



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

June 28, 2021

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1022 Highland Colony Pkwy, Ste. 101
Ridgeland, Mississippi 39157

Re: Authority to Improve School District Property for the Ultimate Purpose of
Conveying the Improved Property to a Non-Profit Organization

Dear Mr. Rimes:

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

Background Facts

The Greene County School District (the “District”) owns property that, according to your request, is currently serving no need or purpose of the District. The District is considering making improvements to the property so that such property can be used by a non-profit organization that has an educational purpose, and the District has been asked to, ultimately, transfer the property to the non-profit organization.

Question Presented

Would it be legal for the District to make improvements to District property for the ultimate purpose of transferring the property to a 501(c)(3) non-profit organization?

Brief Response

No. Spending public funds to improve school district property for the purpose of transferring the property to a non-profit organization would constitute an unlawful donation under Article 4 Section 66 of the Mississippi Constitution.¹

¹ This opinion does not analyze the school board’s general authority to improve school district property. Rather, this opinion specifically responds to the question of whether improvements to school district property *for the ultimate purpose of donating the property to a non-profit organization* is permissible.

Applicable Law and Discussion

Mississippi law authorizes a school board to donate school district property under certain circumstances. Specifically, Mississippi Code Annotated Section 37-7-471 provides:

Whenever the school board of any school district shall find and determine, by resolution duly and lawfully adopted and spread upon its minutes:

- (a) That any school building, land, property or other school facility is no longer needed for school or related purposes and is not to be used in the operation of the schools of the district or that such school building, land, property or other school facility may yield a higher long-term economic value to the district, in the discretion of the local school board;
- (b) That the sale of the property in the manner otherwise provided by law is not necessary or desirable for the financial welfare of the school district; and
- (c) That the use of the school building, land, property or other school facility for the purpose for which it is to be sold, conveyed or leased will promote and foster the development and improvement of the community in which it is located and the civic, social, educational, cultural, moral, economic or industrial welfare thereof, the school board of such school district shall be authorized and empowered, in its discretion, and upon the terms and conditions set forth in Section 37-7-477, to sell, convey, lease or otherwise dispose of same for any of the purposes set forth herein. ***Such sale, conveyance, lease or other disposition, including retention of partial interest, or undivided interest or other ownership interest, shall be made upon such terms and conditions and for such consideration, nominal or otherwise, as the school board may, in its discretion, deem proper in consideration of the benefits which will inure to the school district or the community in which the school building, property or other facility is located by the use thereof for the purpose for which it is to be sold, conveyed, leased or otherwise disposed of***

Miss. Code Ann. § 37-7-471 (emphasis added).²

Assuming the land in question is not Sixteenth Section School Trust Lands, which cannot be disposed of except under very limited circumstances, MS AG Op., *Janus* at *4 (Oct. 13, 2006), the school board may convey District property, by whatever terms are deemed appropriate by the board, in accordance with Section 37-7-471. However, we find no statutory authority that would allow a school board to use public funds to make improvements to school district property if the purpose of making those improvements is to convey the property to a non-profit organization. Doing so without explicit statutory authority would constitute an unlawful donation under Article 4, Section 66 of the Mississippi Constitution, which provides:

² Section 37-7-477(1) also requires certain conveyances of school property to include a reversionary clause within the conveying instrument.

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No law granting a donation or gratuity in favor of any person or object shall be enacted except by the concurrence of two-thirds of the members elect of each branch of the legislature, nor by any vote for a sectarian purpose or use.

MISS. CONST. art. IV, § 66.

In 2005, our office was asked whether the City of Amory could *build* and lease, at no charge, a building to the Mississippi Department of Public Safety. MS AG Op., *Creekmore* (Feb. 18, 2005). In that opinion, we stated:

[A]uthority to convey or lease land would necessarily include any existing structure on that land. However, this authority does not extend to permit the expenditure of county or municipal funds to construct a building for the sole purpose of donating the use of it to the State. As we are aware of no specific statutory authority for a county or municipality to donate cash or in-kind services to the Department of Public Safety, the expenditure of county or municipal funds in this fashion would constitute an unlawful donation.

MS AG Op., *Creekmore* at *1 (Feb. 18, 2005) (internal citations omitted). This rationale applies to a school board's conveyance of school district property. Notwithstanding a school board's authority to lawfully convey real property pursuant to Section 37-7-471, spending public funds to improve that property for the ultimate purpose of donating it would constitute an unlawful donation.

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/ Abby Cummings*

Abby Cummings
Special Assistant Attorney General