, an ad valorem tax on all taxable property located in St. Clair County at a rate of two mills per dollar of assessed value of the taxable property, the proceeds of which shall be paid into an expendable fire protection trust fund in the county treasury and allocated therefrom for fire protection and emergency medical services.

(b) Within 30 days of payment into the fire protection trust fund of the proceeds from the additional tax levied pursuant to (a), each eligible fire department in the county shall make a requisition to the county commission for a share of the tax proceeds in the fund. ***The county commission shall divide the funds equally among the eligible fire departments of St. Clair County.***

(c) Funds allocated to eligible fire departments shall only be expended for fire protection and emergency medical services including day to day operations, training, supplies, buildings, capital improvements, and equipment. All expenditures shall be documented with the county commission. ***An eligible fire department means a fire department located in St. Clair County which is certified under the guidelines of the Alabama Forestry Commission.*** Any tax proceeds allocated for fire protection and emergency medical services under this amendment may not be expended for salaries, food, drink, social activities, or fundraising activities. After receiving funds, the fire departments shall keep accurate records to verify that the funds were properly expended. By September 15th of each year, each fire department shall file a form with the county

commission detailing the expenditures of all funds during the previous 12 months and setting out a schedule of all proposed projects. The filing shall also account for all unspent funds and whether the unspent funds have been obligated. The St. Clair County Fire and Emergency Medical Service Association shall supply the accounting forms to each eligible volunteer fire department.

ALA. CONST. amend. 652 (emphasis added).

Amendment No. 652 provides that the Commission shall divide the funds from the fire protection trust fund equally among the eligible fire departments of St. Clair County. ALA. CONST. amend. 652(b). The Amendment further provides that an eligible fire department is one that is located in St. Clair County and that is certified by the Forestry Commission. ALA. CONST. amend. 652(c). This Office has been informed that some fire districts cross county lines into counties adjacent to St. Clair and that the fire station for the district is located in the adjacent county. Based on the language of the Amendment, the Commission may not pay part of the funds to fire departments certified by the Forestry Commission if the department does not have a fully operational fire station located within St. Clair County. If a fire department is in the process of building a fire station in St. Clair County, that department may receive funds from the fire protection fund only after the station is fully operational. Therefore, the Commission may pay part of the funds only to those fire departments that are located within St. Clair County and are certified by the Alabama Forestry Commission.

This opinion is consistent with previous opinions of this Office regarding payment of tax revenue to fire departments. Act No. 87-522, a local act relating to Marshall County, authorizes the Marshall County Commission to impose a tax on certain tobacco products sold in the county. The Act provides that the revenue from the tax “shall be divided equally among qualified volunteer fire departments of Marshall County” 1989 Ala. Acts No. 89-485, 1015. This Office opined that the act provides that only volunteer fire departments located in Marshall County may share in the tax revenues. Opinion to Howard Hawk, Member, House of Representatives, dated April 23, 1999, A.G. No. 99-00175. In addition, Amendment No. 564 to the Constitution of Alabama provides for a fire protection tax in Covington County. Amendment No. 564 provides that an

eligible fire department, for purposes of the amendment, is “a fire department in Covington County. . . .” This Office determined that only those fire departments and rescue squads located within the boundaries of Covington County should receive the fire protection tax proceeds. Opinion to Seth Hammett, Member, House of Representatives, dated January 8, 1996, A.G. No. 96-00086. *See also* opinion to Charles Griffin, Mayor, Town of Springville, dated February 26, 2001, A.G. No. 2001-100. *Compare* Opinion to Representatives Richard Laird and Ron Johnson, dated April 19, 2001, A.G. No. 2001-157 (holding that tax revenue dedicated for distribution to the Talladega County Association of Volunteer Fire Departments may be disbursed by the Association to fire departments outside the county that serve residents within the county because enabling legislation did not restrict the disbursement of tax revenues only to Talladega County).

CONCLUSION

Pursuant to Amendment No. 652 to the Constitution of Alabama, the St. Clair County Commission may pay part of the funds from the fire protection trust fund only to certified fire departments that have fully operational fire stations located within St. Clair County.

QUESTION TWO

Pursuant to subsection (c) of the Act, the Forestry Commission is charged with the responsibility of determining whether a fire department is located in St. Clair County and certifying to the Commission those fire departments that are eligible to receive a share of the tax. Is the Commission authorized to pay a part of the fire tax fund to all fire departments certified by the Forestry Commission? Is the Commission correct in its interpretation that it can rely upon the Forestry Commission to determine whether, pursuant to the Forestry Commission’s guidelines, a fire department is located in St. Clair County and eligible to receive a part of the fire tax if certified by the Forestry Commission?

FACTS AND ANALYSIS

Section (c) of Amendment No. 652 provides that “[a]n eligible fire department means a fire department located in St. Clair County which is certified under the guidelines of the Alabama Forestry Commission.” ALA. CONST. amend. 652(c). An eligible fire department is one that is located in St. Clair County and that is certified under the guidelines of the Alabama Forestry Commission. Amendment No. 652 does not charge the Forestry Commission with the responsibility of determining whether a fire department is located in St. Clair County. The Forestry Commission is responsible for determining which fire departments should be certified pursuant to section 9-3-17 of the Code of Alabama, not determining which fire departments are located within a particular county. The Commission and the Forestry Commission should work together to ensure that all fire departments on the list certified by the Forestry Commission are located within St. Clair County. While the Forestry Commission may have included in its certification fire departments who serve the county but are not located within the county, a fire department certified by the Forestry Commission is not eligible to receive a portion of the fire tax funds provided by Amendment No. 652 unless the fire department is located within St. Clair County.

CONCLUSION

The St. Clair County Commission is authorized to pay a part of the fire tax fund to fire departments certified by the Forestry Commission only if the department has a fully operational fire station located in St. Clair County. The St. Clair County Commission and the Forestry Commission should work together to ensure that all fire departments on the list certified by the Forestry Commission are located within St. Clair County.

QUESTION THREE

Whether a fire department which (1) meets the Forestry Commission’s guidelines, (2) is certified by the Forestry Commission as an eligible fire department, and (3) which provides

fire services within St. Clair County to citizens of St. Clair County who pay the fire tax, is a fire department located in St. Clair County pursuant to the provisions of the Act?

FACTS, ANALYSIS, AND CONCLUSION

As stated above, a fire department must have a fully operational fire station located in St. Clair County to receive funds from the fire protection trust fund pursuant to Amendment No. 652.

QUESTION FOUR

Since the Act states that the fire departments are to make a requisition to the county commission for a share of the tax within 30 days of payment into the fire protection trust fund, and because the Act does not specify a time period within which the Commission must comply with the requisition, is the Commission correct in its interpretation that it can disburse the funds in the fire protection trust fund to the eligible fire departments on a biannual basis?

FACTS AND ANALYSIS

Your opinion request states:

Ad valorem taxes are received by the tax collector throughout the year; however, most ad valorem taxes are received between October and January of the following year. The tax collector then forwards to the Commission the applicable funds to be deposited into the fire protection trust fund account. Some months the amount received by the Commission is relatively small. Because of this, the Commission and the fire departments have agreed that disbursement of the fire tax funds will be made on a biannual basis.

This agreement is practical and makes
administration of the fund more manageable.

Subsection (b) of the Amendment states:

(b) Within 30 days of payment into the fire protection trust fund of the proceeds from the additional tax levied pursuant to (a), each eligible fire department in the county shall make a requisition to the county commission for a share of the tax proceeds in the fund. The county commission shall divide the funds equally among the eligible fire departments of St. Clair County.

ALA. CONST. amend. 652. While this section provides that each eligible fire department must request its share of the tax proceeds from the fund within 30 days of payment into the fund, the Amendment does not specify the period of time in which the Commission must disburse the funds. Therefore, the Commission may disburse the funds in the fire protection trust fund to the eligible fire departments on a biannual basis.

CONCLUSION

The St. Clair County Commission may disburse the funds in the fire protection trust fund to the eligible fire departments on a biannual basis.

QUESTION FIVE

Under the provisions of the Act, is the Commission responsible for reviewing and making sure that all fire departments file an expenditure report or for the accurateness of the reports that are filed, or are the fire departments responsible for the filing and the accurateness of their reports?

FACTS AND ANALYSIS

Section (c) of Amendment No. 652 provides in pertinent part:

After receiving funds, the fire departments shall keep accurate records to verify that the funds were properly expended. By September 15th of each year, each fire department shall file a form with the county commission detailing the expenditures of all funds during the previous 12 months and setting out a schedule of all proposed projects. The filing shall also account for all unspent funds and whether the unspent funds have been obligated.

ALA. CONST. amend. 652. The Commission should keep records to ensure that all eligible fire departments file an expenditure report each year. Each eligible fire department is responsible for the filing and accuracy of its expenditure report to be filed by September 15 of each year.

CONCLUSION

Each eligible fire department is responsible for the filing and accuracy of its expenditure report.

QUESTION SIX

Under the provisions of the Act, is the State of Alabama Department of Examiners of Public Accounts responsible for reviewing and making sure that all fire departments file an expenditure report or for the accurateness of the reports that are filed, or are the fire departments responsible for the filing and accurateness of their reports?

FACTS AND ANALYSIS

Section (e) of Amendment No. 652 provides that the State Department of Examiners of Public Accounts shall audit the fire protection trust fund when the county is audited. ALA. CONST. amend. 652(e). The Amendment

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does not charge the State of Alabama Department of Examiners of Public Accounts with the responsibility of reviewing the expenditure reports of these fire departments or with the accuracy of the reports. Section (c) of the Amendment provides that each year each fire department shall file a form with the Commission detailing the expenditures of the department for the previous year and providing a schedule of all proposed projects. Therefore, each fire department in St. Clair County is responsible for the filing and accuracy of its own expenditure report.

CONCLUSION

Each fire department in St. Clair County is responsible for the filing and accuracy of its own expenditure report.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Terri Olive Tompkins of my staff.

Sincerely,

BILL PRYOR
Attorney General
By:

CAROL JEAN SMITH
Chief, Opinions Division

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