



Restrictions on Municipal Expenditures

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Restrictions on Municipal Expenditures

- Bid Law
 - Regular
 - Public Works
- Section 94
- Section 94.01
- Gasoline Taxes
- Capital Improvement Fund
- Corrections Fund



Is the Expenditure Legal?



- Are Funds Restricted?
- Bid Law Apply?
- Is there a Public Purpose?
- Can You Comingle Funds?
- Properly Approved?
 - Notice
 - Correct Entity Approval
 - Contract Needed?
 - Resolution Needed - Bids?

Purposes of Competitive Bidding



- Prevent Favoritism
- Secure Goods or Services at the Lowest Price
- Encourage Free Competition
- Protect Taxpayer (Public) Money

Bid Laws – General Competitive Bidding



Contracts for \$15,000 or more

Goods or labor

Purchase or lease (inc. lease/purchase)

Used or new equipment



Bid Laws — Public Works Bidding

- Applies only to Public works projects over \$50,000
- Construction, repair, renovation, or maintenance of public facilities
 - financed in whole or in part with public funds
 - with financing that is retired with public funds
 - Examples
 - Buildings, structures, sewers, waterworks, roads, bridges, docks, underpasses, and viaducts

Process



Does the bid law apply?

Request bids

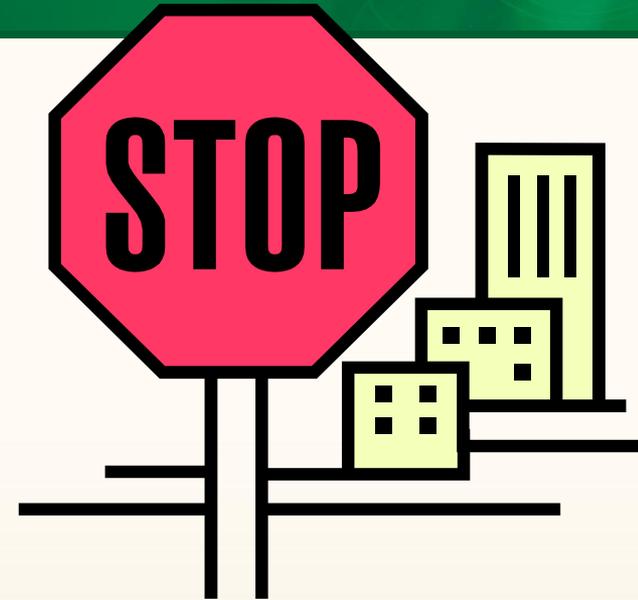
Allow time for preparation and filing

Open and total bids

Award contract to lowest responsible bidder

Performance of the contract

Section 94, Alabama Constitution, 1901



- Prohibits:
 - Lending Credit
 - Granting public money or property to aid to:
 - Any private individual, association or corporation



Purpose Behind Section 94

- Goal is to Prevent Unwise and Reckless Abuses of Power
- “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*, 87 Ala. 223, 6 So. 402 (1889), ‘any aid ... by which a pecuniary liability is incurred.’”



Slawson (Public Purpose Doctrine)

- *Slawson v. Alabama Forestry Commission*, 631 So. 2d 953 (1994).
- Court held that a public entity may give something of value to nonpublic entities and organizations if the public entity determines that the appropriation will serve a “public purpose.”
 - Public purpose is one that promotes the health, safety, morals, security, prosperity, contentment and general welfare of the community.
 - Determination is wholly within the discretion of the municipal governing body.
- 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. Attorney General’s Opinion 2003-074.

Public Purpose Doctrine



Eliminates bright-line test

Creates a confusing (and tempting) standard for municipal officials





What is a Public Purpose?

Black's Law Dictionary:

A public purpose “. . . is synonymous with governmental purpose. . . . [It] has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents with a given political division. . . .”



What is a Public Purpose?

McQuillin:

“What is a public purpose cannot be precisely defined, since it changes to meet new developments and conditions of the times.” While it does not have to serve the needs of the municipality as a whole, “Each case must be decided with reference to the object sought to be accomplished and to the degree and manner in which that object affects the public welfare.”



What is a Public Purpose?

WDW Properties v. Sumter – SC Supreme Court:

“[a]ll legislative action must serve a public rather than a private purpose”

“may serve a public purpose even though it:

1. benefits some more than others and,
2. results in profit to individuals”



What is a Public Purpose?

WDW Properties v. Sumter – SC Supreme Court (Test):

1. “The Court should *first* determine the ultimate goal or benefit to the public intended by the project.
2. *Second*, the Court should analyze whether public or private parties will be the primary beneficiaries.
3. *Third*, the speculative nature of the project must be considered.
4. *Fourth*, the Court must analyze and balance the probability that the public interest will be ultimately served and to what degree.”

Section 94 - Contracts



Can be used to benefit private entities

Must Also Benefit the Public

Must provide a service the municipality could provide on its own



Section 94.01, Alabama Constitution



Authorizes public funds for “the purpose of promoting the economic and industrial development of the county or the municipality.”

-- BUT. . . .



Section 94.01, Alabama Constitution

Municipality MUST:

Approve the proposed action at a public meeting by a resolution containing a determination by the governing body that the expenditure ***will serve a valid and sufficient public purpose***, notwithstanding any incidental benefit accruing to any private entity or entities.

AND

Section 94.01, Alabama Constitution



Municipality MUST:

At least seven days prior to the public meeting, publish notice in the newspaper having the largest circulation in the municipality, describing:

1. the proposed action,
2. a description of the public benefits, and
3. 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.

Restricted State-Distributed Funds



- Gasoline Taxes
 - Uses are limited, depending on the tax that is being distributed
 - Must maintain separate accounts
- Capital Improvement Fund
 - Maintain a special account
 - Use solely for capital improvements and the renovation of capital improvements
- Corrections Fund
 - Funds used exclusively for correctional facilities or court complexes, unless altered by local act
 - Separate account