



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

November 24, 2020

The Honorable George Flaggs, Jr.  
Mayor, City of Vicksburg  
1401 Walnut Street  
Vicksburg, Mississippi 39181

Re: Sale of Surplus Property

Dear Mayor Flaggs:

The Office of the Attorney General has received your request for an official opinion.<sup>1</sup>

### **Background Facts**

In your request, you state that a developer is interested in building condominiums on three parcels of property in downtown Vicksburg (the “City”), each of which is owned by the City. You state the developer plans to invest approximately \$15,000,000.00 in the downtown area. In addition to adding ad valorem taxes, foot traffic downtown, construction jobs, and eliminating blighting conditions in the area, you state the addition of condominiums to downtown Vicksburg would stimulate growth and a need for new businesses.

The City wishes to convey the parcels of land to the developer pursuant to Section 57-7-1 of the Mississippi Code, and you state that the addition of condominiums to your downtown area is a commercial use since it will stimulate economic development, increase ad valorem taxes, create construction jobs, eliminate blighting conditions, and increase sales taxes. You also cite the Mississippi Supreme Court’s holding in *Ball v. Mayor and Board of Aldermen of the City of Natchez*, 983 So. 2d 295 (Miss. 2008), wherein the court found that the trial court did not err in finding that the construction of condominiums was a commercial use in that scenario pursuant to Section 57-7-1.

### **Questions Presented**

1. Does the City have authority to determine that these properties are “surplus and not needed for government purposes” even though they were purchased for other uses that did not come to fruition?
2. Does Section 57-7-1 authorize the City to convey surplus property to a developer for the construction of condominiums as a commercial use, in light of the economic benefits,

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<sup>1</sup> Due to a scrivener’s error, this opinion is issued in place of the October 6, 2020 opinion issued to The Honorable George Flaggs, Jr., which is hereby withdrawn.

additional ad valorem taxes, elimination of blighting conditions in the area, and stimulation of growth?

3. Can the economic benefits, increase in ad valorem taxes, elimination of blighting conditions in the area, and stimulation of growth in the downtown be considered in the determination of “good and valuable consideration so as to not constitute a donation.”

### **Brief Response**

In response to your first question, yes. If the City determines that municipal property is no longer needed for municipal purposes, it may sell or lease the real property in accordance with the appropriate disposal statute.

In response to your second question, yes. The City has the authority to determine that the development of condominiums is a commercial or industrial purpose as contemplated by Section 57-7-1.

With respect to your third question, when making the determination of what constitutes good and valuable consideration for the disposal of property pursuant to Section 57-7-1, the municipality may consider factors other than monetary value. This is a factual determination that must be made by the City’s governing authorities and is subject to review by the Office of the State Auditor.

### **Applicable Law and Discussion**

Addressing your first and second questions together, Section 57-7-1 governs disposal of surplus property by certain governmental bodies and provides:

In the event that any municipality, county, supervisors district, municipal airport authority, regional airport authority or other governmental subdivision shall have surplus airport land or other lands which are not needed for airport purposes or for other governmental purposes, then such property so designated and described may be set aside and improved for industrial and commercial purposes and the same may thereafter be operated or the same may be leased or sold upon such terms and conditions as a municipality, county, municipal airport authority, regional airport authority or governmental subdivision shall prescribe.

In order to provide for the improvement of such property for industrial and commercial purposes, the municipality or other authority shall be authorized to provide all necessary utilities therefor and to lay out, construct and/or improve and hard-surface roadways, streets, driveways and access roads, railroads and spur tracks, and provide for the grading, drainage, sewer, lights and water, and all other necessary or proper utilities as may be necessary or proper to make such land desirable or useful as a site or sites for industrial and commercial enterprises. The cost and expense of such improvements to said real estate shall be paid for from funds made available from the lease or sale of such lands to the extent such funds are available.

If a municipality disposes of property pursuant to Section 57-7-1, which is specific to the sale or lease of surplus real property for industrial or commercial purposes, it need not comply with the disposal provisions of Section 21-17-1. *See Ball v. Mayor and Bd. Of Aldermen of City of Natchez*, 983 So. 2d 295, 305 (Miss. 2008) (“The provisions of Mississippi Code Annotated Section 21–17–1(13) clearly and unambiguously state that the powers conferred by Section 13 are ‘in addition and supplemental’ to other laws and ‘nothing contained in this section shall be construed to prohibit, or to prescribe conditions concerning, any practice or practices authorized under any other laws.’ Therefore, the City had authority to proceed pursuant to Mississippi Code Annotated Section 57–7–1.”); MS AG Op., *Montgomery* at \*1 (Mar. 31, 2006).

As you noted in your request, the Mississippi Supreme Court, in *Ball*, held that a proposed development of condominiums was commercial in nature. *Ball v. Mayor and Bd. Of Aldermen of City of Natchez*, 983 So. 2d at 306. Whether your specific transaction qualifies as one that meets the requirements of Section 57-7-1 is a factual determination to be made by the City’s governing authorities.

Turning to your third question, our office has previously opined:

Once the municipality has determined that the property is no longer needed for municipal purposes, it may sell or lease the real property for good and valuable consideration, upon such terms and conditions as the municipality may prescribe. MS AG Op., *Shoemaker* (August 29, 2008). We have previously opined that, while sales and leases pursuant to Section 57-7-1 do not necessarily require fair market value, such disposal “should be made for good and valuable consideration and may not be such as would constitute a donation.” MS AG Op., *Crowell* (July 26, 2002). *The determination of what constitutes “good and valuable consideration” is within the discretion of the governing authorities and should be reflected in the municipal minutes.* MS AG Op., *Power* (July 26, 2013).

MS AG Op., *Montgomery* at \*1 (Mar. 31, 2006) (emphasis added). The City of Vicksburg has previously asked for an opinion regarding what constitutes good and valuable consideration as contemplated in Section 57-7-1. MS AG Op., *Thomas* at \*1 (Apr. 7, 2017). Citing the above *Montgomery* opinion, among others, our office opined that “[w]hether the consideration listed in your request constitutes sufficient ‘good and valuable consideration’ is a factual determination which must be made by the governing authorities, subject to review by the Office of the State Auditor. When making such determination, the municipality may consider factors other than monetary value.” *Id.* This remains the position of the Attorney General’s Office.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Beebe Garrard

Beebe Garrard  
Special Assistant Attorney General