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STATE OF ALABAMA
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Honorable Jeffrey McLaughlin
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321 Blount Avenue
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Municipalities - Public Purpose -
Real Property - Electric
Cooperatives - Marshall County

The City of Arab may transfer property to the Arab Electrical Cooperative for less than adequate consideration if the city determines that the transfer serves a public purpose.

Dear Mr. McLaughlin:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Arab.

QUESTION

May the City of Arab transfer two acres of land owned by the city, for less than adequate consideration, to the Arab Electrical Cooperative ("Cooperative") for use by the Cooperative in building an electrical substation if the city determines that a public purpose of improving the electrical grid throughout the city will be served by the construction of the substation?

FACTS AND ANALYSIS

The City of Arab seeks to transfer property to the Arab Electrical Cooperative for less than adequate consideration. Section 11-47-20 of the Code of Alabama authorizes municipalities to dispose of surplus real property. ALA. CODE § 11-47-20 (2008). In an opinion issued to Honorable James W. Richardson, Mayor, City of Carbon Hill, dated October 10, 2002, A.G. No. 2003-008, which is similar to the present question, this Office determined that the City of Carbon Hill could sell property to a private entity for less than adequate consideration if the city council determined that the sale served a public purpose. *Id.*

Section 94 of article IV of the Recompiled Constitution of Alabama, as amended, is inapplicable so long as the transfer promotes some public purpose that is consistent with the goals and authority of the public entity providing the funds. Opinion to Honorable Craig Ford, Member, House of Representatives, dated July 29, 2004, A.G. No. 2004-191; opinion to Honorable Betty Brewer, Cullman County Judge of Probate, dated March 9, 2001, A.G. No. 2001-111; *Slawson v. Ala. Forestry Comm'n*, 631 So. 2d 953, 955 (Ala. 1994); *Opinion of the Justices* No. 120, 254 Ala. 506, 49 So. 2d 175, 178 (1950).

What constitutes a public purpose is largely within the legislative domain rather than within the domain of the courts. *Slawson* at 956; *Richardson* at 3; see opinion to Honorable Clifton P. Knight, Mayor, City of Hartselle, dated May 24, 2001, A.G. No. 2001-187;. Accordingly, if the City of Arab determines that a public purpose is served, and the contemplated action fits within section 11-47-20, then the city may convey the property for less than full and adequate consideration.

It would be prudent to memorialize the transaction in a contract or other written agreement that would document the public benefits that will flow from the transfer of property. This Office has stated several times that where transfer of funds or property to a private entity exists the best policy is to make clear the public benefits arising from the transaction. Opinions to Honorable Wynnton Melton, Mayor, City of Geneva, dated April 16, 2009, A.G. No. 2009-061; Honorable James W. Richardson, Mayor, City of Carbon Hill, dated October 10, 2002, A.G. No. 2003-008; Honorable Jerry Lacey, Chairman, Fayette County Commission, dated January 31, 1997, A.G. No. 97-00097.

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CONCLUSION

The City of Arab may transfer property to the Arab Electrical Cooperative for less than adequate consideration if the city determines that the transfer serves a public purpose.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

TK/MMG/AJ
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