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APR 18 1995

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Honorable Bobby L. Crowder
Mayor, City of Valley
P. O. Box 186
Valley, Alabama 36854

Municipalities - Surplus
Property - Credit - Public
Purpose

A city may not sell surplus
property and accept a
promissory note secured by a
mortgage as payment.

Dear Mayor Crowder:

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

QUESTION

Does Section 94 of the Alabama
Constitution of 1901, as amended by
Amendment No. 112, prevent a city from
selling surplus property whereby the City
accepts a promissory note and mortgage as
consideration for the sale?

FACTS AND ANALYSIS

Your letter of request does not set forth many details
of the transaction that you propose to enter. It is apparent
that the City of Valley wishes to sell surplus property and
accept in payment a promissory note, secured by a first

mortgage on the property. Alabama law prohibits a city from engaging in this type of transaction.

Section 94, Constitution of Alabama 1901, as amended by Amendment No. 112, states that "[t]he legislature shall not have power to authorize any county, city, town or other subdivision of this state to lend its credit . . . to any individual, association, or corporation whatsoever. . . ." This section of our constitution has spawned numerous cases interpreting it. You cited in your letter four cases, Rogers v. City of Mobile, 169 So.2d 282 (Ala. 1964); Ramer v. City of Hoover, 437 So.2d 455 (Ala. 1983); Mobile Wrecker Owners Association v. City of Mobile, 461 So.2d 1303 (Ala. 1984) and Dothan Area Chamber of Commerce, Inc. v. Shealy, 561 So.2d 515 (Ala. 1990), that stand generally for the proposition that ordinary commercial contracts are not subject to the prohibitions in Section 94. A consideration of these cases leads fairly to the conclusion that the contracts considered therein are easily distinguished from the contracts that you propose.

The tenets of statutory and constitutional construction focus upon the meaning and intent of the deliberative body in adopting the provisions of law. In City of Montgomery v. Water Works, 1994 Ala. Lexis 607 (Ala. 1994), the Supreme Court stated:

"The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature in enacting the statute. The words used must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect."

Under Section 94, a city may not "lend its credit." "Lend" is defined by Black's Law Dictionary, 6th ed., as "to provide money to another for a period of time, usually with interest charge incurred by borrower." "Lend" is defined by Webster's Ninth New Collegiate Dictionary as "to let out

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(money) for temporary use on condition that the same or its equivalent be returned." "Credit" is defined by Black's Law Dictionary, 6th ed., as "time allowed to the buyer of goods by the seller, in which to make payment for them." Webster's Ninth New Collegiate Dictionary defines "credit" as "time given for payment for goods or services sold on trust." Giving these words their natural, plain, ordinary, and commonly understood meanings, it is manifestly apparent that the evil sought to be avoided by the inclusion of Section 94 in our constitution is the sale of public property or services for a promise of future payment. The cases cited by you grew out of the various attempts to expand the prohibition of Section 94 beyond simple credit sales so that it could be used as a sword to attack varied contracts of public bodies. None involve a straight-forward sale of public property upon credit terms.

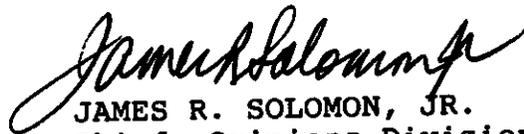
CONCLUSION

A city may not sell surplus property and accept a promissory note secured by a mortgage as payment.

I hope that I have satisfactorily answered your question. If this office can be of further assistance to you, please do not hesitate to call upon Jack W. Wallace, Legal Division, Department of Examiners of Public Accounts.

Sincerely,

JEFF SESSIONS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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