

Attachment 1

[Baldwin County Commission Letterhead]

The Honorable Steve Marshall
Attorney General's Office
Opinions Division
PO Box 300152
Montgomery, AL 36130-0152

Dear Attorney General Marshall,

I am writing this letter on behalf of the Baldwin County Commission regarding the scope of an exemption from competitive bid laws found in § 11-89A-18, *Code of Alabama* (1975).

NATURE AND CHARACTER OF QUESTION

Governmental subdivisions in Alabama may form solid waste disposal authorities pursuant to §§ 11-89A-1 et seq., *Code of Alabama* (1975). The governmental subdivision that forms such an authority is called the “determining subdivision” and can be either a municipality or a county. § 11-89A-2(8)-(10). The authority can be jointly organized by more than one determining subdivision. *See e.g.* § 11-89A-4(b)(4), *Code of Alabama* (1975) (requiring the name of each determining subdivision to be stated on the certificate of incorporation).

Pursuant to § 11-89A-18, authorities are “exempt from the laws of the State of Alabama requiring competitive bids for any contract to be entered into by municipalities or public corporation authorized by them.” *Code of Alabama* (1975). The Supreme Court of Alabama has held that this exemption does not apply to authorities where the determining subdivision is a county. *See Beavers v. County of Walker*, 645 So.2d 1365 (Ala. 1994). (It appears that the authority in *Beavers* had only one determining subdivision, which was a county.)

The Baldwin County Commission is considering forming a solid waste disposal authority that includes a determining county and a determining municipality. As it evaluates whether or not the formation of an authority would be wise, expedient, and necessary, which determination is required by § 11-89A-3(5), *Code of Alabama* (1975), the Baldwin County Commission would benefit from knowing whether § 11-89A-18's exemption would apply to such an authority.

The Office of the Attorney General of the State of Alabama has addressed the scope of the exemption, but the undersigned is unaware of any opinion directly addressing its application to authorities jointly formed by a determining county and a determining municipality. For example, the Attorney General has opined that an authority with a county determining subdivision “may amend its certificate of incorporation to become a municipal solid waste disposal authority, therefore qualifying for the exemption from the Competitive Bid Law found in section 11-89A-18.” Opinion to Honorable Michael L. Jackson, Attorney for Solid Waste Disposal Authority of Chilton County, dated March 9, 2007, Ala. Op. Atty. Gen. No. 2007-059. (It is unclear whether or

not the determining county would continue to be determining subdivision of the authority and whether that factored into the Attorney General's analysis.)

In Hon. Bill Curtis, this office pointed to § 11-89A-18 as an exemption applicable to an authority which some "counties and municipalities compris[ed]." Opinion to Honorable Bill Curtis, Executive Director of East Central Alabama Solid Waste Disposal Authority, dated May 6, 1994, Ala. Op. Atty. Gen. No. 94-00183. (Hon. Bill Curtis was released the month before the *Beavers* decision and does not rely exclusively on § 11-89A-18 to opine that the subject contracts were exempt.)

SPECIFIC QUESTION

Whether a solid waste disposal authority with a county and a municipality as determining subdivisions is exempt from the laws of Alabama requiring competitive bids pursuant to § 11-89A-18, *Code of Alabama* (1975)?

Your assistance in answering this question would be greatly appreciated. Please do not hesitate to contact us should you have any questions.