



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

January 14, 2022

Tommy B. Rogers, Esq.  
Board Attorney, Covington County Board of Supervisors  
Post Office Box 1415  
Collins, Mississippi 39428

Re: Sale of Property by the Covington County Economic Development  
District to a Private Enterprise

Dear Mr. Rogers:

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

### **Background**

According to your request, pursuant to Mississippi Code Annotated Section 19-5-99, the Board of Supervisors of Covington County (the “Board”) established the Covington County Economic Development District (the “District”), and the Board was designated to manage the affairs of the District. You state that the District purchased certain land, and with the help of grants, constructed a building for the initial use of processing blueberries. We understand that the building is currently leased to a vending business which uses the building for warehouse purposes in selling and distributing various items that are sold in vending machines. You also state that the vending business now leasing the property has offered to purchase the building and the property upon which it is situated for an amount that is much less than the amount the District has expended for the purchase of the site and construction of the building situated thereon. We understand that there has been no appraisal made of the building and the land proposed to be conveyed to the private industry.

### **Questions Presented**

1. Is the District required to obtain an appraisal of the building and site to determine the fair market value of said property prior to the transfer of the site and building?
2. Is the District required to obtain an opinion from a court of competent jurisdiction as to whether the consideration is nominal?

3. In the event that a taxpayer later files suit and a court finds that the consideration was nominal, and the sale should not have been approved, what is your opinion as to whether or not the members of the District, being the members of the Board, would be personally liable in said matter?

### **Brief Response**

1. The District is not required to obtain an appraisal to determine fair market value of the referenced property prior to the disposal of the referenced property under Section 19-5-99.
2. The District is not required to obtain an opinion from a court of competent jurisdiction as to whether consideration for the referenced property is nominal or not.
3. To the extent your inquiry requires this office to make a legal assessment and/or make a determination about issues of liability, we are unable to respond by way of official opinion.

### **Applicable Law and Discussion**

Section 19-5-99 authorizes counties and municipalities to establish economic development districts. MS AG Op., *Webb* at \*1 (May 11, 2001). Section 19-5-99(1) sets forth the purpose of an economic development district, which is to promote industrial development. MS AG Op., *Ellis* at \*1 (Sep. 21, 1994).

Your first question asks whether an economic development district is required to obtain an appraisal of a building and site to determine the fair market value prior to making a decision regarding consideration of the transfer of the site and building. Section 19-5-99(5)(a) governs the disposition by the economic development district of the property so acquired. MS AG Op., *Williams* at \*1 (May 21, 2004). Section 19-5-99(5)(a) provides, in relevant part:

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 or 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.

...

State law also does not authorize an economic development district to donate the property to a private industry. MS AG Op., *Webb* at \*1 (May 11, 2001). Rather, the law requires that such property be transferred for good and valuable consideration. *Id.* (citing MS AG Op., *Slade* (Mar. 27, 1986) and MS AG Op., *Webb* (May 15, 1998)).

In MS AG Op., *Williams* at \*1 (May 21, 2004), we opined that an economic development district *may not donate* a piece of property in the district's industrial park to a new industry that would construct a processing plant with the industry's own funds. (Emphasis added.) The *Williams* opinion further stated:

Even though an economic development district is given wide discretion and broad authority with regard to disposal of industrial sites, Section 19-5-99(5)(a) contemplates that the governing authorities of the district effectuate any such transfer in exchange for good and valuable consideration in keeping with our constitutional mandate that prohibits donation or gratuity to private entities. Art. 4 Sec. 66 MISS. CONST. of 1890.

*Id.* at \*1.

Accordingly, with respect to your first question, it is the opinion of this office that an economic development district is not required to obtain an appraisal to determine fair market value of the property to be sold.<sup>1</sup>

Your second question asks if an economic development district is required to obtain an opinion from a court of competent jurisdiction as to whether consideration of the property to be sold is nominal or not. We previously opined that the determination of what suffices for "good and valuable consideration" is with the province of the economic development district and that the district's findings are subject to review by a court of competent jurisdiction. MS AG Op., *Williams* at \*2 (May 21, 2004).

In MS AG Op., *Lawrence* at \*2 (May 30, 2003), we opined that if an economic development district finds and spreads upon its minutes a determination that consideration which is less than the appraised value and less than the total amount invested in the site is good and valuable consideration and would best promote and protect the public interest, then transfer of the site to a private industry is permissible. Similarly, in MS AG Op., *Mock* at \*2 (Feb. 6, 1998), we opined that if an economic development district made the determination that acceptance from an industrial tenant of a payment for a full retirement of an outstanding bond indebtedness would best promote and protect the public interest, the economic development district could convey the property to its tenant without further consideration.

With respect to your second question, even though this office has opined that an economic development district's findings on what suffices for good and valuable consideration is subject to review by a court of competent jurisdiction, there is no law that requires a district to obtain an opinion from a court as to whether the consideration is nominal or not on the front end. This determination would be *subject to review* as opposed to *required* to be reviewed by the court. It is

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<sup>1</sup> You do not indicate that the property referenced in your request is surplus property. However, we note that economic development districts may sell property that has been determined to be surplus pursuant to Section 19-7-3. MS AG Op., *Smith* at \*1 (Sept. 26, 2008). We have previously opined that an appraisal is not required prior to disposal of surplus property under Section 19-7-3. MS AG Op., *Griffin* at \*1 (July 30, 1999).

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the District's responsibility to make a determination of what would best promote and protect the public interest, not for a court to determine prior to each transaction.

Your third question asks us to opine on whether the members of the District, being the members of the Board, would be personally liable if a taxpayer later files suit and a court finds that the consideration was nominal, and the sale should not have been approved. Questions of liability involve "mixed issues of law and fact which cannot be addressed by an Attorney General's opinion." MS AG Op., *Head* at \*1 (Nov. 25, 1998); *see also* MS AG Op., *Hammack* at \*2 (Oct. 13, 1993) ("We cannot by opinion determine liability."); MS AG Op., *Lawrence* at \*1 (Jul. 20, 2007) ("[W]e cannot speculate to the various potential liabilities which might arise and may not render an opinion in that regard.").

Because your third question asks us to opine on the Board members' potential liability, we are unable to respond 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/ *Gregory Alston*

Gregory Alston  
Special Assistant Attorney General

OFFICIAL OPINION