



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

May 9, 2023

Andy Gipson, Commissioner
Mississippi Department of Agriculture & Commerce
Post Office Box 1609
Jackson, Mississippi 39215-1609

Re: Nonresident Aliens Owning Over 320 Acres of Land in Mississippi

Dear Commissioner Gipson:

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

Question Presented

Based on the restrictions imposed in Mississippi Code Annotated Section 89-1-23, is the transfer of title in land to any single foreign investor in excess of 320 acres null and void?

Brief Response

Section 89-1-23 places restrictions on nonresident aliens acquiring or holding land in Mississippi, including the 320-acre industrial development limitation you reference. However, regarding the consequence of violating Section 89-1-23, the statute only states that “[a]ll land held or acquired contrary to this section shall escheat to the state.”

Applicable Law and Discussion

Section 89-1-23 provides, in part:

Except as otherwise provided in this section, nonresident aliens shall not hereafter acquire or hold land, but a nonresident alien may have or take a lien on land to secure a debt, and at any sale thereof to enforce payment of the debt may purchase the same, and thereafter hold it, not longer than twenty (20) years, with full power during said time to sell the land, in fee, to a citizen; or he may retain it by becoming a citizen within that time. *All land held or acquired contrary to this section shall escheat to the state;* but a title to real estate in the name of a citizen of the United States, or a person who has declared his intention of becoming a citizen, whether

resident or nonresident, if he be a purchaser or holder, shall not be forfeited or escheated by reason of the alienage of any former owner or other person.

Any person who was or is a citizen of the United States and became or becomes an alien by reason of marriage to a citizen of a foreign country, may hereafter inherit, or if he or she heretofore inherited or acquired or hereafter inherits, may hold, own, transmit by descent or transfer land free from any escheat to the State of Mississippi, if said land has not heretofore escheated by final valid order or decree of a court of competent jurisdiction.

Nonresident aliens who are citizens of Syria or the Lebanese Republic may inherit property from citizens or residents of the State of Mississippi.

Nonresident aliens may acquire and hold not to exceed three hundred twenty (320) acres of land in this state for the purpose of industrial development thereon. In addition, any nonresident alien may acquire and hold not to exceed five (5) acres of land for residential purposes. The nonresident alien may dispose of any such land, but if any land acquired for industrial development ceases to be used for industrial development while owned by a nonresident alien, it shall escheat to the state. The limitation set forth in this paragraph shall not apply to corporations in which the stock thereof is partially or wholly owned by nonresident aliens.

(Emphasis added).

As shown, Section 89-1-23 contains certain exceptions to the general prohibition of nonresident aliens acquiring or holding land in Mississippi, including the 320-acre industrial development limitation referenced in your request. Land acquired pursuant to national treaties is also exempt from this prohibition. *See De Tenorio v. McGowan*, 510 F.2d 92, 95 (5th Cir. 1975) (“This statutory provision yields, of course, to any applicable provision of any valid Treaty of the United States with a foreign country, constituting a part of the Supreme Law of the Land . . .”).

We note that although nonresident alien is not defined by statute, the language of Section 89-1-23 implies that the term only applies to individuals. Further, the statute explicitly provides that the 320-acre industrial development limitation “shall not apply to corporations in which the stock thereof is partially or wholly owned by nonresident aliens.” Miss. Code Ann. § 89-1-23.

Regarding the consequence of violating Section 89-1-23, the statute does not provide that any transfers in title made contrary to the limitations therein shall be null and void. *Compare* Miss. Code Ann. § 89-1-23, *with* Miss. Code Ann. § 29-1-75(1) (“[Every patent issued in contravention hereof shall be void.]”). Rather, Section 89-1-23 only states that “[a]ll land held or acquired contrary to this section shall escheat to the state.”

Beyond this, we cannot by official opinion address whether the terms or provisions of a specific contract would be unlawful and therefore null and void. Pursuant to Section 7-5-25, this office is authorized to issue official opinions upon questions of state law only.

Andy Gipson, Commissioner

May 9, 2023

Page 3

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/ Maggie Kate Bobo*

Maggie Kate Bobo
Special Assistant Attorney General

OFFICIAL OPINION