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Engineers and Land Surveyors Board –
Municipal Corporations – Surveys –
Cemeteries

Chapter 11 of title 34 of the Code of Alabama requires that the surveying of burial places, graveyards, and cemeteries, as set forth in chapter 17 of title 11 of the Code of Alabama, be performed by or under the direct supervision of a licensed professional land surveyor.

Dear Ms. Dinger:

This opinion of the Attorney General is issued in response to your request on behalf of the Board of Licensure for Professional Engineers and Land Surveyors.

QUESTION

Does chapter 11 of title 34 of the Code of Alabama require that the surveying of burial places, graveyards, and cemeteries, as set forth in chapter 17 of title 11 of the Code of Alabama, be performed by or under the direct supervision of a licensed professional land surveyor?

FACTS AND ANALYSIS

Sections 11-17-1 through 11-17-16 of the Code of Alabama address the dedication of burial places, graveyards, and cemeteries by counties. These sections have been in existence and have remained unchanged since as early as 1907. Specifically, section 11-17-1 states as follows:

Five or more citizens may petition the judge of probate of any county in which any burial place, graveyard or cemetery is located, requesting him to appoint a commission to locate, mark the boundaries, plat and survey such burial place or to enlarge the area of any burial place, mark the boundaries thereof, plat and survey the part enlarged.

ALA. CODE § 11-17-1 (1989).

Once the petition is filed, “the judge shall appoint a commission, not to exceed five nor less than three, to *locate the boundaries, survey, map and plat such burial place* and shall forthwith notify each member of such commission of his appointment and issue to him a commission directing him to perform the duties required of him under this chapter.” ALA. CODE § 11-17-2 (1989) (emphasis added). The Code specifically instructs the commission as follows:

Within 60 days after their appointment, the commission shall meet at the proposed burial place, fix the boundaries and mark with posts, brick, stone or other durable material the graveyard to be established or enlarged and shall make their report in writing and file the same in the office of the judge of probate.

ALA. CODE § 11-17-3 (1989). After proceedings are recorded, the burial place is dedicated to the public. ALA. CODE § 11-17-6 (1989). Also, before such dedication, the petitioners must pay damages suffered by any person by reason of a taking of that person's property. ALA. CODE § 11-17-4 (1989). A public dedication of these sites would, of course, remove any doubts relating to ownership of the sites and the propriety of spending public funds on their upkeep.

Having established a method for public dedication of burial places, graveyards, and cemeteries that includes a requirement that the commission locate the boundaries and survey, map, and plat the burial place, the question of whether

the commission must follow the requirements found in the Code of Alabama regulating the practice of surveying arises. This law can be found at sections 34-11-1 through 34-11-37 of the Code. These sections, for the most part, were initially enacted in 1961 and were amended in 1967, 1976, 1997, and 2002.

Section 34-11-1(8) defines the practice of surveying as follows:

Professional services, including, but not limited to, consultation, project coordination, investigation, testimony, evaluation, planning, mapping, assembling, and interpreting reliable scientific measurements and information relative to the location, size, shape, areas, volumes, or physical features of the earth, improvements on the earth, the space above the earth, or any part of the earth, *and the utilization and development of these acts and interpretation into an orderly survey map, plan, report, description, or project.* Project coordination shall include the coordination of those technical submissions as prepared by others. Notwithstanding the provisions of this subdivision, the practice of land surveying shall exclude functions unique to engineering as specified by rules of the board. The practice of land surveying shall include, but is not limited to, any one or more of the following:

a. Locates, relocates, establishes, reestablishes, lays out, or retraces any property line or boundary of any tract of land or any road, right-of-way, easement, alignment, or elevation of all real property whether or not fixed works are sited or proposed to be sited on the property.

b. Makes any survey for the subdivision of any tract of land or for condominiums.

c. Determines, by the use of the principles of land surveying, the position for any survey, monument, or reference point; or sets, resets, or replaces any such monument or reference point.

d. Determines the configuration or contour of the surface of the earth or the position of fixed objects thereon by measuring lines and angles and applying the principles of mathematics or photogrammetry.

e. Geodetic surveying which includes surveying for determination of the size and shape of the earth both horizontally and vertically and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry.

f. Creates, prepares, or modifies electronic or computerized data, including land information systems and geographic land information systems, relative to the performance of the activities in paragraphs a. to e., inclusive.

ALA. CODE § 34-11-1(8) (2002) (emphasis added).

Section 34-11-2 of the Code of Alabama states as follows:

(a) No person in either public or private capacity shall practice or offer to practice engineering or land surveying, unless he or she shall first have submitted evidence that he or she is qualified so to practice and shall be licensed by the board as hereinafter provided or *unless he or she is specifically exempted from licensure under this chapter.*

* * *

(c) In order to safeguard life, health, and property and to promote the public welfare, the practice of land surveying in this state is a profession subject to regulation in the public interest. It shall be unlawful for any person to practice or offer to practice land surveying in this state, as defined by this chapter, or to use in connection with his or her name or otherwise assume, use, or advertise any title or description including, but not limited to, the terms land surveyor, land surveyors, land

surveying, professional land surveyor, professional land surveyors, professional land surveying, or any modification or derivative thereof, tending to convey the impression that he or she is a professional land surveyor ***unless the person has been duly licensed or is exempt from licensure under this chapter.***

ALA. CODE § 34-11-2 (2002) (emphasis added). The Alabama Supreme Court has interpreted this section to require that only registered land surveyors may perform land surveys unless there is an applicable exemption. *Lawler and Co. v. Hare*, 587 So. 2d 387 (Ala. Civ. App. 1991).

Section 34-11-14 lists the only exemptions from the requirement that surveys be performed by a licensed surveyor. These exemptions are as follows:

This chapter shall not be construed to prevent or to affect any of the following:

(1) The practice of any other legally recognized profession or trade.

(2) The work of an engineer intern or land surveyor intern, employee, or a subordinate of any person holding a certificate of licensure under this chapter, or any employee of a person practicing lawfully under paragraph b of subdivision (1) of Section 34-11-4, if the work is done under the responsibility and supervision of a person holding a certificate of licensure under this chapter or a person practicing lawfully under paragraph b of subdivision (1) of Section 34-11-4.

(3) The practice of officers and employees of the government of the United States while engaged within this state in the practice of engineering or land surveying for the government. This exception does not extend to any engineer or land surveyor engaged in the practice of professional engineering or land surveying whose compensation is based in whole or in part on a fee.

(4) The practice of engineering or land surveying with respect to transportation or utility facilities by any transportation company or public utility subject to regulation by the Alabama Public Service Commission, the Federal Communications Commission, the Federal Energy Regulatory Commission, or the Nuclear Regulatory Commission, including its parents, affiliates, or subsidiaries; or by the officers and employees of any transportation company or public utility including its parents, affiliates, or subsidiaries. This exception shall not extend to any engineer or land surveyor engaged in the practice of engineering or land surveying whose compensation is based in whole or in part on a fee.

(5) The practice of engineering or land surveying by any person who is employed by the Alabama Department of Transportation prior to January 1, 1997, in any engineering or engineering assistant classification series under the State of Alabama Personnel Board, Merit System.

(6) The mere execution as a contractor of work designed by a professional engineer or the supervision of the construction of such work as a foreman or superintendent shall not be deemed to be the practice of engineering.

(7) The performance of engineering services which are purely incidental to the practice of architecture by registered architects, or their employees, or subordinates under their responsible supervising control.

ALA. CODE § 34-11-14 (2002). It is the opinion of this Office that none of the exemptions listed are applicable to a commission appointed by a probate judge under section 11-17-1.

The fundamental rule of construction is to ascertain and give effect to the intent of the Legislature in enacting the statute. *Ex parte Ala. Dept. of Mental Health and Mental Retardation*, 840 So. 2d 863 (Ala. 2002); *Gholston v. State*, 620 So. 2d 719 (Ala. 1993). Where a statutory pronouncement is distinct and

unequivocal, there remains no room for judicial construction, and the clearly expressed intent of the Legislature must be given effect. *Ex parte Holladay*, 466 So. 2d 956 (Ala. 1985); *Dumas Bros. Mfg. Co. v. Southern Guar. Ins. Co.*, 431 So. 2d 534 (Ala. 1983).

In construing statutes, courts do not interpret provisions in isolation, but considers them in the context of the entire statutory scheme. *Siegelman v. Ala. Ass'n of School Boards*, 819 So. 2d 568 (Ala. 2001). Where more than one Code section is involved, each should be construed in harmony with the other Code sections in effect, so far as is practical. *Kinard v. Jordan*, 646 So. 2d 1380 (Ala. 1994). The appellate courts of this state have determined that, in resolving conflict between statutory provisions, whenever possible statutes must be construed *in pari materia* in light of their application to the same general subject matter. *Opinion of the Justices No. 334*, 599 So. 2d 1166 (Ala. 1992); *Bynum v. Campbell*, 419 So. 2d 1370 (Ala. 1982). In cases of conflicting statutes on the same subject, the latest expression of the Legislature is the law. *Baldwin County v. Jenkins*, 494 So. 2d 584 (Ala. 1986); *Soles v. State*, 820 So. 2d 163 (Ala. Crim. App. 2001); *Ex parte CSX Transp., Inc.*, 533 So. 2d 613 (Ala. Civ. App. 1987).

The activities described in sections 11-17-1 and 11-17-2 fall under the definition of the practice of surveying found in section 34-11-1(8). There is no express exemption found in section 34-11-14, or elsewhere, for persons appointed by a probate judge under section 11-17-1. The opinion that such commissioners are not exempt is strengthened by the fact that the laws regulating surveying were passed many years after the law allowing the appointment of a commission to establish a graveyard, the survey laws have been amended four times, and the Legislature has not adopted such an exemption. In matters of statutory interpretation, it is presumed that the Legislature, in enacting new legislation, knows the existing law. *Ex parte Fontaine Trailer Co.*, 854 So. 2d 71 (Ala. 2003) (quoting *Blue Cross & Blue Shield of Ala., Inc. v. Nielsen*, 714 So.2d 293, 297 (Ala.1998)). Section 34-11-2 prohibits anyone who is unlicensed or not under one of the express exemptions from the surveying activities found in chapter 17 of title 11. In applying the legal principles of statutory construction to the Code sections in question, it is the opinion of this Office that a commission appointed by a probate judge to locate the boundaries and survey, map, and plat a burial place would need to include one licensed surveyor who would actually perform the surveying work or, at a minimum, supervise and be responsible for the surveying activities.

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CONCLUSION

Chapter 11 of title 34 of the Code of Alabama requires that the surveying of burial places, graveyards, and cemeteries, as set forth in chapter 17 of title 11 of the Code of Alabama, be performed by or under the direct supervision of a licensed professional land surveyor.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Albritton of my staff.

Sincerely,

TROY KING
Attorney General

By:



CAROL JEAN SMITH
Chief, Opinions Division

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