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AG: Cullman can't build in Good Hope

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Alabama's attorney general says the city of Cullman can't construct and operate a utility system within the corporate limits of Good Hope unless Good Hope has given Cullman a franchise to do it.

"It's a hopeful feeling," said Margaret Hoenig, whose Good Hope property the city of Cullman wanted to use for the sewer system. "I don't really know what to say right now."

The Good Hope couple has been in a battle with Cullman for several months regarding the use of their 50 acres at the intersection of Mize Road and Alabama Highway 69. The property is zoned for residential and commercial use.

The city of Cullman wants to condemn part of the Hoenigs' property to expand and improve its wastewater treatment facility, a move the Hoenigs say is unnecessary because the project can be accomplished in other ways. The city wants to expand the sewer system in part to serve its industrial park on County Road 222.

City of Cullman officials were either unavailable or unwilling to comment on the attorney general's opinion, which was made public Monday.

"I would rather wait until our attorney has reviewed it, since I have not seen a copy of it," said Cullman Mayor Donald Green. "I would rather wait until I have a chance to make a copy of it and have a chance to read it and sit down with him and discuss it."

Cullman city attorney Roy Williams declined to comment.

The attorney general's opinion says Cullman can acquire property by eminent domain only if it has been granted a franchise by the town of Good Hope to use public streets and public places for a sewer project. The opinion was signed by Attorney General Bill Pryor and Opinions Division Chief Carol Jean Smith.

Good Hope Mayor Gordon Dunagan said the town received no correspondence from the city of Cullman regarding the sewer expansion.

Several members of the Good Hope Town's Council didn't like the idea of another municipality coming inside their borders to perform work, especially since the town was neither given notice nor asked for permission.

"We're not in favor of any other town condemning property in our town," Good Hope Councilman David Scott said.

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The AG opinion cited Section 220 of the Alabama Constitution: "No person, firm, association or corporation shall be authorized or permitted to use the streets, avenues, alleys or public places of any city, town or village for the construction or operation of any public utility or private enterprise, without first obtaining the consent of the proper authorities of such city, town or village."

"They didn't ask for consent, and we didn't give it," Dunagan said.

The Hoenigs' son-in-law, David Antaillia, has been working with the couple to resolve the issue.

"The attorney general's opinion is good for us because it adds to our argument, but it's not a victory yet," Antaillia said.

Antaillia said Cullman's condemnation of the Hoenigs' property is not the only way the project can be completed. He admits Cullman would save money by taking two pump stations off line and using a gravity-fed line, which would run through the Hoenigs' property.

The Hoenigs filed suit to stop the condemnation process. Since Cullman proceeded with condemnation, a probate hearing is scheduled for Feb. 11 to determine the value of the property. If a value is not determined from the hearing, a committee named by the probate judge will determine the value of the property. That decision can be appealed to circuit court.

Antaillia hopes that in light of the attorney general's opinion, the city will withdraw its condemnation order.

"It does save the city money, but the damage it does doesn't weigh out for us," he said.

Good Hope attorney Greg Nicholas said the litigation will continue.

"The advisory opinion has no force and effect," Nicholas said. "But an attorney general's opinion is certainly persuasive."

Dale Greer of the Cullman Community and Economic Development Agency declined to comment, saying the office had nothing to do with the sewer project. Councilman Ernest Hauk said he would prefer not to comment until he had read the opinion.

"I would want Roy (Williams) to look at it and ponder over it before I would comment on it," Council President Woody Jacobs said.

Reporter Frankie Glynn contributed to this story.

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