



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

July 11, 2022

Bobby Moak, Esq.  
Attorney, City of Brookhaven  
402 Monticello Street  
Bogue Chitto, Mississippi 39629

Re: Disposal of Surplus Municipal Property under Section 57-7-1

Dear Mr. Moak:

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

### **Background**

According to your request, property located within the City of Brookhaven (the “City”) is currently being used as a refuse location as well as a refuse transfer station. However, the City wants to designate the property as surplus and improve it for sale or lease for commercial or industrial purposes under Mississippi Code Annotated Section 57-7-1.

### **Question Presented**

May the City designate property currently being used as a refuse location and refuse transfer station as surplus to be disposed of in accordance with Section 57-7-1?

### **Brief Response**

The City may only dispose of property under Section 57-7-1 for industrial and commercial purposes if it determines that the property is no longer needed for governmental purposes.

### **Applicable Law and Discussion**

Section 57-7-1 governs the disposal of surplus airport land or other lands no longer needed for other governmental purposes and states, in pertinent part:

In the event that any municipality . . . shall have surplus . . . lands which are not needed for . . . governmental purposes, then such property so designated and described may be set aside and improved for industrial and commercial purposes

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and the same may thereafter be operated or the same may be leased or sold upon such terms and conditions as a municipality . . . shall prescribe.

In order to provide for the improvement of such property for industrial and commercial purposes, the municipality . . . shall be authorized to provide all necessary utilities therefor and to lay out, construct and/or improve and hard-surface roadways, streets, driveways and access roads, railroads and spur tracks, and provide for the grading, drainage, sewer, lights and water, and all other necessary or proper utilities as may be necessary or proper to make such land desirable or useful as a site or sites for industrial and commercial enterprises. The cost and expense of such improvements to said real estate shall be paid for from funds made available from the lease or sale of such lands to the extent such funds are available.

The authority granted in Section 57-7-1 is limited to a sale or lease of surplus property for commercial or industrial purposes. MS AG Op., *Manley* at \*2 (Sept. 10, 2014).

A municipality must determine whether the property in question is surplus, i.e., no longer needed for municipal purposes, before a sale or lease can take place. *Id.*; MS AG Op., *Turnage* at \*3 (July 28, 2017). Therefore, the City must determine whether municipal property currently in use for refuse disposal and transfer is indeed surplus and no longer needed for governmental purposes. Such determinations “are ultimately factual ones to be made by the municipality itself subject to review by the Office of the State Auditor.” *Turnage* at \*3.

If the City determines that the subject property is indeed surplus as contemplated by Section 57-7-1, it has discretion as to the sale or lease price. The determination of such consideration should be reflected in the municipal minutes. MS AG Op., *Flaggs* at \*2 (Nov. 24, 2020). “We have previously opined that, while sales and leases pursuant to Section 57-7-1 do not necessarily require fair market value, such disposal ‘should be made for good and valuable consideration and may not be such as would constitute a donation.’” *Flaggs* at \*2 (quoting MS AG Op., *Crowell* at \*2 (July 26, 2002)). When leasing surplus property, while any such lease may exceed the term of the current municipal board, such lease would be voidable at the option of successor boards because there is no authority to bind successor boards to the terms of a proposed lease. MS AG Op., *Bobo* at \*1 (Feb. 2, 2007).

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  
Assistant Attorney General