



2022-041

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August 5, 2022

Honorable Jim Zeigler
State Auditor of Alabama
600 Dexter Avenue
Room S-101
Montgomery, Alabama 36830

State Auditor – Electronic Inventory
Control System – State Departments
and Agencies

The State Auditor's Office may mandate that state agencies upgrade bar code labels to radio frequency identification ("RFID") tags, requiring them to purchase RFID tags from an approved vendor, if it determines that RFID technology is reasonably available to such state agencies.

Dear Mr. Zeigler:

QUESTION

May the State Auditor's Office mandate that state agencies upgrade bar code labels to radio frequency identification ("RFID") tags, requiring them to purchase RFID tags from an approved vendor?

FACTS AND ANALYSIS

You state in your opinion request that the State Auditor's Office has begun to update the barcode scanning software that has been previously used by state agencies with Radio Frequency Identification ("RFID") tags. You state further that, when agencies began using barcode labels to identify an asset with the property number in the management system, the State Auditor's Office used scanning software and barcode scanners to conduct property audits. Although agencies purchased barcode labels from an approved vendor, your Office provided additional ones when the agencies ran out of labels. Noting that not all the agencies have converted to the new RFID system, you ask if the State Auditor's Office may mandate all state agencies to upgrade to the RFID system, requiring them to purchase RFID tags from an approved vendor.

In its opinion to Honorable Beth Chapman, State Auditor, dated Jul. 2, 2003, A.G. No. 2003-180, this Office responded to the State Auditor's request to require state agencies to use the Protégé electronic inventory control system. Although this Office noted that a state agency's authority is limited to "its statutory and constitutional powers," it held that the State Auditor's Office may require state agencies to use a specified electronic database control system, stating:

The State Auditor, through her Property Inventory Division, is responsible for maintaining a complete and accurate inventory of all nonconsumable personal property owned by the State of Alabama that is not specifically exempted by law. Section 36-16-8 charges the Auditor with collecting specific information on each item of such property and conducting biannual inspections to account for the property. Property managers in each state department are to be held strictly accountable for property entrusted to their custody. In order for the Auditor to fulfill these responsibilities, she may establish a ***uniform system of reporting and accountability*** including an electronic inventory control system and ***prescribe methods, formats, and media reasonably available*** to state agencies to be used in reporting the required information.

Chapman, at pp. 3-4 citing *Ex parte Ala. Bd. of Nursing*, 835 So. 2d 1010 (Ala. 2001), and ALA. CODE §§ 36-16-8 to 36-16-11 (2013) (emphasis added). Therefore, based on its authority to maintain a complete and accurate inventory of state property, the State Auditor's Office was authorized to require all state agencies to use Protégé as a "uniform system of reporting and accountability."

Under the same rationale expressed in *Chapman*, the State Auditor's Office may also require state agencies to adopt specified "methods, formats, and media" to carry out the purposes of section 36-16-8 of the Code, so long as they are "reasonably available." In determining whether mandating the use of a given method, format, or media such as RFID technology is warranted for the administration of section 36-16-8 of the Code, considerable weight and deference should be afforded the agency's interpretation of a statute it administers. *Broadwater v. Blue & Gray Patio Club*, 403 So.2d 209 (Ala. 1981). Courts are required to defer to an agency's reasonable interpretation of a statute with which it is charged with administering. An agency's interpretation of a statute will be deemed reasonable and controlling unless it is arbitrary, capricious, or manifestly contrary to the clear meaning of the statute. *Dawson v. Scott*, 50 F.3d 884 (11th Cir. 1995).

This Office addressed a governmental entity's determination of what constitutes "reasonable availability" in its opinion to Honorable Albert Hall, Member, House of Representatives, dated May 20, 1981, A.G. No. 81-00394. In *Hall*, a local act authorized the Madison County Commission to perform road services on private property if such services and road building materials were not reasonably available from private enterprises. This Office reasoned that "availability" and "reasonable cost" were "abstract terms" as used in the local act and deferred to the Madison County Commission's determination that road building materials were not reasonably available at a reasonable cost from private enterprise firms. *Id.* at p. 4.

Applying the same deference in this case as applied in *Hall*, it is the opinion of this Office that the State Auditor's Office may find that RFID technology is reasonably available to state agencies if it can articulate a rational basis for determining that the adoption of such technology is affordable and reasonably worth any extra expense paid by state agencies. You indicate in your request that your Office has been researching RFID devices for nearly ten years and that, although development costs were prohibitive in the beginning, prices have lowered over time. You also state that Protégé has since been purchased by AssetWorks, the company

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that has designed the RFID software. This circumstance might ease the process of implementing and maintaining the new system. Finally, many agencies have already converted to the RFID system and the State Auditor's Office may work closely with those agencies that might have difficulty in converting. As this Office stated in *Chapman*, at p. 4, "[t]he State Auditor should work with those state agencies that are unable to establish the requested uniform system to find a reasonable method of compliance" and "may furnish some of the necessary software or hardware to the agency."

CONCLUSION

The State Auditor's Office may mandate that state agencies upgrade bar code labels to radio frequency identification ("RFID") tags, requiring them to purchase RFID tags from an approved vendor, if it determines that RFID technology is reasonably available to such state agencies.

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

Sincerely,

STEVE MARSHALL

Attorney General

By:



BEN BAXLEY

Chief, Opinions Division

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