



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

February 15, 2022

The Honorable Ken Morgan  
Mississippi House of Representatives  
District 100, Lamar and Marion Counties  
1640 Highway 587  
Morgantown, Mississippi 39483

Re: Development and Construction of Recreational Sports Complex on Certain  
Property as Described in Chapter 386, Laws of 2017 as Amended

Dear Representative Morgan:

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

### **Background**

According to your request, Marion County and the Marion County Economic Development District (MCEDD) are contemplating transferring property to the City of Columbia for the development of a recreational sports complex. Based on subsequent conversations, we understand that several properties are being considered but some may be subject to use restrictions which would prohibit the development of the recreational sports complex. The properties in consideration, all of which were part of the Columbia Training School, have already been transferred and conveyed to various entities by Legislative action.

A brief history of the property at issue is necessary to fully understand the questions at issue:

#### **MCEDD Parcel 1 (370 acres):**

The earliest transfer related to the underlying property in your request is a three hundred seventy (370) acre tract, with improvements located thereof, transferred and conveyed by the Mississippi Department of Human Services (MSDH) to the Marion County Economic Development District (MCEDD) initially by a Special Warranty Deed dated May 3, 2011 and filed in the land records of the Marion County Chancery Clerk on May 5, 2011 in Book 1663 at Page 99, executed pursuant to the authority of Executive Order No. 2011-001 executed by the Executive Director of MDHS on or about April 13, 2011 and Miss. Code Ann. § 43-27-39(4). Neither the Deed nor the Executive Order contained a restriction upon the use of the property by the MCEDD.

This conveyance by Special Warranty Deed was “ratified, approved, confirmed and validated” by House Bill 132 (Regular Session 2013).

**Marion County Parcel 2 (160 acres):**

Between the conveyance by Special Warranty Deed of MCEDD Parcel 1 and the ratification of the same by House Bill 132 (Regular Session 2013), House Bill 621 (2012 Regular Session)(Section 1, Chapter 553, Laws of 2012) authorized the Department of Finance and Administration (DFA), acting on behalf of the Mississippi Department of Human Services (MDHS), to transfer and convey approximately two hundred fourteen (214) acres, together with improvements thereon, to the Marion County Board of Supervisors. *See also*, Miss. Code Ann. § 43-27-39.

Section 1, Chapter 553, Laws of 2012 was amended by House Bill 132 (Regular Session 2013). Though not indicated as a part of the amendment, House Bill 132 changed the total acreage from the original two hundred fourteen (214) acres authorized in House Bill 621 to one hundred sixty (160) acres, and likewise set forth a different legal description than that set forth by House Bill 621. The one hundred sixty (160) acres as described by House Bill 132, as opposed to the original two hundred fourteen (214) acres as described by House Bill 621, was transferred and conveyed by DFA to the Marion County Board of Supervisors by Quitclaim Deed dated May 9, 2013 and filed in the land records of the Marion County Chancery Clerk on May 16, 2013 in Book 1719 at Page 428.

**Airport Authority Parcel 3 (204 acres) and MCEDD Parcel 4 (406 acres):**

Section 1, Chapter 386, Laws of 2017 (House Bill 6 (2017 Regular Session)) authorized DFA to transfer and convey two hundred four (204) acres to the Columbia-Marion County Airport Authority (Airport Authority) and four hundred six (406) acres to the MCEDD only to be “used to make improvements to the Marion County Airport and to construct an adjacent industrial park or other aviation-related facility.”

**Marion County Parcel 5 (18 acres):**

House Bill 1533 (2019 Regular Session) amended Section 1, Chapter 386, Laws of 2017 to authorize the MCEDD to transfer and convey, without cost and without the restrictions imposed by Miss. Code Ann. § 19-5-99(5)(a), approximately eighteen (18) acres of the four hundred six (406) acres previously conveyed to MCEDD by DFA to the Marion County Board of Supervisors “for the purpose of law enforcement training.”

**MCEDD Parcel 6 (40 acres):**

House Bill 1533 further amended Section 1, Chapter 386, Laws of 2017 to authorize DFA to transfer and convey approximately forty (40) acres to the MCEDD “for the purpose of providing unobstructed access for the industrial development of the Marion County AirPlex” on the four hundred six (406) acres previously conveyed to MCEDD,

### Questions Presented

1. Does the development and construction of a recreational sports complex, on any portion of property conveyed to Marion County or MCEDD, meet the criteria of being defined as an “industrial development” for purposes to satisfy its inclusion in “constructing an adjacent industrial park” as intended by Section 1, Chapter 386, Laws of 2017?
2. Does the MCEDD have the authority to transfer any portion under its control to the Marion County Board of Supervisors, the City of Columbia, or any other public or private entity, for purposes specified in Section 1, Chapter 386, Laws of 2017?
3. If the answers to inquiries 1 and 2 above are “No,” is it true that legislation would be necessary to provide the MCEDD with the authority to transfer and convey property previously conveyed to MCEDD by the State to any governmental, public or private entity for purposes contrary to those specified in Section 1, Chapter 386, Laws of 2017?

### Brief Response

1. Whether a particular use constitutes an industrial purpose requires a factual determination that this office is unable to make by official opinion. To use the property for something other than an industrial purpose would violate the use restriction imposed by Section 1, Chapter 386, Laws of 2017 as well as Miss. Code Ann. § 19-5-99.
2. In response to your second question, yes. Pursuant to Miss. Code Ann. § 19-5-99, the MCEDD may “sell, lease, trade, exchange or otherwise dispose of industrial sites . . . situated within industrial parks to individuals, firms or corporations, public or private, *for industrial and warehouse use . . .*” (Emphasis added).
3. In response to your third question, legislation would be required for the MCEDD to convey property for purposes other than those specified in Section 1, Chapter 386, Laws of 2017 and to exempt any conveyance made by the MCEDD from the use restrictions of Miss. Code Ann. § 19-5-99.

### Applicable Law and Discussion

Miss. Code Ann. § 19-5-99 provides, in relevant part, as follows:

- (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*, as well as the Mississippi Military Department or Mississippi National Guard for military 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. Any industrial lease may be executed by the district upon such terms and conditions and for such monetary rental or other considerations as may be found to be in the best interest of the public, upon an order or resolution being spread upon the minutes of the district authorizing same.

Miss Code Ann. § 19-5-99 (emphasis added).

Section 19-5-99 specifically authorizes economic development districts to transfer industrial sites and rail lines under its control *for industrial and warehouse use*, upon such terms and conditions, as will best promote and protect the public interest, convenience and necessity. No legislation is necessary for the MCEDD to make conveyances for those specific purposes. For other purposes on land owned by the MCEDD that are outside the scope of industrial and warehouse use, legislation would be required.<sup>1</sup>

In addition to the restriction(s) imposed by Miss. Code Ann. § 19-5-99, previous Columbia Training School property to which MCEDD now holds title is subject to further use restrictions imposed by the Legislature.

Referring to the properties as defined above, MCEDD acquired Parcel 1, Parcel 4, and Parcel 6 through Legislative action. While the use and transfer of Parcel 1 is restricted by Miss. Code Ann. § 19-5-99, House Bill 132 (Regular Session 2013) imposed no further restriction upon the use of these three hundred seventy (370) acres). However, the use of Parcel 4 is further restricted to the making of improvements to the Marion County Airport and to the construction of an adjacent industrial park or other aviation-related facility by House Bill 6 (2017 Regular Session); and the use of Parcel 6 is further restricted to providing unobstructed access for the development of the Marion County AirPlex by House Bill 1533 (2019 Regular Session). Thus, to utilize one of these MCEDD parcels, legislative action would be necessary for any to be used for purposes(s) contrary to Miss. Code Ann. § 19-5-99, or those specified by House Bill 6 (2017 Regular Session) and/or House Bill 1533 (2019 Regular Session). However, the use of Parcel 2, acquired by Marion County by virtue of House Bill 132 and Quitclaim Deed dated May 9, 2013 and recorded in Book 1719 at Page 428 in the office of the Marion County Chancery Clerk, is subject to no use restriction. These one hundred sixty (160) acres, therefore, may be used for the development of the contemplated recreational sports complex.

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<sup>1</sup> You do not indicate that any of the property referenced in your request is surplus property. Notably, this office has previously opined that economic development districts may sell surplus property in accordance with Section 19-7-3. MS AG Op., *Smith* at \*1 (Sept., 26, 2008). However, this would be subject to use restrictions imposed by the Legislature in the specific conveyances referenced in your request.

Hon. Ken Morgan  
February 15, 2022  
Page 5

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/ Phil Carter*

Phil Carter  
Special Assistant Attorney General

OFFICIAL OPINION