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May 16, 2008

Mr. James E. Palmour, III  
1294 West Ridge Road, Suite B  
Gainesville, Georgia 30501

RE: Law Dept. File No. 0400-AA-GAINESVILLE: LOCAL VENDOR  
PREFERENCE-08 (1077648)

*Please refer to the Law Department File Number in all correspondence.*

Dear Mr. Palmour:

We have reviewed your letter dated April 11, 2008 and the attached memorandum outlining your legal research and conclusions. We understand that the issue presented is when and under what circumstances may a local government provide for local vendor preferences in public works construction contracts and for procurement of supplies, equipment, materials, and personal services that are not part of a public project. We also understand that you have concluded that a local public works contract in excess of \$100,000 would be subject to O.C.G.A. § 36-91-1, et seq. and therefore such local public works contract could not provide for local vendor preferences.

We agree with this assessment as it relates to construction contracts. In some state construction contracts, we have incorporated a form of the below quoted language so as to not run afoul of this prohibition of local vendor preference, but at the same time to encourage the employment and use of Georgia people and products:

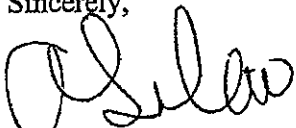
**Employment of Georgia Citizens and Use of Georgia Products.** The work provided for in this Contract is to be performed in Georgia. It is the desire of the Owner that materials and equipment manufactured or produced in Georgia shall be used in the work and that Georgia citizens shall be employed in the work at wages consistent with those being paid in the general area in which the work is to be performed. This desire on the part of the Owner is not intended to restrict or limit competitive bidding or to increase the cost of the work; nor shall the fulfillment of this desire be asserted by the Contractor as an excuse for any noncompliance or omission to fulfill any obligation under the contract.

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With respect to your question concerning when and under what circumstances a local government may provide for local vendor preferences in non-public works contracts, it appears that you did not opine on this issue in your March 19, 2008 memorandum. Our general practice is to provide review of opinions of local government attorneys when requested. As such, we have not undertaken a comprehensive analysis of the second issue. We note, however, that there do exist local vendor preferences at the state level under Georgia law. See e.g. O.C.G.A. § 50-5-60 (preference to supplies, equipment, materials, and printing produced in Georgia generally); O.C.G.A. § 50-5-61 (state and local authorities to give preference to supplies, materials, and printing produced in Georgia); O.C.G.A. § 50-5-62 (preference to local sellers of Georgia products); and O.C.G.A. § 50-5-63 (exclusive use of Georgia forest products in state construction contracts except where federal regulations conflict). From our limited review, there do not appear to be any reported Georgia cases challenging the constitutionality or legality of these "local preference statutes." We further note for your information the following two law review journals, both of which address the subject of local preference statutes: Barton B. Clark, Give 'Em Enough Rope: States, Subdivisions and the Market Participant Exception to the Dormant Commerce Clause, 60 U. Chi. L. Rev. 615 (Spring 1993); James D. Southwick, Binding the States: A Survey of State Law Conformance With the Standards of the GATT Procurement Code, 13 U. Pa. J. Int'l Bus. La. 57 (Winter 1992).

Please contact me at the above number if you have any questions or concerns.

Sincerely,



ANNETTE SIMELARO  
Assistant Attorney General

AS/sp 484197