

OFFICE OF THE ATTORNEY GENERAL



97-00061

JEFF SESSIONS
ATTORNEY GENERAL
STATE OF ALABAMA

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (334) 242-7300

December 23, 1996

Honorable Douglas C. Martinson, II
Attorney, Town of Triana
P. O. Box 2675
Huntsville, AL 35804-2675

Municipalities - Cemeteries
- Fees - Funds - Exhumation

A city may not, during normal working hours, use city equipment and city employees to dig graves in a cemetery not owned by the city, even where full reimbursement is made.

City, under certain guidelines, may lease idle municipal equipment to local citizens for the digging of graves.

Dear Mr. Martinson:

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

QUESTION

Can the Town of Triana open and close graves in a cemetery not owned by the town for a charge to the family?

FACTS, LAW AND ANALYSIS

Section 94 of the Constitution of Alabama 1901, as amended by Amendment No. 112, prohibits a city from granting money or any other thing of value in aid of a private person, corporation, or association.

This office has determined that a city may not, during normal working hours, use city equipment and city employees to dig graves in a cemetery not owned by the city, even where full reimbursement is made. Opinions to Honorable W. B. Chandler, Mayor, Town of Moundville, dated August 14, 1981, A.G. No. 81-00508, and to Honorable Nelson Arnold, Mayor, Fultondale, dated October 24, 1973.

However, it was concluded in the opinion to Mayor Chandler, supra, that a city under certain guidelines may lease idle municipal equipment to local citizens for the digging of graves. The guidelines as set out in that opinion are as follows:

- (1) The service must not be available in the area through private enterprise.
- (2) The equipment could be leased by the municipality only when not needed by the municipality.
- (3) The amount paid to the municipality should be an amount comparable to that of the rental of such equipment from private sources.
- (4) The lease contract would mandate municipal approval of operators of the machinery in order to assure that only qualified persons would be allowed to operate the machinery.
- (5) Town employees could be allowed to operate the machinery only when not on duty in their municipal job.

Honorable Douglas C. Martinson, II
Page 3

If, and only if, these guidelines are met can a municipality lease idle municipal equipment to local citizens.

CONCLUSION

A city may not, during normal working hours, use city equipment and city employees to dig graves in a cemetery not owned by the city, even where full reimbursement is made.

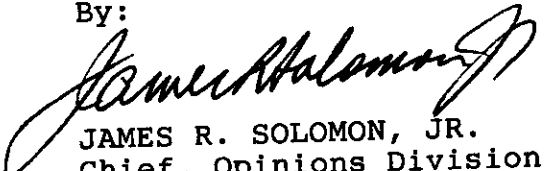
City, under certain guidelines, may lease idle municipal equipment to local citizens for the digging of graves.

I hope this sufficiently answers your question. If our office can be of further assistance, please contact James R. Solomon, Jr., of my staff.

Sincerely,

JEFF SESSIONS
Attorney General

By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

JS/LKO/cw
MD11.96/OP