

# OFFICE OF THE ATTORNEY GENERAL



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JIMMY EVANS  
ATTORNEY GENERAL  
STATE OF ALABAMA

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ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (205) 242-7300

Honorable Emmett O'Neal Griswold, Jr.  
City Attorney  
City of Samson  
8 North Broad Street  
Samson, AL 36477

Municipalities - Surplus  
Property - Education, Boards  
of - Environmental Management

Where a small portion of a large tract is clearly not used or dedicated for use as a public park, the municipality may dispose of the small portion without an election under Code of Alabama 1975, § 35-4-410.

Dear Mr. Griswold:

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

## QUESTION ONE

Whether or not the fact that part of the real estate described in Exhibits "A" and "B" is being used by the City of Samson, Alabama, for public and governmental purposes, including part being used as a recreational park, requires the City of Samson, Alabama, to hold an election, pursuant to Amendment 112 to the Constitution of Alabama, 1901, and pursuant to Section 35-4-410, Code of Alabama 1975, before alienating the 2.3 acres which is

not being used for any public or governmental purpose and is not being used as a recreational park.

#### FACTS AND ANALYSIS

Your request presents the following facts:

The city wants to alienate 2.3 acres from a larger tract of real estate. The 2.3 acres is not being used for any governmental or public purposes, but the remaining portion of the larger tract is being used for public and governmental purposes. Portions of the remaining larger tract have Little League and softball fields, city water well, and sewer and water lines. Also, the 2.3 acre parcel and the remaining larger tract join land owned by the Geneva County Board of Education. Part of the real estate owned by the Geneva County Board of Education is being used for an elementary school.

Code of Alabama 1975, § 35-4-410, et seq., requires an election when a municipality wishes to alienate a public improvement. The facts presented indicate that no "public improvement" is located on the 2.3 tract (Exhibit D). Your request states that the 2.3-acre tract is not being used as a public park and that it is, in fact, separated by a branch from the larger tract on which there is a public park.

#### CONCLUSION

Under facts presented, municipality is not required to hold an election before alienating the 2.3-acre tract described above, but the property must not be needed for municipal or public purposes under Code of Alabama 1975, § 11-47-20.

#### QUESTION TWO

Did the City of Samson, Alabama, building a Little League ball field and

softball field, constitute a dedication of subject property as a playground or recreational facility within the meaning of Amendment 112, Constitution of Alabama, 1901, and Section 35-4-410, Code of Alabama 1975, where the city's deed to said real estate conveys fee simple title free from any type of dedication language? If so, can the city alienate a portion of said real estate not being used as part of the public park recreational facility and not being used for any public or governmental purpose as set forth in the case of O'Rorke v. City of Homewood, 286 Ala. 99, 237 So.2d 487 (1970), which states that a municipality has no implied power to alienate or to dispose of property dedicated to or held in trust for the public use, but ordinarily its property abandoned from public use or not devoted thereto may be disposed of by the managing authorities when acting in good faith and without fraud?

#### FACTS AND ANALYSIS

The property in question was deeded to the municipality in fee simple without restrictions of any type. Absent any subsequent dedication or restriction by the municipality itself, it appears that only that portion of the property that is being used for a public park and other municipal purposes such as a city water well may not be alienated.

#### CONCLUSION

Absent any restrictions in the deed to the property or any restrictions placed by the municipality itself, there appears to be no dedication of the 2.3-acre tract contained within a tract bought by the municipality, a portion of which is being used for a public park.

QUESTION THREE

Whether or not the City of Samson, Alabama, must contact the Geneva County Board of Education to see if said Board may have a public use for the 2.3-acre parcel of land before the City may alienate the same as unneeded or surplus real estate.

FACTS AND ANALYSIS

We find no opinion directly construing the "public use" provisions of Code of Alabama 1975, § 11-47-20. However, in Vestavia Hills Board of Education v. Utz, 530 So.2d 1378 (Ala. 1978), the Supreme Court held that conveyance of property to the board of education required a finding that the subject property was no longer needed for public purposes. Absent such a finding, the conveyance to the board of education was invalid. This decision clearly indicates that the "public purpose" in Section 11-47-20 is one in which the municipality can engage and is virtually synonymous with "municipal purpose."

CONCLUSION

While there appears to be no mandatory requirement that the municipality contact the Geneva County Board of Education before alienating municipal property, cooperation between governmental entities is always in the spirit of the public good.

QUESTION FOUR

State all legal steps the law requires the City of Samson, Alabama, to take before the city can sell the 2.3 acres as surplus and unneeded real estate, pursuant to Section 11-47-20, Code of Alabama 1975.

FACTS, ANALYSIS AND CONCLUSION

Code of Alabama 1975, § 11-47-20 states:

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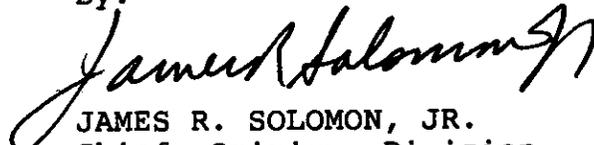
"The governing body of any city or town in this state may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto, and a conveyance made by the mayor in accordance with such ordinance invests the grantee with the title of the municipality."

Other than the matters set forth in this section itself, it appears that all other matters have been set forth in the answers to Questions One, Two and Three, except we note as set forth in the letter attached to your request, any federal, state and local laws relating to wetlands must be followed.

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

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