



# A SELECTED READING

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## Authority to Expend Municipal Funds

Section 94 of the Alabama Constitution, 1901, as amended by Amendment 112, reads as follows: “The Legislature shall not have power to authorize any county, city, town or other subdivision of this state to lend its credit, or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in any such corporation, association or company, by issuing bonds or otherwise. It is provided, however, that the legislature may enact general, special or local laws authorizing political subdivisions and public bodies to alienate, with or without a valuable consideration, public parks and playgrounds or other public recreational facilities and public housing projects, conditional upon the approval of a majority of the duly qualified electors of the county, city, town or other subdivision affected thereby, voting at an election held for such purpose.”

### Purpose

The purpose of Section 94 is to prevent abuses resulting from the unwise and reckless use of power. In the absence of a special constitutional grant of power (a few Alabama cities have such grants), a municipality has no power to donate money, issue bonds, subscribe to stock, or otherwise aid a private corporation even though a municipality may be incidentally benefited by the location of the company in the municipality. This prohibition includes aid to railroad companies, steamship lines, manufacturing plants, etc.

In *Opinion of the Justices*, 49 So.2d 175 (Ala. 1950), the court said: “It has been pointed out that the evil to be remedied is the expenditure of public funds in aid of private individuals or corporations, regardless of the form which such expenditures may take, and that Section 94 prohibits, in the words of the decision in *Garland v. Board of Revenue of Montgomery County*, 6 So. 402 (Ala. 1889), ‘any aid ... by which a pecuniary liability is incurred’.”

In *Garland*, the court said: “... the cause giving birth to this section of the Constitution was the recognized fact that the ‘trustees of government are and have always been amenable to’ the subtle influence of anticipating that by establishing and promoting a new industry or institution in a community, though established for private gain, it brings to the community where established, some public benefits, and that such influence encourages the improvident expenditure of public money and the incurring of governmental liabilities that must be taken care of by taxation.”

In 1994, the Supreme Court decided *Slawson v. Alabama Forestry Commission*, 631 So.2d 953 (Ala. 1994). In *Slawson* the court changed the application of Section 94 to appropriations and expenditures of municipal governments by holding that a public entity such as a city may give money or something of value to non-public entities and organizations if the public entity determines that the appropriation will serve a public purpose. *Slawson* at 956. The court went on to define a public purpose as one that promotes the health, safety, morals, security, prosperity, contentment and general welfare of the community. *Id.* Further, the court held that the decision as to whether an expenditure serves a public purpose or confers a public benefit is wholly within the discretion of the legislative body making the decision or the municipal governing body in the case of municipalities. *Id.*

Since *Slawson* the Attorney General has consistently held that the determination of whether an expenditure is for a public purpose is a factual one and can only be made by the governing body of the local government making the expenditure. AGO 2003-074.

The League recommends the creation of a contractual relationship before the municipal governing body approves an expenditure of appropriation to a private individual, corporation or association.

### Cater Act

In 1949, the Legislature passed Act 648 (Sections 11-54-80 through 11-54-101, Code of Alabama 1975), now generally known as the Cater Act, to aid the citizens of Alabama in their efforts to induce the location of new plants and factories in

this state. An industrial board, organized under the act, normally constructs a building and leases it to the manufacturer for use as a factory. The board finances the building from the sale of bonds payable from revenues from the lease and secured by the mortgage on the building.

After passage of this Act and at a time when municipalities were beginning to use it, Governor Jim Folsom, Sr. asked the Alabama Supreme Court for its opinion on the constitutionality of the Act in view of Section 94 of the Constitution. In *Opinion of the Justices*, 49 So.2d 175 (Ala. 1950), the court stated: "We think that Act No. 648 involves no expenditure of public money and the incurring of no liability that must or can be taken care of by taxation. Under the Act, a municipality is not authorized to spend public funds."

May a municipality appropriate funds or perform services for a board organized under this Act? The Attorney General has held, in general, that a city may, but the League urges that an opinion be obtained in each individual case as a matter of protection.

A 1983 amendment to the Cater Act included in the list of permissible projects any commercial enterprise providing hotel or motor inn services. The Supreme Court of Alabama upheld the constitutionality of this amendment in *Smith v. Industrial Development Board of Andalusia*, 455 So.2d 839 (Ala. 1984). The court stated that hotels "provide incentive for industry and business to locate in or near the municipality. They provide accommodations for guests and traveling employees of industries and businesses, provide facilities for conventions, exhibitions, and meetings, and use the 'agricultural products and natural resources of this state' in their construction and maintenance."

### **Wallace Act**

The Supreme Court was requested to advise on the constitutionality of the Wallace Act (Act 756, 1951 Acts; Sections 11-54-20, et seq., Code of Alabama 1975,) in view of Section 94. Again the answer was favorable. *See, Re Opinion of the Justices*, 53 So.2d 840 (Ala. 1941). The court, in this opinion, stated that a review of the cases in which statutes were held void because of the provisions of Section 94 reveals that each of these cases has involved a municipality incurring a pecuniary liability.

In *Newberry v. Andalusia*, 57 So.2d 629 (Ala. 1952), the court upheld the Wallace Act against a contention that Section 94 was violated. The decision reads in part: "The opinion has been heretofore expressed that Section 94 applies to cases where a municipality or a county incurs a pecuniary liability and does not apply in cases where the entire cost of the project is financed by issuance of municipal revenue bonds payable solely from income or rentals of the project ... a lease of public property without consideration is certainly a violation of Act 94, but we do not have such a case ... we hold, therefore, that there is no constitutional interdiction which inhibits the city, through its governing body, acting in good faith, from determining that this contract is a fair and reasonable rental for the prescribed period."

### **Economic and Industrial Development**

In 2004 Amendment 772, Alabama Constitution, 1901, was ratified and added to the Constitution as Section 94.01. This Amendment grants specific authority to counties and municipalities to lend credit to or grant public funds and things of value to any individual, firm, corporation, or other business entity, public or private, for the purpose of promoting the economic or industrial development of the county or municipality.

However no such action should be taken unless prior thereto the governing body approves the action, at a public meeting, by resolution stating that the expenditure of public funds for the purpose specified will serve a valid and sufficient public purpose notwithstanding any incidental benefit accruing to any private entity or entities. Also the governing body must give at least seven days notice of this meeting, to be published in the newspaper having the largest circulation in the county or municipality as the case may be, describing in reasonable detail the action proposed to be taken, a description of the public benefits sought to be achieved by the action, and identifying each individual, firm, corporation, or other business entity to whom or for whose benefit the county or the municipality proposes to lend its credit or grant public funds or thing of value. *See, Amendment 772(c) Alabama Constitution, 1901.*

### **Court Decisions Approving Expenditures**

There is little question about expenditures made for a purpose which is specifically authorized by legislative acts. For example, Section 31-2-129, Code of Alabama 1975, authorizes the governing body of a municipality to appropriate money for various uses to assist National Guard units located therein. Sections 11-91-1 through 11-91-8, Code of Alabama 1975, grant municipalities the authority to appropriate funds to purchase group insurance policies for municipal officers and employees. *See, Opinion of the Justices*, 30 So.2d 14 (Ala. 1947).

The court has approved donations and appropriations to a public corporation which exercises a public function as an agency

of the city or town. See, *Opinion of the Justices*, 48 So.2d 757 (Ala. 1950), relating to redevelopment projects authorized in Sections 24-2-1 through 24-2-10, Code of Alabama 1975, and *Andalusia v. Southeast Alabama Gas District*, 74 So.2d 479 (Ala. 1954), in which the court held that Section 94 does not prevent a city from rendering assistance to a public corporation.

In *Carey v. Haleyville*, 161 So. 496 (Ala. 1935), the court held that public funds could be used to erect a school building even though title was vested in another public agency. But this case seems to restrict a municipality to the use of its surplus funds.

In *Alabama State Bridge Corporation v. Smith*, 116 So. 695 (Ala. 1928), the court sustained an act establishing a corporation whose objects provided for the construction of bridges. With references to Section 94, the court stated: "The objection is obviated by the consideration that this section related to private corporations only." A similar holding is found in *State v. Mobile*, 28 So.2d 177 (Ala. 1946), a case involving a payment of \$350,000 by the City of Mobile to the State Docks and Terminals.

Following these principles, the court has sustained payment of "moral" claims, stating: "Also, the constitution (Section 94) is not infringed when the appropriation by the Legislature is to pay an honorable and righteous claim, though legally unenforceable, if for a public purpose." See, *Board of Revenue of Mobile County v. Puckett*, 149 So.2d 850 (Ala. 1933), and *State v. State*, 6 So.2d 603 (Ala. App. 1942).

The court has approved the donation of funds for redevelopment of slum areas, projects done in conjunction with the federal government. *Opinion of the Justices*, 48 So.2d 757 (Ala. 1950).

This section was designed to prevent the expenditure of public funds to aid private individuals or corporations. This section does not apply to a transaction between a municipality and an agency of the state. *Rogers v. Mobile*, 169 So.2d 282 (Ala. 1964).

In *Fitts v. Birmingham*, 141 So. 354 (Ala. 1932), the Supreme Court of Alabama held that a city has authority to protect and to promote its wellbeing before the Legislature and to incur and pay reasonable compensation to persons for such services.

### **Attorney General's Opinions Approving Expenditures**

Section 36-15-18, Code of Alabama 1975, requires the Attorney General to give an opinion, in writing or otherwise, as to any question of law connected with the duties of the following municipal officers when requested so to do in writing: mayor or chief executive officer of any incorporated municipality, city council or like governing body of any incorporated municipality, or any other officer required to collect, disburse, handle or account for public funds. Section 36-15-19, Code of Alabama 1975, provides that the written opinion of the Attorney General, secured by any officer entitled to such opinion, shall protect such officer and the members of such board, local governing body or agency to whom it is directed or for whom the same is secured, from liability to either the state, county or other municipal subdivisions of the state because of any official act or acts performed as directed or advised in such opinion. The courts have ruled that such opinions are not controlling or binding on the court but are merely advisory. *Hill Grocery Co. v. State*, 159 So. 269 (Ala. 1935). Advice by the Attorney General does not protect an officer against claims of individuals which result from erroneous construction of the law affecting his duties. *Curry v. Woodstock Slag Corp.*, 6 So.2d 479 (Ala. 1942).

Section 36-15-20, Code of Alabama 1975, requires any mayor, city council or like governing body of an incorporated municipality to submit, with the request for an opinion, a resolution adopted by the governing body of the municipality, setting forth the facts showing the nature and character of the question which makes the advice or opinion sought necessary to present performance of some official act that such officer or governing body must immediately perform.

The Attorney General has been called upon often to rule on the legality of the expenditure or appropriation of public funds. The following opinions list expenditures that have been **approved** by the Attorney General:

- Municipalities may purchase liability insurance for city vehicles. AGO to W. A. Gayle, January 14, 1957.
- Municipalities may reimburse employees who have purchased liability insurance to protect themselves while driving municipal vehicles. AGO to B. R. Winstead, July 14, 1964.
- Mobile has legal authority to become a member of the National Rivers and Harbors Congress. 37 Quarterly Report of the Attorney General 79.
- Birmingham may employ an association to work as liaison agent with the federal government. AGO to B. R. Winstead, October 27, 1965.
- Municipalities may appropriate funds to recreation boards organized under Act 350, 1945 Acts of Alabama. 70 Quarterly Report of the Attorney General 18.
- A city may use funds to construct a swimming pool on land owned or leased to a municipality. AGO to Cecil White, April 30, 1965.

- A city may donate to a public ball club and to public schools. AGO to D. B. Smith, September 14, 1977.
- A city may appropriate funds to a county school attended by city residents. AGO to William P. Stokes, December 8, 1969.
- A city may contribute to a county hospital board which operates an ambulance service. AGO to Dennis Porter, August 29, 1969.
- A city may appropriate funds to a local civil defense rescue squad. AGO to Hugh Herring, Jr., August 1, 1969.
- A town may reimburse the mayor for expenses incurred in connection with the incorporation of the town. AGO to W. S. Turpen, January 9, 1974.
- A municipality may legally pay the attorney fees in defense of an action brought against the mayor for acts done by the mayor on behalf of the municipality in pursuit of his official duties. AGO to William H. Robertson, November 16, 1973.
- A city can appropriate funds for the research and writing of a municipal history. AGO to Hon. Guy Roberts, January 18, 1965.
- Municipalities may appropriate funds to recreation boards organized under Act 218, 1967 Acts of Alabama. AGO to E. G. Rickarby, July 11, 1969.
- Gadsden may donate funds to a halfway house. AGO to Kenneth W. Gilchrist, April 22, 1970.
- A city may appropriate funds to an industrial development board for the purchase of real estate. AGO to Phillip L. Green, March 25, 1974, and others. **Note:** Due to the language of Section 94, the League suggests that any municipality interested in making such an appropriation secure its own opinion.
- A municipality and county may jointly appropriate funds to purchase a brochure to promote industrial development. AGO to L. R. Driggers, May 31, 1972.
- A city may purchase hospital insurance for its own employees. AGO to Hon. J. M. Breckenridge, October 17, 1972. However, a city cannot pay premiums on hospital insurance for its officers until the beginning of the new administration. AGO to James P. Nix, January 1, 1977.
- Auburn can legally pay for the cost of radio spots broadcast in connection with announcing a public meeting relating to a bond election. AGO to James K. Haygood, Jr., August 31, 1967.
- A city can spend public funds to make improvements in a water main for a shopping center. AGO to Willard Pienzezza, December 8, 1977.
- A city may fill sink holes on private property when it constitutes a health and safety hazard. AGO 1979-285 (to Hon. William B. Parrett, September 10, 1979). **Note:** Any city wishing to do this should obtain its own opinion.
- A municipality may, for adequate consideration, contract with a Boy's Club and a Girl's Club to provide services to the citizens of the town. AGO 1980-214 (to Hon. George Chard, February 13, 1980).
- A city can donate uniforms, building rentals, travel expenses, coaches' salaries and transportation costs for the city boxing team. AGO 1980-358 (to Hon. M. G. Temme, May 8, 1980).
- A city may perform work on city property as well as adjoining private property where necessary to protect the city property. The city should obtain written permission from the owner of the abutting property before beginning the work. AGO 1980-494 (to Hon. Maurice C. West, August 6, 1980).
- A municipal board may award longevity pins, if and only if, the pins are awarded pursuant to an established policy and the value of such pins is nominal. AGO 1981-401 (to Hon. J. Robert Miller, June 2, 1981).
- Municipal funds may be used to provide meals or refreshments for an advisory committee meeting when work done at the meeting is clearly related to the achievement of a municipal purpose. AGO 1982-168 (to Hon. Thomas R. Elliott, Jr., February 5, 1982).
- A city may furnish clothing or clothing allowances to detectives but not to general office workers. AGO 1983-082 (to Hon. Herman Cobb, November 18, 1982).
- A city may contribute to its volunteer rescue squad and fire department under Section 9-3-18, Code of Alabama 1975, as amended. AGO 1983-156 (to Hon. Clarence F. Rhea, January 31, 1983). **Note:** If the rescue squad or fire department is not associated with the municipality, the municipality should enter into a written contract with the squad or department for services as consideration for the contribution made.



- A city may provide emergency medical treatment to citizens within the county at no charge. AGO 1985-431 (to Hon. Thomas B. Norton, M.D., July 9, 1985).
- A municipality may expend funds to purchase pipe to be placed on the state right-of-way to support the driveway of a new business. AGO 1985-457 (to J. D. Falkner, July 30, 1985).
- A city may use municipal funds to advertise and promote retail trade within its corporate limits and police jurisdiction. **Note:** Such services must be bid unless they fall into one of the exceptions in Section 41-16-61, Code of Alabama 1975. AGO 1986-374.
- A city may construct a building to honor the heritage of the town and establish a board to operate the facility, provided that the structure is to be used for one of the purposes enumerated in Section 11-47-16, Code of Alabama 1975. AGO 1987-060.
- A city may establish a program of giving cash awards to city employees for recommendations which result in savings to the city without violating Section 68, Constitution of Alabama, 1901, if the payments are for prospective services to be rendered. AGO 1987-083.
- A municipality may appropriate funds to purchase a park in the police jurisdiction. AGO 1991-201.
- A county may maintain driveway bridges and install pipe on the street right of way, if necessary for the convenience of the public. AGO 1991-251.
- A municipality may use its employees and equipment on private property to remove a hazard which affects the general public or to remove a public nuisance. The cost of removing the hazard is to be assessed against the property owner unless the problem was created by the municipality. AGO 1991-097 and AGO 1991-098.
- Under the facts presented, it appears that the municipality would have the authority to make improvements to leased property. AGO 1990-157.
- A municipality may appropriate funds to its industrial development board. AGO 1990-174.
- As part of its regular road maintenance, a county may routinely clean drainage areas located on private property if the county has an easement on the property. AGO 1990-317.
- A municipality may donate funds and property to the State Department of Veterans Affairs for the purpose of building a nursing home. AGO 1992-177.
- A municipality may appropriate funds to its medical clinic board and the county hospital association to purchase equipment which will be sold or leased to a doctor. AGO 1992-286.
- A municipality may contract with a private school to expend municipal funds in return for the right to use the school's facilities for municipal purposes. AGO 1992-413.
- Pursuant to Section 11-47-19, Code of Alabama 1975, a municipality may hold a public picnic and expend municipal funds for food, entertainment, supplies, reimbursement for travel in connection with picking up food and supplies and for remote broadcasts by local radio station to promote the event. AGO 1993-013.
- A municipality may, by appropriate resolution of its governing body, transfer and convey without consideration to a hospital authority organized under Section 22-21-310, Code of Alabama 1975, a parcel of land large enough to construct suitable office facilities for lease to physicians. AGO 1993-138.
- A municipality may contract with a domestic violence agency, provided the organization provides sufficient services to the citizens of the municipality as adequate consideration for the amount of money the city appropriates or expends under the contract. AGO 1993-190.
- A municipality should make a reasonable effort to sell unneeded dirt from an excavation project. If it cannot sell the dirt, the city may provide the dirt to its citizens at no cost upon certification by a knowledgeable party, such as the city engineer, that this is the most economical and beneficial way of disposing the dirt. City equipment and labor can be used to load the dirt. AGO 1993-299. **Note:** City officials should exercise caution in applying this opinion to their own situations.
- A city may appropriate public funds to aid in the maintenance and operation of ambulance services organized pursuant to Section 11-87-2, Code of Alabama 1975. AGO 1994-004.
- A city has the authority to expend funds for educational purposes. Any funds paid to the county board of education must be made by appropriation and not as tuition for individual students. AGO 1994-016.

- Whether a person can be paid in a lump sum pursuant to a contract with a municipality is a question of fact which must be resolved by the parties involved. AGO 1994-055.
- The city council may expend public funds for membership dues in professional organizations related to their public duties and may pay the actual expenses incurred by councilmembers in attending official functions of those organizations. AGO 1994-060.
- A municipality may lease a trencher and backhoe to private citizens only where the following conditions are met: (1) The service or property must not be available in the area through private enterprise; (2) The equipment can be leased only when not needed by the city; (3) The amount paid to the city must be comparable to what it would cost to rent the equipment from private sources; (4) The lease agreement should mandate municipal approval of operators of the machinery in order to assure that only qualified persons be allowed to operate it; and (5) Town employees can only be allowed to operate the machinery when not on duty at their municipal jobs. AGO 1994-134.
- A city may go upon private property, with permission of the owners or by obtaining an easement and where the drainage problem was not caused by the property owner, expend public funds to repair or maintain portions of the municipal drainage system which are on the property. AGO 1994-154.
- A city may appropriate funds to a county health department. In certain instances, cities may contract with nonprofit organizations to provide services. AGO 1994-168.
- While a city may pay dues for its officers to belong to organizations, the purposes of which are to increase or maintain the professional abilities of their members, the chamber of commerce is a civic organization and cities do not have the authority to pay dues to the chamber for the mayor and councilmembers. AGO 1994-220.
- A county commission may perform work on private property to correct a health and erosion problem caused by the county incorrectly installing a culvert. AGO 1994-221.
- A county commission may, in its discretion, purchase and maintain automobiles for members of the commission to use in the performance of their official duties and permit home garaging of the vehicles. AGO 1994-243.
- Provided that a gasoline credit card is issued without a fee and the bid law is complied with, a city may purchase gasoline with a credit card. AGO 1994-263.
- Under the facts of this opinion, a city may work on private property where damage to the property resulted from municipal construction work. AGO 1995-018.
- While a city may donate funds to public schools that its residents attend, expenditure of funds cannot be left up to a board created by the municipality. AGO 1995-021.
- A city may install culverts on rights of way to allow property owners access to their property and may seek reimbursement of the costs from the property owners. AGO 1995-026.
- An incorporated water board may provide ditching services to water customers on private property and charge a fair compensation. The board may also rent its equipment to another board for fair compensation. AGO 1995-041.
- Pursuant to a contract, a city may furnish materials or cash to a private developer in exchange for a drainage easement. AGO 1995-078.
- A county commission may appropriate funds to a private organization as long as the funds are used for a public purpose. A contract would ensure proper use of the funds. The private organization would not be subject to the bid law. AGO 1995-112.
- A municipal utility board set up under Section 11-50-13, Code of Alabama 1975, may contribute surplus funds to a county hospital board. AGO 1995-143.
- A city may donate surplus police vehicles to a public junior college for use as security vehicles if town residents attend the college. AGO 1995-144.
- A municipal council may authorize the police chief to escort local school organizations, even if this requires travel outside the police jurisdiction. AGO 1995-148.
- Except for state-appropriated funds designated for salaries, local boards of education may transfer funds between budgeted line items up to 40 percent of the amount appropriated for each line item. AGO 1995-194.
- A city may convey public property to a nonprofit corporation if there are benefits flowing to both parties which promote a public purpose. AGO 1995-204.

- Conveyances of public property to a private corporation at no cost where there is no public purpose, violate Section 94, Constitution of Alabama, 1901. AGO 1995-281.
- A county commission may transfer real property to a nonprofit corporation if the commission determines the transfer serves a public purpose. AGO 1995-299.
- A city may appropriate funds to a county board of education which provides public school facilities and teachers to educate children of the municipality. AGO 1995-320.
- Separately incorporated gas districts may provide new customers with gas water heaters. AGO 1995-333.
- A municipal utilities department cannot give away appliances nor provide discounts as customer incentives without violating Section 94, Constitution of Alabama, 1901. AGO 1995-259.
- A city may haul gravel for its citizens if there is class legislation allowing the work and providing for reimbursement to the city for labor, materials and equipment used, or if the property in question creates a public health or safety problem. AGO 1996-087.
- State agencies may purchase equipment such as refrigerators, microwave ovens, ice makers and coffee makers for the use of their employees. AGO 1996-092.
- A private driveway is not considered a public road simply because school buses and mail carriers use it. The driveways must be dedicated to public use, accepted by a public entity with authority to accept dedications, and convey some benefit to the public entity before the entity can maintain it. AGO 1996-214.
- A county commission may authorize the sheriff to spend funds to establish a disaster relief team which will respond to areas declared disaster areas throughout Alabama. AGO 1996-186.
- An industrial development board may only spend funds within the parameters established by statute. After determining that board obligations are met, the board may, under Section 11-54-93, Code of Alabama 1975, appropriate unneeded funds to the municipality to purchase signs and for other nonindustrial projects. AGO 1996-248.
- A separately incorporated water board may appropriate funds to a nonprofit corporation to be used for activities consistent with the purposes of the board. AGO 1996-279; AGO 1996-280.
- A municipality may lease idle equipment only under strict guidelines. AGO 1996-282.
- A municipality may appropriate funds to a nonprofit corporation which will oppose expansion of a landfill, if the council determines the expenditure is in the public interest. However, the better practice would be for the municipality to contract with the organization for these services. AGO 1996-281.
- Employees of a county may not load chert onto private vehicles. AGO 1997-001.
- A county may provide office space to a private, non-profit corporation if the county determines that the corporation serves a public purpose. AGO 1997-097. **Note:** The League recommends entering into this arrangement only pursuant to a valid contract.
- A municipality may provide office space to a private, nonprofit corporation if the governing body determines the corporation serves a public purpose. AGO 1997-099. **Note:** The League recommends entering into this arrangement only pursuant to a valid contract.
- Local boards of education may hire lobbyists and enter into cooperative agreements for this purpose. AGO 1997-288.
- A county may spend public funds to prosecute a civil suit only if there is a justiciable controversy involving a proper corporate interest of the county. AGO 1997-137.
- A private group may conduct a nonbinding referendum for a municipality. The municipality may not participate other than as private citizens. The council cannot agree to be bound by the referendum. AGO 1997-257.
- A municipality may pave a driveway adjacent to a municipal ball park only if the property is dedicated to the municipality or the municipality obtains an easement. AGO 1997-145.
- Pursuant to an agreement between a county commission and the Alabama Department of Agriculture and Industries, a county commission may appropriate grant money obtained from the department for any purpose that furthers and promotes agriculture in the county. AGO 1997-268.

- A county commission may donate money or property to a municipal industrial development board within the county to attract industry. A municipality or county has no control over the expenditure of funds by an industrial development board. AGO 1998-094.
- A county commission may purchase and renovate a building and lease the building to the Alabama Veterans Museum and Archive if the commission determines there is a public purpose for this and that the public purpose is served. AGO 1998-219.
- A local act authorizing a county to work on private property provides that these services are to be made available only when the citizens cannot obtain the services from private enterprise at a reasonable cost. AGO 1998-150.
- A municipality may convey public property to a nonprofit corporation if there are benefits flowing to both parties and a public purpose is served. AGO 1998-111.
- A municipality may make appropriations to a county nonprofit cattlemen's association to assist in the construction of a convention and exposition center if the council determines that the appropriation is for a public purpose. AGO 1999-052. **Note:** The League recommends using a contract for services.
- The Morgan County Commission may enter into an agreement with the Princess Theater where the commission agrees to give the theater money in return for the theater making cultural facilities available to the public. AGO 1998-142.
- Section 11-80-4.1 of the Code authorizes municipalities to appropriate funds to a community action agency such as the 11th Area Community Action. AGO 1998-129.
- A municipality may appropriate the proceeds of a one-cent municipal sales tax to a county school attended by residents of the municipality. AGO 1999-155.
- A municipality may donate or lend municipal funds to its airport authority created pursuant to Section 4-3-40 of the Code to construct a speculative building in the industrial park. The municipality may also borrow funds pursuant to Section 4-3-80 of the Code for this purpose. AGO 1999-156.
- A municipality may enter into a lease agreement with a youth center where the youth center will provide services to the youth of the municipality in return for space in a municipal building, if the council determines the services constitute adequate consideration. AGO 1999-093.
- If a municipal council determines that a public purpose is served, the municipality may appropriate funds to a local children's museum for the renovation of a building located on property leased by the municipality. The municipality may then sublease the building to the museum for a nominal consideration. The Attorney General recommends a written contract permitting this. AGO 2000-071.
- If a municipality determines the construction of an emergency sand berm on a private beach serves a public purpose, the municipality may contribute public funds to pay part of the cost. AGO 1999-152.
- Pursuant to Section 38-1-6 of the Code, a municipality may appropriate funds to an incorporated senior citizens service, and may allow the organization to use a municipal building and may provide utilities to the organization. AGO 1999-227.
- The city of Decatur, through its personnel board, may adopt a personnel policy that provides for the reimbursement of travel expenses for select candidates for employment with the city and for reimbursement of moving expenses for select new employees, subject to restrictions to prevent abuse and promote fiscal responsibility. AGO 1999-278.
- If a city determines that stocking a lake owned by the Alabama Power Company will serve a "public purpose," i.e., the promotion of tourism, the city may expend municipal funds for this purpose. The better practice would be for the city to contract with Alabama Power Company regarding the use of the lake. AGO 2000-121
- The Association of Retarded Citizens may pay the Winston County Commission the cost of repairing a private driveway so that it is accessible for school buses transporting handicapped students. AGO 2000-235.
- Whether a city may expend public funds for food and drinks at certain events is a factual determination. If the city council determines that an event serves a public purpose, public funds may be expended by inaugural events, banquets, picnics and other such functions. AGO 2003-049.
- If a city determines that cooperation with a private subdivision and any third party contractors in an effort to remove siltation from a private lake would serve a public purpose, a city may contribute funds or in-kind services to the siltation removal effort without violating Section 94, Constitution of Alabama, 1901. AGO 2002-211.
- A city may lease municipal property at no charge if a public purpose is served. The city council must determine if a



public purpose is to be served by the corporation in leasing the municipal property. AGO 2003-083.

- The cost of private cellular telephones used by election officials is not included within the definition of expenses reimbursable by the state but a county may pay these costs from county funds if the county finds that these are reasonable costs of conducting the election. AGO 2004-058.
- A municipality may contract with the chamber of commerce to collect contributions on behalf of the chamber in exchange for services that benefit the city and the public. Further, a city may collect contributions and donate those contributions to an industrial development board so long as the board uses the funds for purposes that are consistent with the statutory authority granted to the board. AGO 2004-067.
- If a city determines that an expenditure of municipal funds serves a public purpose, the city may expend municipal funds for the benefit of a nonprofit corporation formed for the purpose of developing, promoting, and protecting the property rights of city citizens, businesses, and other property owners. AGO 2004-147.
- If a city council determines that expending funds for the acquisition of a monument to memorialize the former existence of a public educational institution serves a public purpose, such expenditure is consistent with Section 94, as amended by Amendment 558, of the Constitution of Alabama, 1901. AGO 2005-021.
- A town may expend public funds to pay for debris and tree removal following a hurricane, even if it involves work on private property, if the town council makes a determination that the work done served a legitimate public purpose. Absent such a finding, the council may assess individual property owners for any cleanup and tree removal performed where the debris constituted a health hazard and where the owners were unable to secure a private source to perform the cleanup service. AGO 2005-029.
- The determination of whether a city may expend funds to improve drainage on private property must be made by the city governing body based on whether the improvement will serve a public purpose, and the city must have an easement on the land. A public purpose is served if the expenditure confers a direct public benefit of a reasonably general character, and this must be determined by the governing body on a case-by-case basis. AGO 2005-073.
- A County Board of Education (“Board”) may enter into contractual arrangements with a City (“City”) as long as the school board receives fair and adequate consideration for these transactions and the Board determines that its actions serve a public purpose. The City may enter into the contractual arrangements with the Board as long as any funds expended by the City serve a public purpose and the arrangement does not bind future councils. AGO 2008-101.
- A Health Care Authority (“Authority”) can contract with the governmental entity responsible for maintaining the public road between a Hospital and a Medical Park to widen the road if the Authority’s board of directors determines the improvement would accomplish a purpose of the Authority. The Authority can donate property to be used as the location of a senior citizens facility to the City if the property does not constitute a material part of the assets of the Authority and the disposition will not significantly reduce or impair the level of health care services. AGO 2008-115.
- Under Section 94.01 of the Alabama Constitution, a town may borrow money and grant
- public funds to a private corporation or other private entity to aid the corporation with the expense of installing a center turn lane for the purpose of promoting economic development in the town, if the town determines a public purpose will be served. Local Constitutional Amendments may also authorize the expenditure of funds by the town. If public funds are transferred to a private entity, such funds are not subject to Alabama’s laws regarding competitive bidding or public works bidding. AGO 2009-086.
- A city may transfer property to an Electrical Cooperative for less than adequate consideration if the city determines that the transfer serves a public purpose. AGO 2010-102.
- A county commission may appropriate funds to a local university, which is a state
- institution of higher learning, to be utilized in support of its football program, if the commission determines that the appropriation serves to promote economic development within the county. AGO 2010-010.
- A municipality, through the operation of its city gas and electric utility department, may
- institute a voluntary donation program whereby the city helps meet local needs by allowing utility customers the option of donating money through the bill payment process and the city may use these donations to provide funds to the utility department to assist low-income families having difficulty paying their utility bills if the governing body determines that a public purpose is served by such action. AGO 2010-014.

- A municipality, for less than adequate consideration, may convey real property owned by
- the city to the industrial development board for the board's use for the promotion of industry within the city, if the city council complies with the conditions of Section 94.01 (Amendment 772) of the Alabama Constitution, including a determination that a public purpose is served by the transfer. AGO 2011-051.
- To determine whether a public purpose is served, the governing body must look to the
- statutes setting forth the powers of the governmental entity. If within such powers, there exists the authority to promote the action at issue, then the governing body need only decide whether the appropriation will help accomplish that purpose. AGO 2012-002.
- The Baldwin County Commission may, in its discretion, pay the legal costs of defending county commissioners and employees during a pending investigation and in litigation if the county commission determines that a proper corporate interest is involved and the actions do not involve a willful or wanton personal tort or a criminal offense. AGO 2012-029.
- A city may pay to have buildings demolished on land owned by a nonprofit entity in exchange for a land swap if the city determines that there are benefits flowing to both parties and a public purpose is served. Such an arrangement should be memorialized in a contract or some other written agreement. AGO 2012-041.
- The Choctaw County Commission ("Commission") may improve a private road if the Commission determines that a public purpose is served. The Commission or the volunteer fire department association should obtain an easement from the private property owner(s) before making any improvements. AGO 2013-033.
- If the Town of Beatrice determines that a public purpose is served by the relocation of unneeded light fixtures, then the town should enter into a contract to memorialize the agreement. Conversely, if the town determines there are mutual benefits to both parties and consideration on both sides regarding the relocation of unneeded light fixtures, the Town of Beatrice should enter into a commercial contract with the charitable foundation. AGO 2013-035.
- The Calhoun County Water Authority may lawfully place a water line upon private property at the expense of the property owner for the purpose of installing a fire hydrant and monitoring the system. AGO 2013-055.
- A town may lease surplus real property to a non-employee, or to an employee who does not participate in the discussion of the consideration of the lease by the town council, for rent in an amount determined by the council to be adequate consideration. AGO 2013-067. The City of Eufaula may enter into an agreement with the U.S. Army Corps of Engineers ("Corps") to provide trash removal, janitorial services, mowing, landscaping, nominal maintenance, and surveillance for a park and campground that is owned by the Corps and is located in the city's police jurisdiction. AGO 2014-001.
- The Conecuh County Commission ("Commission") may appropriate funds to the Town of Repton to complete a highway beautification project, purchase land for a farmer's market, and complete a welcome center for the purpose of promoting economic development if the Commission complies with the conditions of Section 94.01(c) of the Recompiled Constitution of Alabama. AGO 2014-038.
- The City of Tuskegee may appropriate funds to a private property owner where damage to the property resulted from city work on a drainage easement. AGO 2014-062.
- The City of Roanoke may donate funds to the Rotary Club of Roanoke, a nonprofit organization, for the purpose of assisting with "The Theatre Project." AGO 2014-094.
- The City of Dadeville ("City") may convey property and improvements to the Community Action Committee, Inc. of Chambers, Tallapoosa, Coosa ("Community Action Committee") for less than adequate consideration, only if the City determines that a public purpose is served by the benefits provided to the general public by the Community Action Committee and the property is not needed by the City for municipal purposes. AGO 2016-016.
- The City of Wetumpka is authorized to lease property for a maximum term of 99 years, pursuant to Section 11-47-21 of the Code of Alabama. The city is authorized to enter into a long-term lease with the Elmore County Health Care Authority for less than adequate consideration and allow the Authority to sublease the property to a private entity for use as a medical clinic and medical office complex. AGO 2016-022.
- The City of Daphne may guarantee the mortgage of a nonprofit organization to support the construction of soccer fields for the purpose of promoting economic development if the city council complies with the conditions of Section 94.01(c) of Article IV or Section 3 of the Local Amendments for Baldwin County of the Recompiled Constitution of Alabama. AGO 2017-006.

- City officials and employees can expend municipal funds to solicit donations for a charity benefitting a park if the donations are voluntary, the donor knows that the charity is the recipient, and the town council determines that a public purpose is served. (AGO Note: This question should be submitted to the Ethics Commission.) AGO 2017-007.
- The municipality may reimburse a public utility for the costs of relocating utility lines for the purpose of promoting economic development if the city council complies with the conditions of Section 94.01(c) of Article IV of the Recompiled Constitution of Alabama. In the alternative, the municipality may donate funds to a downtown redevelopment authority which may use the funds to reimburse a public utility for the costs of relocating utility lines. AGO 2017-025.
- A city may engage in a fundraising campaign for charities and assign employees to work on such campaign, if the donations are voluntary, the donor knows that the charity is the recipient, and the city council determines that the campaign is being conducted for a public purpose consistent with its statutory authority. The campaign may solicit donations from employees and include donation of goods and services. AGO 2019-027.
- A city may engage in fundraising activities for disaster relief both in and outside the state if the council determines that a public purpose is served. A city official can lend his or her name and title to an event hosted by a private charity only if the event is official business and the council determines that a public purpose is served. (AGO Note: This question should be submitted to the Ethics Commission.) AGO 2019-027.
- A city may hold a charity golf tournament only if the council determines that a public purpose is served, and donations are solicited for charities for which a statutory basis has been identified. (AGO Note: This question should be submitted to the Ethics Commission.) AGO 2019-027.
- The purchase of law enforcement equipment with forfeiture proceeds does not violate Section 94 of Article IV of the Recompiled Constitution of Alabama. The use of forfeiture proceeds to benefit private persons or entities does not violate Section 94 if a valid law enforcement purpose is served. AGO 2019-029.
- The City of Brewton may expend public funds and allow its employees, agents, or contractors to enter private property with the owner's consent to remove any unsightly and damaged trees if the city council determines that the work promotes economic and industrial development for the city and the council complies with the conditions of Section 94.01(c) of the Recompiled Constitution of Alabama. AGO 2019-040.

### **Court Decisions Denying Use of Public Funds**

In *Garland v. Board of Revenue of Montgomery County*, *supra*, the court condemned a plan to construct a bridge to be used, in part, as a railroad bridge.

In *Sou. Ry. Co. v. Hartshorne*, 50 So. 139 (Ala. 1909), the court held that a city cannot purchase land with public funds and convey it to a railroad company, in consideration of which the company will construct a depot on the land.

A county may not contribute money from its general fund to a local bar association for the establishment of a library because of the provisions of Section 94. *Rogers v. White*, 70 So. 994 (Ala. 1916).

In *Swindle v. State*, 143 So. 198 (Ala. 1932), a county should not be compelled by mandamus to pay out of its general fund to the wife and children of a convict hired to the state where the county received no earnings from the employment.

The court decided that an appropriation to a radio station was invalid since it found that a contract between the county and the broadcasting company was made to induce the company to establish the station. *Stone v. Mobile Broadcasting Corp.*, 136 So. 727 (Ala. 1931).

### **Attorney General's Opinions Denying Use of Public Funds**

The Attorney General has ruled that public funds may **not** be spent for the following purposes:

- A county may not appropriate public funds for the purpose of locating and promoting a canning plant or factory in the county. Quarterly Reports of the Attorney General, October-December 1944.
- A county may not fund an abattoir. Reports of the Attorney General, April-June 1943.
- A county may not contribute public money to a medical scholarship fund. AGO 1979-041 (to Charles V. Ford, January 23, 1979).
- A county or municipality is not authorized to perform work on private roads. AGO 1979-047 (to Tom Young, January 19, 1979).
- A city may not appropriate funds for a private ball club. AGO to D. B. Smith, September 14, 1977.
- Section 94 prohibits a municipality from digging graves for its residents. AGO to Nelson Arnold, October 24, 1973.

- A municipality cannot expend public funds for street lighting of private property even where the property was used for public parking. AGO to L. H. Gunter, July 9, 1973.
- Cities cannot contribute to private hospitals. AGO to Mayor of Headland, January 31, 1953.
- Cities cannot lend public funds to a private civic club. AGO to Clerk of Trafford, March 17, 1950.
- Cities cannot contribute to a community center unless the city has control of the project. AGO to Clerk of Oak Hill, April 28, 1953.
- Municipalities have no statutory authority to become members of the chamber of commerce. **Note:** Municipalities may enter into contracts with the chamber of commerce to appropriate funds to the chamber in return for services provided by the chamber of commerce to the city. AGO to James K. Haygood, Jr., June 13, 1969; Oris E. Davis, January 11, 1973; and William M. Bouldin, August 2, 1977.
- Cities may not donate funds to volunteer ambulance and rescue squads. AGO to Joe Stringer, March 20, 1970.
- A city cannot do grade work for a church beyond the street right of way. AGO to George Sizemore, March 19, 1971.
- A city cannot pay for the repair of a building owned by the home demonstration club. AGO to B. A. Rogers, April 12, 1971.
- A city cannot make unrestricted appropriations to its medical clinic board. AGO to Oliver E. Young, Jr., May 24, 1973.
- A municipal governing body may not spend public money for a weather wire to be located in and used by a local radio station. AGO to W. T. Lockard, March 13, 1975.
- A city cannot donate to the band boosters club. AGO to C. H. Roberts, December 28, 1973.
- A city cannot donate to the Y.M.C.A. AGO to William H. Key, August 29, 1974.
- A city cannot donate to the Red Cross. AGO to Fred Purdy, October 20, 1967.
- Cities cannot spend public money for holiday greeting cards. AGO to Ralph P. Eagerton, November 8, 1967.
- A city cannot contribute to a Girl Scout reunion. AGO to Bill Brigham, February 25, 1977.
- A city cannot appropriate funds to a private museum. AGO to Ed Porter, May 31, 1977.
- Municipalities cannot give their employees Christmas bonuses. AGO to Hoover Moore, April 16, 1974.
- Cities cannot pay expenses of official's wives at conventions or pay civic club dues for officials or employees. A city cannot furnish a telephone at an official's home or business. AGO to John M. Anthony, Jr., December 2, 1974.
- Cities cannot do work in private cemeteries. AGO 1979-235 (to Fred W. Purdy, June 29, 1979).
- Sections 68 and 281 of the Alabama Constitution, 1901, prohibit payment to elected officials for lost time from their regular jobs while attending court hearings involving city business. AGO 1980-318 (to Hon. Clarence F. Rhea, April 8, 1980).
- A municipality cannot purchase coffee for its employees or visitors to city hall. AGO 1981-334 (to Hon. Larry H. Barton, April 10, 1981).
- A municipality may not buy ads in a high school annual nor make donations to the band booster's club. AGO 1981-379 (to Ms. Rosa H. St. John, May 11, 1981).
- A municipality may not spend public funds to hold an advisory referendum. AGO 1982-198 (to Hon. George A. Monk, February 16, 1982).
- A municipality may not use its equipment and labor to prepare a site for the expansion of a private plant. AGO 1983-228 (to Hon. Ted Boyette, March 14, 1983).
- A county may not sell pipe to private individuals at the cost of the pipe. AGO 1984-028 (to Judge F. R. Albritton, Jr., October 24, 1983). **Note:** The same opinion would apply to municipalities.
- A municipality may not purchase land in order to develop a commercial enterprise. AGO 1987-191.
- Section 94, Constitution of Alabama, 1901, prohibits a municipality from contributing funds to a private, non-profit organization, even if it serves the public good. AGO 1988-030.
- Municipalities may not appropriate funds to individual firefighters who are not organized into a volunteer fire department. AGO 1991-157.



- Municipalities may not give potted plants to private businesses located in the municipality. AGO 1991-294.
- A county commission may not provide free office space to the local chapter of the American Red Cross. AGO 1991-116.
- Individual city councilmembers may not supervise and control municipal departments. The city council must approve expenditures of municipal funds. AGO 1991-147.
- Section 94, Alabama Constitution, 1901, prohibits a county commission from granting public money to private, nonprofit corporations, even though such corporations may serve the public good. AGO 1990-139.
- A county governing body cannot donate funds to the National Right to Vote Celebration, Inc. While the county may contract for the performance of services, the services must be those that the county could legally provide for its citizens. AGO 1990-206.
- A city may not contribute funds to a privately sponsored baseball league but may contract with the league to provide a baseball program and tournament for the city. AGO 1990-227.
- A county may not perform work on private roads or property. AGO 1990-257.
- Counties may not work on private property in the absence of either legislation permitting the work in question or a request from the state board of health. AGO 1991-333.
- A city may not lend money to an industrial development board for the purpose of housing a business that does not fit the definition of a project into which the industrial development board may enter. AGO 1990-396.
- A city may use CDBG funds but not money from the municipal general fund, to install sewer lines on private property. AGO 1991-406.
- A county may not maintain private driveways used by county school buses. AGO 1992-172.
- A city may not give property to a private, nonprofit organization but may contract with the organization for services to be provided to the city in exchange for the property, as long as the city itself has the authority to provide the services. AGO 1992-231.
- A local act of the Legislature authorizing a county to perform work on private property without compensation would violate Section 94, Constitution of Alabama, 1901. AGO 1993-139.
- A county has no authority to perform work at no cost on a private ditch owned by a church. The county may not sell pipe to the church unless there is a need to dispose of it as surplus property. AGO 1993-145.
- County and city boards of education may not spend public funds for advertisements to continue or renew an existing ad valorem tax. AGO 1993-234.
- Public funds may not be expended for the purchase of plaques or framed certificates for employees. AGO 1993-294. A city cannot pay for paving around a building leased by the town from the county and presently used as a funeral home. AGO 1993-311.
- A county cannot donate property to a nonprofit corporation. It must sell the property to the organization for the fair market value of the property. If the organization contracts to perform services for the county which the county itself may legally perform, then a portion of the consideration for the property may include repairs and renovations to the property, which will benefit the county and its citizens and services furnished by the organization to the citizens of the county. AGO 1993-325.
- An unincorporated municipal utility board is an agency of the city which created it and is bound by the same restrictions relating to the expenditure of public funds as the city itself. AGO 1994-242.
- A county may not contribute public funds to a private medical clinic board. AGO 1994-256.
- A city may not perform work on that portion of water and sewer lines that are located on private property. AGO 1995-029.
- A city may not give property to a private, nonprofit organization but may contract with the organization for services to be provided to the city in exchange for the property, as long as the city itself has the authority to provide the services. AGO 1992-231.
- Where a local act establishing a municipal personnel system does not authorize the city to expend funds to pay an expense allowance for personnel board members, the city has no authority to do so. AGO 1995-048.

- A municipal electric distribution system cannot give electric heaters to customers as an incentive for them to remain with the system. AGO 1995-115.
- A municipal utilities department cannot give away appliances nor provide discounts as customer incentives without violating Section 94, Constitution of Alabama, 1901. AGO 1995-259.
- A county may not give property to a manufacturing company because the appropriation does not serve a public purpose. AGO 1995-167.
- A municipality may not pave church parking lots. AGO 1996-037.
- A city may not spend funds to assist a church in hosting a convention. AGO 1996-103.
- A city may not provide free utility taps for Habitat for Humanity projects. AGO 1996-233.
- A private driveway is not considered a public road simply because school buses and mail carriers use it. The driveway must be dedicated to public use, accepted by a public entity with authority to accept dedications and convey some benefit to the public entity before the entity can maintain it. AGO 1996-214.
- A municipality may not use municipal equipment or employees to dig graves in a cemetery not owned by the municipality even if full reimbursement is made. A municipality may, under certain guidelines, lease idle municipal equipment to local citizens for the digging of graves. These guidelines are:
  1. The service must not be available in the area through private enterprise;
  2. The equipment can be leased by the municipality only when it is not needed by the municipality;
  3. The amount paid to the municipality must be comparable to the rental cost of the equipment through private sources;
  4. The lease contract must mandate municipal approval of operators of the machinery in order to assure that only qualified persons are allowed to operate the machinery; and
  5. Town employees may operate the equipment only when not on duty in their municipal jobs. AGO 1997-061.
- A municipality may not purchase an ad in a souvenir booklet published by a political organization if the ad does not serve a public purpose and the booklet is not a recognized medium of advertising. AGO 1997-220.
- A municipality may not, during normal working hours, use city equipment and employees to open and close graves, even where there is full reimbursement. The municipality may, however, lease idle equipment under certain guidelines. AGO 1998-130.
- A gas district organized pursuant to Sections 11-50-390, et seq., Code of Alabama 1975, may not purchase gas generators and equipment for a privately owned radio station to broadcast emergency and weather bulletins when electrical service is interrupted. AGO 1998-187.
- A county department of human resources does not have the authority to buy gifts of appreciation, such as flowers, cards and awards. AGO 1999-112.
- A municipal utilities board may not pay one-half the cost of a water storage tank that will be placed on private property and used for the exclusive benefit of a private corporation. It may, however, take steps to provide water service to the customer. AGO 2000-060.
- A water and fire protection authority organized under Sections 11-88-1 through 11-88-21, Code of Alabama 1975, does not have the power to donate funds to an elementary school for restoration of its playground. AGO 1999-215.
- An incorporated board may not appropriate funds to a nonprofit organization if the appropriation exceeds the board's corporate powers. AGO 1999-129.
- Section 94 of the Alabama Constitution prohibits a municipality from providing lighting for a private church. AGO 1999-249.
- Courts in the state of Alabama have held that, as a matter of law, an increase in tax revenue, or the creation of tax revenues does not serve a public purpose. AGO 2001-187.
- A town may not perform work on or repair a water or sewer line that is on private property unless there is legislation that permits such work to be done, the damage constitutes a health hazard, the cost is assessed against the private property owner or the town caused the damage. AGO 2001-188.

- Municipal funds may not be expended to provide cake and coffee at monthly meetings of city employees with birthdays in the respective month, even if the work done at these meetings is clearly related to the achievement of one or more municipal purposes. AGO 2002-049.
- The appropriation of city funds for the purpose of awarding college scholarships is neither expressly nor impliedly authorized by the state, nor is the authority essential to the operation of the City of Anniston. The City cannot make appropriations directly or indirectly to the Anniston City Schools Foundation for the purpose of awarding college scholarships to graduates of Anniston High School unless the voters in Anniston vote to levy a special tax for a scholarship program and the city council determines such a program would serve a public purpose. AGO 2007-074.
- Public funds cannot be used to pay legal fees incurred by an elected official in the defense of an election. Since a candidate who is an incumbent is not acting in his official capacity when he runs for re-election, a city does not have a proper interest in an election contest between the incumbent and his opponent. AGO 2008-020.
- Absent statutory authority to promote the general welfare and development of citizens who are mentally and developmentally disabled, the Geneva County Commission may not use and appropriate county funds to the Geneva County Association for Retarded Citizens (“Association” or “ARC”) for the payment of fire and hazard insurance on a building owned by the Association. AGO 2012-044.
- The City of Montgomery may not pay compensation to a private citizen that is not for a public purpose authorized by a local act or other law. AGO 2013-005.
- The Town of Sylvan Springs (“Town”) may not accept a gift of undeveloped lots from a limited liability company in exchange for an agreement from the Town to complete and repair roads within a subdivision developed by the limited liability company where the Town intends to sell the undeveloped lots to offset the cost to complete and repair the roads. AGO 2015-056.
- An electric utility board established under Section 11-50-490, et seq., of the Code of Alabama may not enter into loan agreements with customers for the purchase of a new heating, ventilation, and air conditioning system without violating Section 94 of Article IV of the Recompiled Constitution of Alabama. AGO 2018-035.
- The City of Irondale may not expend municipal funds or lend its credit for the repair and/or replacement of private roads and bridges in a private gated community located in the city. AGO 2019-034.

### **Summary**

Traditionally Section 94 of the Alabama Constitution has been interpreted to specifically prohibit municipalities from giving away their property or funds to individuals and private corporations. However, the Alabama Supreme Court has held that municipalities may give away anything in aid or value to another person, corporation or association if the municipal governing body determines that the expenditure or appropriation will serve a public purpose. Ratified in 2004, Amendment 772, Alabama Constitution, 1901 (Also cited as Section 94.01) grants specific authority to counties and municipalities to lend credit to or grant public funds and things of value to any individual, firm, corporation, or other business entity, public or private, for the purpose of promoting the economic or industrial development of the county or municipality, after a properly noticed public meeting.

Further, the League recommends creating a contractual relationship if a municipality plans to appropriate money or gift property to a non-public agency or association.

The Cater and Wallace acts have been upheld by the courts but we recommend that the Attorney General’s approval be obtained before donating to a corporation organized under these Acts. The decisions of the court and of the attorney general are liberal in construing this section but nevertheless we suggest that a ruling be obtained in each appropriation unless there is specific existing authority.