



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

October 7, 2021

Carroll Rhodes, Esq.  
Attorney for Hazlehurst City School District  
Post Office Box 588  
Hazlehurst, Mississippi 39083

Re:    Reclassification of Sixteenth Section Land

Dear Mr. Rhodes:

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

### **Background**

You state that the Hazlehurst City School District (“HCSD”), governed by a five-member Board of Trustees (the “Board”), has a tract of Sixteenth Section land in Copiah County currently classified as commercial and leased by an individual for a term of 25 years, starting on November 1, 2018, and ending on October 31, 2043. However, according to your request, the lessee has been unsuccessful in using the property for commercial purposes and now seeks to place a dwelling on the land and live there. The Board has determined that the highest and best use of the property for producing the maximum amount of revenue would be reclassifying the property as residential. According to your request, the lessee is in agreement with the reclassification.

### **Question Presented**

May the Board reclassify the property although there is an existing commercial lease that does not expire until 2043?

### **Brief Response**

Yes, assuming other lawful restrictions on the use of the land have been satisfied, and the proper procedure is followed, the Board may reclassify the land.

### **Applicable Law and Discussion**

As we have previously stated, “school trust lands must be classified according to their highest and best use for maximizing revenue.” MS AG Op., *Cheney* at \*2 (Sept. 24, 2004). Additionally,

“[t]he board of education is under an obligation to obtain the highest return possible from sixteenth section land as a trustee for the school children of that district.” *Id.* (citation omitted).

Mississippi Code Annotated Section 29-3-39 states, in pertinent part:

It shall be the duty of the board of education to survey periodically the classification of all sixteenth section land under its jurisdiction and to reclassify that land as it may deem advisable because of changes of conditions, and when any land is so reclassified, the board of education shall file a report thereof with the Secretary of State.

Mississippi courts have held that the school district, as trustee of the land, does not have “authority to lease real property held in trust for substantially less than the fair value thereof.” *Benson v. Neshoba Cnty. Sch. Dist.*, 102 So. 3d 1190, 1193 (Miss. Ct. App. 2012) (quoting *Hill v. Thompson*, 564 So. 2d 1, 9 (Miss. 1989)). While your request does not describe the size of the tract in question, you do explain that the Board has determined that the highest and best use for maximizing revenue of the tract is residential. “Residential land” is defined as:

any tract of land upon which the lessee or board-approved sub-lessee is residing. Such lands shall be set up, as nearly as possible, in a rectangular form so as to include the houses and such other permanent improvements as may have been placed thereon by said lessee or his predecessor in title; provided, however, that such tract of land shall not exceed five (5) acres.

Miss. Code Ann. § 29-3-33.

If the tract in question meets the definition of “residential land,” it is the opinion of this office that the Board may reclassify the tract if the change in conditions so warrants and the classification is “based upon the finding of the highest and best use of [that] parcel or tract for producing a maximum of revenue by proper utilization.” Miss. Code Ann. § 29-3-31. After the appropriate finding has been made regarding the reclassification of the tract, the Board must follow the statutorily mandated procedures set forth in Sections 29-3-37 and 29-3-39 regarding notice, objection, and appeal.

This office previously has opined “that a change in classification pursuant to the statutes does not terminate or cancel an existing lease.” MS AG Op., *Hathorn* at \*2 (Sept. 8, 1982). However, to the extent that the statutory requirements for a commercial lease of Sixteenth Section land and a residential lease of Sixteenth Section land differ, the parties may need to terminate the existing lease and execute a new one.

Section 29-3-132 states, “[n]othing in this chapter shall be construed to supersede or modify any power or authority of a county, municipality, or combination thereof, or any zoning or planning board or agency, or similar public authority, to adopt and enforce zoning or land use laws, ordinances or regulations.” While exercising its duty to maximize the income from this particular tract of Sixteenth Section land, the Board must consider any other lawful restrictions on the use of such lands. MS AG Op., *Kemp* at \*2 (Aug. 28, 1991) (stating “[b]y analogy, a school board

Carroll Rhodes, Esq.

October 7, 2021

Page 3

responsible for oversight of sixteenth section lands located in urban areas may not ignore legally enacted zoning classifications, even if some alternative use which conflicts with such classifications would yield a higher return.”).

In conclusion, the Board may reclassify a tract of Sixteenth Section land from commercial to residential, provided the current lease does not prohibit such reclassification, the land in question meets the requirements for residential land, and the Board of Trustees follows the statutorily mandated procedures.

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

OFFICIAL OPINION