



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

February 8, 2024

Bill Cork, Executive Director
Mississippi Development Authority
Post Office Box 849
Jackson, Mississippi 39205

Re: Disposal of Property Pursuant to Senate Bill 2810

Dear Mr. Cork:

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

OFFICIAL **Background** OPINION

According to your request, the Mississippi Development Authority (“MDA”) made a loan for a manufacturing company located in Columbus, Mississippi, which was secured with a lien on the company’s real property (the “Property”). The company subsequently filed bankruptcy, and MDA acquired the Property as part of the bankruptcy proceedings.

Under 2019 Mississippi Senate Bill No. 2810 (“S.B. 2810”) Section 1(1), the Legislature authorized MDA “to sell, lease or otherwise dispose of, in whole or in part, in a manner as determined in the sole discretion of the authority” certain state property, including the subject Property located in Columbus, Mississippi. S.B. 2810 Section 1(3) further states:

In the event that any or all of the [subject Property] is sold, the real property shall be sold for not less than the current fair market value as determined by the average of two (2) appraisals by qualified appraisers, one of whom shall be selected by the Department of Finance and Administration, and both of whom shall be certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board.

The bill does not define the term “dispose.”

Questions Presented

1. Based on the “otherwise dispose of” language, if MDA makes the appropriate findings, may MDA dispose of the Property by auctioning it to the highest bidder below the appraised fair market value?
2. If MDA makes the appropriate findings, may the agency convey the Property on the basis of negotiation below the appraised fair market value?
3. If MDA makes the appropriate findings, may MDA declare the Property to be surplus and convey the Property below the appraised fair market value?
4. Based on the “otherwise dispose of” language, if MDA makes the appropriate findings, may MDA donate all or a portion of the Property?

Brief Response

1. An auction is a type of sale, and S.B. 2810 Section 1(3) explicitly prohibits the sale of the Property below the current appraised market value without exception. However, the authority granted to sell, lease or otherwise dispose of the property applies to said Property “in whole or in part.” Thus, if MDA determines that a part of the subject Property may be sold at auction, conveyance by negotiation, conveyance as surplus, or otherwise for a price that meets or exceeds its fair market value, that part may be sold.
2. See answer to question one.
3. See answer to question one.
4. Article 4, Section 95 of the Mississippi Constitution prohibits the donation of “[l]ands belonging to, or under the control of the State . . . to private corporations or individuals, or to railroad companies.” However, if MDA makes the factual determination that the definition of dispose as set forth in S.B. 2810 Section 1(1) includes donation, MDA may donate all or a portion of the Property so long as it is not donated to a private company or individual or to a railroad company.

Applicable Law and Discussion

Your request concerns the meaning of S.B. 2810, specifically the phrase “otherwise dispose of” as set forth in Section 1(1). As stated *supra*, S.B. 2810 Section 1(1) authorizes MDA “to sell, lease or otherwise dispose of, in whole or in part, in a manner as determined in the sole discretion of the authority” certain state property, including the subject Property located in Columbus, Mississippi. Regarding the sale of the Property specifically, S.B. 2810 Section 1(3) further mandates:

In the event that any or all of the [subject Property] is sold, the real property *shall* be sold for not less than the current fair market value as determined by the average

of two (2) appraisals by qualified appraisers, one of whom shall be selected by the Department of Finance and Administration, and both of whom shall be certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board.

(emphasis added).

Put simply, S.B. 2810 Section 1(3) explicitly prohibits the sale of the Property below the current appraised market value. *See Pitalo v. GPCH-GP, Inc.*, 933 So. 2d 927, 929 (Miss. 2006) (“Simply stated, ‘shall’ is mandatory, while ‘may’ is discretionary.”). Furthermore, S.B. 2810 provides no exceptions to this prohibition. Your first three questions concern various scenarios in which MDA would be selling the Property below the current appraised fair market value. Accordingly, it is the opinion of this office that MDA may not: (1) dispose of the Property by auctioning it to the highest bidder below the appraised fair market value, (2) convey the Property on the basis of negotiation below the appraised fair market value, or (3) declare the Property to be surplus and convey the Property below the appraised fair market value. However, the authority granted to sell, lease or otherwise dispose of the property applies to said Property “in whole or in part.” Thus, if MDA determines that a part of the subject Property may be sold at auction, conveyance by negotiation, conveyance as surplus, or otherwise for a price that meets or exceeds its fair market value, that part may be sold.

Regarding your fourth question, Article IV, Section 95 of the Mississippi Constitution provides, in part:

Lands belonging to, or under the control of the State, shall never be donated directly or indirectly, to private corporations or individuals, or to railroad companies. Nor shall such land be sold to corporations or associations for a less price than that for which it is subject to sale to individuals.

Accordingly, it is the opinion of this office that the Property owned by MDA, a state agency, may not be donated to a private corporation or individual or to a railroad company. *See MS AG Op., Bryant* at *1 (Mar. 11, 1992) (providing sale of property owned by a state agency would be governed by Section 95 of the Mississippi Constitution).

Beyond this, whether donating the Property would be considered “disposing” of the Property is a question of fact, and this office may only issue official opinions addressing prospective questions of law. *MS AG Op., Barton* at *1 n.2 (May 17, 2021). Thus, it is the opinion of this office that if MDA determines the definition of dispose as set forth in S.B. 2810 Section 1(1) includes donation, MDA may donate all or a portion of the Property so long as it is not donated to a private corporation or individual or to a railroad company.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

Bill Cork, Executive Director

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By: */s/ Maggie Kate Bobo*

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Special Assistant Attorney General

OFFICIAL OPINION