



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

December 5, 2022

Conrad Mord, Esq.
Attorney, Walthall County Board of Supervisors
Post Office Drawer 311
Tylertown, Mississippi 39667

Re: Sale of County Property

Dear Mr. Mord:

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

Background

According to your request, the Walthall County Board of Supervisors (the “Board”) purchased a vacant grocery store building and adjacent parking lot located next to the county courthouse property. In addition to paying the purchase price of \$450,000.00, the Board has expended additional sums to pay for the title work, appraisal, environmental assessment, closing costs, and legal fees. The original purpose for the purchase of the property was moving county offices to prevent the spread of COVID-19.

The Board has now been approached by the Industrial Development Authority of Walthall County, an economic development district established under the authority of Mississippi Code Annotated Section 19-5-99, about the possibility of selling the property to a small, privately-owned grocery store.

Questions Presented

1. Does the Board have authority to make specific findings of facts as set forth in Section 19-7-3(3) and sell the property to the small, privately-owned grocery store chain?
2. If the answer to the above question is in the affirmative, may the Board sell the property for less than the purchase price of \$450,000.00 or less than the total investment of \$472,397.10?

3. May the Board donate this property to the Industrial Development Authority of Walthall County, who would, in turn, sell this property to the small, privately-owned grocery store chain for less than the purchase price of \$450,000.00, or less than the total investment of \$472,397.10?

Brief Response

1. If the Board determines based on the facts of your situation that the conditions of Section 19-7-3(3) have been met, then the Board has the authority to sell the property in question to a small, privately-owned grocery store chain.
2. A county may sell surplus property consistent with Section 19-7-3(3) for good and valuable consideration, and what suffices as good and valuable consideration is within the Board's discretion.
3. The Board may not donate real property to an economic development district because doing so would violate the Constitutional prohibition against donations as well as Section 19-3-40, which prohibits a board of supervisors from granting any donation.

Applicable Law and Discussion

Section 19-7-3(3) of the Mississippi Code requires that a board of supervisors make certain affirmative findings in order to dispose of particular pieces of real property. Section 19-7-3(3) states:

Whenever the board of supervisors shall find and determine, by resolution duly and lawfully adopted and spread upon its minutes (a) that any county-owned property is no longer needed for county or related purposes and is not to be used in the operation of the county, (b) that the sale of the property in the manner otherwise provided by law is not necessary or desirable for the financial welfare of the county, and (c) that the use of the county property for the purpose for which it is to be sold, conveyed or leased will promote and foster the development and improvement of the community in which it is located and the civic, social, educational, cultural, moral, economic or industrial welfare thereof, the board of supervisors of such county shall be authorized and empowered, in its discretion, to sell, convey, lease, or otherwise dispose of same for any of the purposes set forth herein.

This office is unable to make determinations of fact by way of official opinion. Miss. Code Ann. § 7-5-25. For that reason, this office is unable to tell you whether the Board can make the affirmative findings required by Section 19-7-3. However, if the Board finds that it can satisfy the requirements of Section 19-7-3(3), it shall spread a lawfully adopted, corresponding resolution on its minutes and is thereby authorized to sell the property in question without advertising for bids.

You ask whether the Board may sell the property for less than the purchase price of \$450,000.00 or less than the total investment of \$472,397.10. In response to a similar request regarding the sale of surplus county-owned property at an amount less than the appraised price and less than the

county's original purchase price, this office opined that under Section 19-7-3(3), a county may convey such property for good and valuable consideration. MS AG Op., *White* at *2 (Aug. 23, 2013). "The determination of what suffices as good and valuable consideration for the conveyance of surplus property under Section 19-7-3 is within the discretionary authority of the Board. . . ." MS AG Op., *Nowak* at *2 (Sept. 20, 2013); MS AG Op., *Chiles* at *2 (Dec. 20, 2019).

Turning to your third question, you ask whether the Board may donate the property to the Industrial Development Authority of Walthall County ("IDA"), who, in turn, will sell the property to the privately-owned grocery chain for less than the purchase price of \$450,000.00, or less than the total investment of \$472,397.10. While the IDA, an economic development district, is authorized to acquire real estate by gift, there is no corresponding authority for boards of supervisors to donate real property to an economic development district. *See* Miss. Code Ann. § 19-5-99(3)(a) ("Any economic development district established under this section shall have the authority to acquire by gift . . . real estate situated within the county . . . comprising such district for the development, use and operation of industrial parks or other industrial development purposes.") Article 4, Section 66 of the Mississippi Constitution of 1890 and Section 19-3-40 of the Mississippi Code both prohibit a Board of Supervisors from granting a donation, and conveying real property to an economic development district ("EDD") without consideration would amount to an unlawful donation. The Mississippi Supreme Court has defined a donation as "an absence of consideration, i.e., the transfer of money or other things of value from the owner to another without any consideration." *McAdams v. Perkins*, 204 So. 3d 1257, 1265 (Miss. 2016) (internal citation and quotations omitted). Simply because an EDD is authorized to accept real property by donation does not equate to a Board of Supervisors having the authority to donate real property under the facts you have presented. To the extent previous opinions of this office are inconsistent with this finding, they are modified to conform hereto.

The second part of your third question is premised upon the IDA receiving the property as a donation from the Board, and in turn, selling it to a private investor. Because the Board may not donate the property in question to the IDA, this question is moot. Therefore, it is the opinion of this office that the Board may not donate the property in question to the IDA but may sell it in accordance with the provisions of Section 19-7-3(3) for good and valuable consideration as determined by the Board.

Please note that this office is unable to opine on whether the initial purchase was consistent with the proper use of ARPA funds and any impact that may have on the proposed transaction.

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