



*Lynn Fitch*

**ATTORNEY GENERAL**  
OPINIONS AND POLICY

September 18, 2024

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Attorney, Leake County Board of Supervisors  
Post Office Box 452  
Carthage, Mississippi 39051

Re: Relinquishing Ownership and/or Control of Park Property to Relieve the  
County of Oversight and Maintenance Responsibilities

Dear Mr. Webb:

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

### **Background**

You provide in your request that on August 12, 1999, the True Light Missionary Baptist Church (“Church”) deeded four acres to Leake County (“County”) with a reversionary clause stating that the property “along with any improvements thereon, will automatically revert to grantor if and when, said property ever ceases to be used for recreational purposes.” On April 9, 2002, the Church deeded an additional two acres adjoining the four acres pursuant to the same terms. In the process of constructing a public park, the County applied for a number of grants. At least one of those grants did not allow a reversionary clause in the deed of conveyance to the County. As a result, on September 8, 2009, the Church executed a Quitclaim Deed conveying its reversionary interest in the referenced six acres to the County. The property has been utilized as a county park since the referenced deeds of conveyance. The Church and its members have assisted with multiple projects at the park and have expended considerable resources of its own, both money and labor, for improvements and repairs. The board of supervisors desires to relinquish ownership and/or control of this park property and be relieved of the oversight and maintenance responsibilities.

### **Questions Presented**

1. May the County, pursuant to Mississippi Code Annotated Section 19-7-3(1), make a finding that the property has ceased to be used for county purposes, and then proceed to advertise it for sale or lease after publishing for three consecutive weeks?
2. If the answer to question 1 is no, can the County close the park for a period of time and then declare it as having ceased to be used for County purposes? The County would then advertise for sale or lease pursuant to Section 19-7-3(1).

3. If the answer to questions 1 or 2 is in the affirmative, may the County accept any bid that is offered for the property after proper legal advertisement?
4. Is there any difference in the interpretation of the language in Section 19-7-3(4) regarding property not being used for county purposes? More specifically, under Section 19-7-3(4), is there any recognized distinction between the language of subsection (4)(a) which provides that when “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” as compared to Section 19-7-3(1) which states the property “shall cease to be used for county purposes?”
5. In the event the County can and does determine the property to no longer be needed for the operation of the County, and that the sale or lease thereof pursuant to publication is not necessary for one or more of the reasons set forth in Section 19-7-3(4), may the County take into consideration and provide credit for any improvements and repairs made to the park by the Church in the past in evaluating good and valuable consideration?
6. Rather than selling or leasing the property, may the County enter into a management or operational agreement with the Church, provided that the County prepares general rules and regulations for the park and the park remains open to the general public?
7. If the answer to question 6 is in the affirmative, may the Church receive any proceeds from concessions or rentals?
8. If the answer to question 6 is in the affirmative, is such an agreement limited to the term of the board of supervisors?

### **Brief Response**

1. Pursuant to Section 19-7-3(1), any real estate belonging to the County that has ceased to be used for county purposes may be sold, conveyed, or leased by the County once the requisite findings in Section 19-7-3(4) have been made and the processes and procedures in Section 19-7-3 have been followed.
2. See our response to Question 1.
3. No, the County may not accept just any bid. The County may reject all bids, accept the highest and best bid, or hold an auction among those who submitted bids with the starting bid being the highest bid received in response to the advertisement. If the County chooses to hold an auction, no bidder in the auction shall be shown any preference. Miss. Code Ann. § 19-7-3(2)(a).
4. While Section 19-7-3(1) authorizes the actions that may be taken when property is no longer used by the County, Section 19-7-3(4) provides the requisite findings that must be made in order to dispose of the property in accordance with Section 19-7-3.
5. Generally, past consideration must be accompanied by present or future consideration for a contract to be valid. *See Marshall Durbin Food Corp. v. Baker*, 909 So. 2d 1267, 1276

(Miss. Ct. App. 2005). What is sufficient as “good and valuable consideration” is within the discretion of the board of supervisors. MS AG Op., *Williams* at \*2 (Dec. 23, 2004).

6. Pursuant to its general contracting authority in Section 19-3-41, it is our opinion that the County could enter into an agreement for the operation and/or management of the park.
7. The County may authorize the Church to retain profits from concessions and/or rentals to defray the Church’s expenses. *See* MS AG Op., *Brabham* at \*2 (Aug. 7, 2009).
8. Governing authorities may not bind their successors in office to contracts that take away their successors’ rights and powers as conferred by law. MS AG Op., *Williams* at \*2 (Dec. 23, 2004). Any contract that extends beyond the term of the governing board(s) without express statutory authority is voidable at the discretion of the successors. *Northeast Mental Health-Mental Retardation Comm’n v. V.M. Cleveland*, 187 So. 3d 601, 605 (Miss. 2016).

### **Applicable Law and Discussion**

Section 19-7-3 provides, in pertinent part:

*(1) In case any of the real estate belonging to the county shall cease to be used for county purposes, the board of supervisors may sell, convey or lease the same on such terms as the board may elect and may, in addition, exchange the same for real estate belonging to any other political subdivision located within the county. In case of a sale on a credit, the county shall have a lien on the same for the purchase money, as against all persons, until paid and may enforce the lien as in such cases provided by law. The deed of conveyance in such cases shall be executed in the name of the county by the president of the board of supervisors, pursuant to an order of the board entered on its minutes.*

*(2)(a) Before any lease, deed or conveyance is executed, the board shall publish at least once each week for three (3) consecutive weeks, in a public newspaper of the county in which the land is located, or if no newspaper be published in said county then in a newspaper having general circulation therein, the intention to lease or sell, as the case may be, the county-owned land and to accept sealed competitive bids for the leasing or sale. The board shall thereafter accept bids for the lease or sale. The board, at its option, may reject all bids or accept the highest and best bid received in response to the advertisement, or the board may hold an auction among those who submitted bids in response to the advertisement. If the board elects to hold an auction, no bidder shall be granted any preference. The opening bid at the auction shall be the highest bid received in response to the advertisement.*

. . .

*(4) 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.

(emphasis added).

Your first question asks whether the County can make the finding that the park has ceased to be used for county purposes and proceed with selling it to relieve the County of its operation and management responsibility. Section 19-7-3 authorizes a county to sell, convey, or lease any property that has ceased to be used for county purposes. Therefore, so long as the property has ceased to be used for county purposes, the County may make the requisite findings outlined in Section 19-7-3(4) and then follow the procedures provided in Section 19-7-3 generally before proceeding with the sale, conveyance, or leasing of the property. This answer is responsive to your second question as well.

Your third question asks whether the County may accept *any* of the bids received in response to the advertisement for sale. Section 19-7-3(2)(a) specifically requires the County to either reject all bids, accept the highest and best bid, or hold an auction amongst all bidders with the highest bid as the starting bid for the auction. If the County chooses to hold an auction, no bidder may be shown any preferential treatment. *Id.* As a result, the County may not accept just *any* bid in response to an advertisement for sale, conveyance, or lease. If the County chooses to accept a bid in response to the advertisement, the County must accept the highest and best bid.

Your fourth question asks whether there is a distinction to be made between certain language in Section 19-7-3(1) and Section 19-7-3(4)(a). Section 19-7-3(1) provides the authority to dispose of property that has “cease[d] to be used for county purposes,” while Section 19-7-3(4)(a) provides the requisite findings that must be made in order to exercise the authority provided in subsection (1). *See MS AG Op., Dukes at \*4 (Aug. 6, 2010).*

Your fifth question asks if the County may take into consideration and provide “credit” for any improvements and repairs made to the park by the Church in the past in evaluating “good and valuable consideration” if the County determines the property is no longer needed for the operation of the County and that the sale or lease thereof pursuant to publication is not necessary in accordance with Section 19-7-3(4). “In most situations, past consideration may not serve as consideration. However, ‘a contract founded partly on a past consideration and partly on an executory consideration is enforceable, although in a sense no resort to the past consideration need be had as the new or executory consideration is conceptually adequate to support enforceability of the contract.’” *Marshall Durbin Food Corp. v. Baker*, 909 So. 2d 1267, 1276 (Miss. Ct. App. 2005) (internal citations omitted). Executory consideration is “consideration that is to be given only after formation of the contract; present or future consideration as opposed to past consideration.” *CONSIDERATION, BLACK’S LAW DICTIONARY* (12th ed. 2024). Accordingly, in addition to any past consideration upon which the contract is made, the parties should agree to some present or future consideration. Regarding the present or future consideration, we have consistently opined that

Jeffrey T. Webb, Esq.

September 18, 2024

Page 5

what is sufficient as “good and valuable consideration” is within the discretion of the board of supervisors. MS AG Op., *Williams* at \*2 (Dec. 23, 2004). This remains the opinion of this office. We note that findings on this issue are subject to judicial review. *Id.*

Your sixth question asks if the County may enter into an agreement with the Church for the management and/or operation of the park. It is our opinion that the County could contract for operation and/or management services of the park in lieu of selling, conveying, or leasing the property pursuant to its general contracting authority provided in Section 19-3-41. *See also* MS AG Op., *Gex* at \*1 (June 16, 1993) (opining that a county, in its discretion, could contract with a youth soccer league to manage the county youth soccer program).

Your seventh question asks whether the Church could retain profits from concessions and/or rentals of the property should the County enter into a management/operation agreement. We have previously said that “if [a] municipality has a management contract with a nonprofit to manage and operate [a] park, ‘the contract with the municipality may authorize the charging of admission fees with the proceeds being retained by the nonprofit organization to defray the organization’s expenses.’” MS AG Op., *Brabham* at \*2 (Aug. 7, 2009) (internal citations omitted). Thus, if the County chooses to authorize the Church to retain profits from concessions and/or rentals to defray the Church’s expenses, it may do so. To the extent your question asks us to opine on the specifics of any contract, we must decline. Opinions of this office are issued on prospective questions of state law only pursuant to Section 7-5-25.

Your final question asks whether the County’s contract for operation and/or management of the park would be binding on successor boards. It is well established that governing authorities may not bind their successors in office to contracts that take away their successors’ rights and powers as conferred by law. MS AG Op., *Williams* at \*2 (Dec. 23, 2004). Any contract that extends beyond the term of the governing board(s) without express statutory authority is voidable at the discretion of the successors. *Northeast Mental Health-Mental Retardation Comm’n v. V.M. Cleveland*, 187 So. 3d 601, 605 (Miss. 2016).

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/ Abigail C. Overby*

Abigail C. Overby  
Special Assistant Attorney General