



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

May 12, 2011

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.STATE.AL.US

Mr. Mike Byrne
Federal Coordinating Officer/
Disaster Recovery Manager
FEMA-1971-DR-AL
417 20th Street North
Birmingham, Alabama 35203

Re: FEMA Assistance in Emergency Debris Removal from Private
and Public Property

Dear Mr. Byrne:

This Office has been asked by the Alabama Emergency Management Agency ("AEMA") to provide a letter that details the legal basis through which the Governor, the municipalities, or the counties may authorize emergency debris removal from private property without the need to obtain a condemnation order from a court or the property owner's permission.

On or about April 15, 2011, through April 28, 2011, severe storms, hail, straight-line winds, flooding, and tornadoes deposited a tremendous amount of debris on public and private property in certain areas of the State of Alabama ("Disaster"). The State of Alabama Health Officer has issued a Declaration of Public Health Nuisance declaring tornado-generated debris to be an immediate threat to the public's health and safety, a copy of which is attached hereto. In addition, I understand that the immediate removal of the debris from public and private property is necessary to provide space for temporary housing to be provided to the citizens affected by the Disaster.

The AEMA has missioned the U.S. Army Corps of Engineers ("USACE"), through the Federal Emergency Management Agency ("FEMA"), to remove debris in the State following the Disaster. After the mission assignment, certain local jurisdictions forwarded letters to AEMA requesting that the USACE perform debris operations in their jurisdictions. The issue is whether the Governor and/or local officials may authorize USACE and its contractors to perform emergency debris removal from private property without the need to first obtain a condemnation order from a court or a right of entry from the property owner.

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In a previous opinion, this Office stated that a municipality has the power to authorize the removal of debris from its jurisdiction without obtaining the consent of the private property owner if conditions constitute a health or safety hazard. Opinion to Honorable William B. Parrett, Council Member, City of Sylacauga, dated September 10, 1979, A. G. No. 79-00285. That opinion relied on section 11-47-117 of the Code of Alabama, which empowers "cities [or towns] . . . to prevent injur[ies] or annoyances from anything dangerous or offensive or unwholesome and to cause all nuisances to be abated . . ." ALA. CODE § 11-47-117 (2008).

Counties have similar authority to abate health and safety hazards pursuant to section 11-3A-2 of the Code of Alabama. ALA. CODE § 11-3A-2 (2008). This Office has also determined that cities have the authority to expend public funds for debris removal from private property following a hurricane if the governing body determines that a public purpose is served by that work. Opinion to Honorable Frank P. ("Skippy") White, Member, House of Representatives, dated December 13, 2004, A.G. No. 2005-029. Counties have similar authority to make a determination that a public purpose is served by such work. Opinion to Honorable Larry Bennich, Chairman, Morgan County Commission, dated October 23, 2003, A. G. No. 2004-012.

Section 31-9-3 of the Code of Alabama defines "emergency management" as "[t]he preparation for and the carrying out of all emergency functions, other than functions for which military forces or other federal agencies are primarily responsible, to prevent, *minimize, and repair injury and damage* resulting from disasters caused by enemy attack, sabotage, or other hostile action, or by fire, flood, earthquake, or other natural cause." ALA. CODE § 31-9-3 (1998) (emphasis added).

Furthermore, section 31-9-13 provides as follows:

All orders, rules and regulations promulgated by the Governor as authorized by this chapter shall have the full force and effect of law when a copy thereof is filed in the office of the Secretary of State. All existing laws, ordinances, rules and regulations or parts thereof inconsistent with the provisions of this chapter or of any order, rule or regulation issued under the authority of this chapter, shall be suspended during the period of time and to the extent that such inconsistency exists.

ALA. Code § 31-9-13 (1998). Based upon these provisions, the Governor could, in the alternative, issue a proclamation declaring the public health emergency

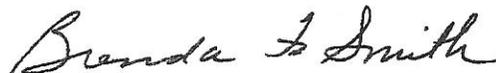
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and authorizing the USACE or its contractors to enter private property to remove debris to eliminate the threat to public health and safety.

Based on the above, if the city, town, or county approves the removal of debris on private property to eliminate a health and safety hazard, such as in the present case, it can be removed by the USACE or its contractors without obtaining the private property owner's permission. Local officials should be cautious in the use of such power and take steps to document the condition of the property before removal (such as pictures or video tape).

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

LS/BFS

Attachment: As stated

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