



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

December 10, 2021

Percy W. Watson, Esq.  
Board Attorney, Hattiesburg Public School District  
301 Mamie Street  
Hattiesburg, Mississippi 39401

Re: School District Purchase of Real Property

Dear Mr. Watson:

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

### **Background**

You state that the Hattiesburg Public School District (the “District”) is in negotiations to purchase several acres of land located across from the high school for the construction of a softball field. The softball field is needed by the District to expand the female sports program. The purchase price of the property is greatly in excess of \$50,000.00, and the owner of the real estate will not accept the fair market value as determined by the average of the two appraisals.

### **Question Presented**

Does Section 43-37-3(c) of the Mississippi Code permit the District to pay an amount in excess of the average of the two appraisals, or is the District restricted from paying more than the average of the two appraisals as dictated by Section 37-7-301(aa)?

### **Brief Response**

Pursuant to Section 37-7-301(aa), the District may not pay a purchase price in excess of the average of the two appraisals.

### **Applicable Law and Discussion**

Section 37-7-301 specifies the powers and duties of public school boards, and subsection (aa) authorizes a school board to purchase real property:

[t]o acquire in its own name by purchase all real property which shall be necessary and desirable in connection with the construction, renovation or improvement of any public school building or structure. Whenever the purchase price for such real property is greater than Fifty Thousand Dollars (\$50,000.00), the school board shall not purchase the property for an amount exceeding the fair market value of such property as determined by the average of at least two (2) independent appraisals by certified general appraisers licensed by the State of Mississippi.

The Real Property Acquisition Policies Law applies to “the acquisition of real property under the laws of this state for use in any project or program in which public funds are used,” Miss. Code Ann. § 43-37-1, and any “agency” “acquiring real property for any project or program in which public funds are used” must comply with this law. Miss. Code Ann. § 43-37-3. This office previously has opined that a school district falls within the definition of “agency,” as used in Section 43-37-3(c). MS AG Op., *Green* at \*2 (Aug. 27, 2010). Section 43-37-3 states, in part, as follows:

(a) Every reasonable effort shall be made to acquire expeditiously real property by negotiation.

(b) Real property shall be appraised before the initiation of negotiations . . . .

(c)(i) Except as otherwise provided in subparagraph (ii) of this paragraph, the price that shall be paid for real property shall be the lesser of the best negotiated price or the approved appraisal of the fair market value or the price at which the property is offered for sale . . . .

(ii) The purchase price for real property may exceed the amount offered as just compensation for the property when reasonable efforts to negotiate an agreement at that amount have failed, and the person, agency or other entity seeking to acquire the property approves an administrative settlement as reasonable, prudent and in the best interests of the public . . . .

With respect to the number of required appraisals and the maximum price that a school district can pay for real property, Sections 37-7-301(aa) and 43-37-3(b) and (c) clearly conflict. As noted above, according to your request, the purchase price of the property is greatly in excess of \$50,000.

“Rules of statutory construction are applied when a statute is ambiguous, has conflicting provisions within it, or conflicts with another statute.” MS AG Op., *Robertson* at \*2 (Sept. 8, 2017) (citing *Mississippi Gaming Comm'n v. Imperial Palace of Mississippi, Inc.*, 751 So. 2d 1025 (Miss. 1999)). Under the rules of construction, when the statutes pertain to the same subject, although in apparent conflict, the statutes should, when possible, “be construed in harmony with each other, to give effect to each.” *Lenoir v. Madison Cty.*, 641 So. 2d 1124, 1129 (Miss. 1994).

This office has previously addressed how these statutes should be read together, finding that “a school district is authorized to negotiate the purchase of real property and is required to make every reasonable effort to acquire such property expeditiously by negotiation, whenever public funds are

used.” MS AG Op., *Yoder* at \*2 (Feb. 20, 2009).<sup>1</sup> While Section 37-7-301(aa) does not require an appraisal to be obtained when the purchase price of the real property is \$50,000.00 or less, “Section 43-37-3 requires that one appraisal be obtained before negotiations begin, unless the fair market value of the real property is \$10,000.00 or less.” *Id.* at \*3. “If the appraisal reflects a value in excess of \$50,000.00, then a second appraisal will be required by 37-7-301(aa) in order for the school district to pay a purchase price in excess of \$50,000.00.” *Id.*; MS AG Op., *Green* at \*2 (Aug. 27, 2010).

However, relative to the maximum price that a school district may pay for real property, governed by Sections 37-7-301(aa) and 43-37-3(c), it is a well-settled principle of statutory interpretation that when two statutes encompass the same subject matter, one being general and the other specific, the more specific statute will control. *Lenoir*, 641 So. 2d at 1129; MS AG Op., *Killebrew-Kenney* at \*1 (June 18, 2003) (citations omitted). Since your request states that the property will cost well above \$50,000, the provisions of Section 37-7-301—the statute more specific to a school board’s acquisition of property at a price greater than \$50,000—govern, and the District may not pay an amount exceeding the average of the two appraisals. *See* MS AG Op., *Jones* (May 23, 2008) (relying on Section 37-7-301 and finding that for property costing in excess of \$50,000.00, the school board could not pay more than the fair market value as determined by the average of two appraisals).

If unable to come to an agreement on price with the owner of the real property, the District may acquire the property through condemnation proceedings pursuant to Section 11-27-1 *et seq.* Miss. Code Ann. § 37-7-301(aa).

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

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<sup>1</sup> On February 20, 2009, this office issued two separate opinions to Mr. Richard Yoder. The opinion referenced herein is opinion number 2009-00052.