

OFFICE OF THE ATTORNEY GENERAL



94-00134

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STATE OF ALABAMA

APR 20 1994

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Honorable Jerry C. Pow
Mayor
City of Brent
P. O. Box 220
Brent, AL 35034

Water and Sewage - Utility
Boards - Equipment - Private
Work

Code of Alabama 1975, § 37-1-49
is not applicable to the Util-
ities Board of the City of Brent.
The Utilities Board may rent its
trencher and back-hoe to private
citizens for a rental fee pro-
vided certain guidelines are
followed.

Dear Mayor Pow:

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

QUESTION

WHEREAS, the question has arisen
concerning the Utilities Board of the City
of Brent renting its trencher and back-hoe
to private citizens to trench. The rental
fee would include operator.

NOW THEREFORE, be it resolved by the
Utilities Board of the City of Brent,
Alabama, that an opinion of the Attorney
General of the State of Alabama be
requested on Section 37-1-49 as it
pertains to this situation.

FACTS, LAW AND ANALYSIS

The Utilities Board of the City of Brent is established under Code of Alabama 1975, § 11-50-230, et seq. (formerly Title 37, Sections 394 to 402 of Code of Alabama 1940). It is a public corporation. City of Mobile v. Cochran, 276 Ala. 530, 165 So.2d 81 (1964).

Code of Alabama 1975, § 37-1-49, mentioned in your request, concerns the duty of a utility regulated by the Public Service Commission to render adequate service and maintain its facilities in good operating condition. However, Code of Alabama 1975, § 11-50-241(b) specifically exempts a corporation formed under the provisions of § 11-50-230, et seq., from all jurisdiction and regulation by the Public Service Commission. Therefore, Code, § 37-1-49 is not applicable to the Utilities Board of the City of Brent.

Regarding the rental of the equipment by the Utilities Board to private citizens, the Attorney General is of the opinion that it is permissible. As previously stated, the Utilities Board of the City of Brent is a public corporation. As a public corporation, it is distinct and separate from the City of Brent, and it is not subject to the prohibitions of Section 94 of the Constitution of Alabama 1901, as amended. Coxe v. Water Works Board of the City of Birmingham, 288 Ala. 322, 261 So.2d 12 (1972). Section 94, as amended by Amendment No. 112, prohibits a municipality from granting money or any other thing of value in aid of a private individual, corporation or association.

Furthermore, Code, § 11-50-235(10) authorizes a corporation established under § 11-50-230, et seq., to lease its personal property.

The Attorney General concluded in an opinion to Honorable Charles D. Langford, Member of the State Senate, District No. 26, dated September 22, 1988, A.G. No. 88-00460, that a city may lease idle city equipment to do grass cutting and bushhogging on private property if strict guidelines are followed. These guidelines are:

"(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."

These guidelines should also be followed by the Utilities Board of the City of Brent when it leases equipment.

CONCLUSION

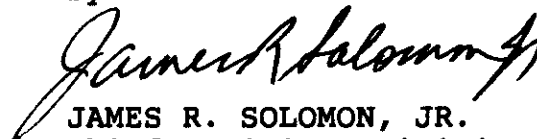
Code of Alabama 1975, § 37-1-49 is not applicable to the Utilities Board of the City of Brent. The Utilities Board may rent its trencher and back-hoe to private citizens for a rental fee provided certain guidelines are followed.

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

Sincerely,

JIMMY EVANS
Attorney General

By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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