

OFFICE OF THE ATTORNEY GENERAL



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Honorable Alma S. Leak
Mayor, City of Wetumpka
P. O. Box 480
Wetumpka, AL 36092

Municipalities - Real
Property - Funds - Exchanges
- Eminent Domain

City may not acquire property
for sole purpose of making an
exchange for other property
it needs.

City may acquire uneconomic
remnant per Section 18-1A-27.

Dear Mayor Leak:

This opinion is issued in response to your request for
an opinion from the Attorney General.

QUESTIONS

1. Can the city acquire property in another state to be equally exchanged or swapped for the 5.96 acre tract of land that it desires to acquire within its limits?
2. If the city is prohibited from acquiring land outside the state of Alabama, may it acquire land within the state for the purposes of transacting a 1031 exchange?
3. Can the city acquire the three lots which it doesn't have a present need for, if this is a condition to

acquire the 5.96 acre tract for which the city does have a public need?

FACTS, LAW AND ANALYSIS

Section 1031 of the United States Internal Revenue Code relates to the exchange of property held for productive use or investment, and we presume that the owner of the property that the city wishes to acquire has expressed a desire to have an exchange for like property in order to avoid tax consequences under the Internal Revenue Code.

As we understand the facts, the city has determined that it needs to acquire a 5.96 acre tract of land in order to construct a drainage ditch which will benefit its residents. The owners of the property have asserted two conditions for a voluntary sale: (1) the city must also purchase at fair market value three other lots owned by the them, and (2) the city acquire the property by means of a "1031 tax exchange." We further understand that the three lots are offered at a fair market value, and that the city has no present need for the lots in connection with the drainage project.

We begin with the proposition that the city may acquire property that its governing body deems necessary or expedient for the carrying out of its powers by the exercise of the power of eminent domain. Accordingly, it is obvious that if the owners of the property in question refuse an appropriate offer for a voluntary sale made by the city, it may proceed under the eminent domain provisions of the Constitution and statutes of this state. Sections 18-1A-21 and -22, Code of Alabama 1975, require the condemnor, in this case, the city, to cause the property to be appraised to determine the amount that would constitute a just compensation for its taking and before commencing a condemnation action, is to submit an offer to acquire the property for the appraised amount. If the acquisition of only a part of a property would leave the owner with an uneconomic remnant, the condemnor is authorized, pursuant to § 18-1A-27, to offer to acquire that remnant concurrently by purchase or condemnation.

We find no provision in the law which would authorize the city to purchase property in another state for the purpose of making a "1031 exchange." Of course, if the city already owned property which would be appropriate for such exchange, it could do so. However, we find no authority for the city to purchase property that it does not need for the purpose of making an exchange. Accordingly, it is the

opinion of this office that the city may not acquire property, outside the state for the mere purpose of making an exchange for property which it can acquire through the powers of eminent domain. It is further the opinion of this office that the city should not be acquiring property for which it has no need, but if acquisition of property needed by the city leaves the former owner with an uneconomic remnant, then, under Section 18-1A-27, the city could acquire that remnant. The question of whether or not the three lots constitute an uneconomic remnant is a question of fact to be determined by the city.

CONCLUSION

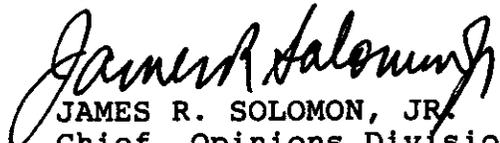
Your first two questions are answered in the negative, and your third question is answered with a qualified negative. Specifically, the city may not acquire property outside the state, nor may it acquire property within the state for the sole purpose of transacting a "1031 exchange" of property. If in its acquisition of the property it deems it needs, it would leave the owner of the property with an uneconomic remnant, the city may offer to acquire that remnant under the provisions of Section 18-1A-27. Whether or not the property in question is an uneconomic remnant is a question of fact to be determined after appropriate investigation by the city.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General

By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division