



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

June 23, 2021

Danny Welch, Esq.
Simpson County Economic Development District
224 North Main Street
Mendenhall, Mississippi 39114

Re: Amending Restrictive Covenants on Property Previously Sold by the District

Dear Mr. Welch:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, the Simpson County Economic Development District (the “District”) purchased a tract of land containing approximately 80 acres for development as a business park in Magee, Mississippi (the “Business Park”), and the District executed and recorded restrictive covenants for the property. The covenants provide for amendment by the owners of a majority of the acreage. The District is the current owner of a majority of the acreage in the business park.

The District previously sold two parcels of land within the Business Park to an entity that built two buildings. However, these properties have since been foreclosed. Covington County Hospital is considering purchasing one of the buildings to use as medical offices for its physicians, among other potential uses. Covington County Hospital has requested that the District amend the restrictive covenants to allow the hospital to utilize the property for the above-listed purposes.

Questions Presented

1. Does the District have legal authority to amend the restrictive covenants to allow for the intended uses set forth above by Covington County Hospital?
2. Are there any limitations on the uses or purposes that may be allowed by future amendments by the District to the restrictive covenants covering the remaining property still owned by the District, which may be conveyed to future purchasers of property in the Business Park?

Brief Response

1. With respect to property being conveyed by a party who originally purchased such property from the District, so long as the covenants permit their amendment and so long as any changes comport with applicable zoning requirements, we find no statutory prohibition on the District amending the covenants to remove the industrial/warehouse use restriction for the property. MS AG Op., *Welch* at *2 (July 1, 2011).
2. Your second question is too broad to address by official opinion. However, for your guidance only, property owned by the District must comply with Mississippi Code Annotated Section 19-5-99 and may be conveyed solely for industrial or warehouse use.

Applicable Law and Discussion

Pursuant to Section 7-5-25, the Office of the Attorney General is authorized to issue official opinions upon questions of state law only. Thus, we cannot by official opinion interpret the terms or provisions of an agreement or contract or infer facts that may be relevant to our opinion. This opinion does not interpret the terms or provisions of the District's restrictive covenants, a copy of which was enclosed with your request.

As you noted in your request, this office has previously issued an opinion to you in your capacity as counsel for the District. MS AG Op., *Welch* (July 1, 2011). Much like your current request, in 2011, you asked, among other things, whether the District had authority to amend the restrictive covenants to remove the "industrial/warehouse" restrictions only as to property already sold by the District, so the owners of those properties could develop it for commercial use. *Id.* at *2. In response, we stated:

Assuming the terms of the covenants permit their amendment as you have described, we know of no impediment in state statutes to the District amending the covenants to remove the "industrial/warehouse use" restrictions to the property *which has already been sold by the district*. We also find no provision of state law that would require that industrial park land, once sold, to continue to be utilized for industrial or warehouse purposes.

Id. (emphasis added). Consistent with our previous opinion to you, we find nothing in the District's enabling statute that requires the District to put restrictions on the title mandating perpetual industrial or warehouse use. However, any amendments allowing for uses other than industrial and warehouse must conform to applicable zoning laws and ordinances. MS AG Op., *Nowak* at *3 (June 13, 2008) (quoting *Hudson v. Morrison Heights Baptist Church*, 782 So. 2d 726, 732 (Miss. 2001) ("[R]egardless of what the covenants say, restrictive covenants can never allow uses of property that are forbidden by zoning laws.")).

What uses are allowable under relevant zoning requires a factual determination, which this office cannot make by official opinion. As we have previously opined in our 2011 opinion to you, with respect to property being conveyed by a party who originally purchased such property from the District, so long as the covenants permit their amendment and so long as any changes comport

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with applicable zoning requirements, we find no statutory prohibition on the District amending the covenants to remove the industrial/warehouse use requirement. MS AG Op., *Welch* at *2 (July 1, 2011).

Your second question, which asks us to identify “any limitations on the uses or purposes” of property owned by the District, is too broad to address by official opinion. However, for informational purposes, we provide the following.

Section 19-5-99 authorizes county boards of supervisors to establish economic development districts in an effort “to secure and further industrial development of the county. . . .” Miss. Code Ann. § 19-5-99(1). The statute states, in part:

(5) Economic development districts established under this section are authorized and empowered:

(a) To sell, lease, trade, exchange or otherwise dispose of industrial sites or rail lines situated within industrial parks to individuals, firms or corporations, public or private, *for industrial and warehouse use . . .* upon such terms and conditions, and for such considerations, with such safeguards as will best promote and protect the public interest, convenience and necessity, and to execute deeds, leases, contracts, easements and other legal instruments necessary or convenient therefor.

Miss. Code Ann. § 19-5-99(5)(a) (emphasis added). According to this section, when the District conveys land, it must be for industrial or warehouse use.¹ Whether a particular use is industrial or warehouse requires a factual determination that this office is unable to make by official opinion.

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/ Misty Monroe*

Misty Monroe
Special Assistant Attorney General

¹ In previous opinions, including the opinion we issued to you in 2011, discussed above, we have noted that economic development districts may separate land that is surplus and no longer suitable for industrial purposes and dispose of it pursuant to Section 19-7-3. *See e.g.*, MS AG Op., *Moseley* at *2 (Aug. 24, 2006).