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OFFICE OF THE ATTORNEY GENERAL

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Honorable John Ben Jones
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Industrial Parks - County Commissions - Abandoned Property – Chambers County

Section 11-23-7 of the Code of Alabama sets forth the mechanism by which an industrial park created pursuant to this statutory authority may be abolished or portions of that property removed therefrom.

Property located within an area designated as an industrial park maintains its status as an industrial park until such time that action is taken pursuant to section 11-23-7 of the Code.

A county commission should monitor industrial parks to ensure such areas are being used for industrial purposes.

A county commission has the authority to enforce restrictions and abolish an industrial park that is no longer used for industrial purposes.

The county commission has no legal duty to inspect or require owners of industrial parks to maintain community standards.

Dear Mr. Jones:

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

QUESTION 1

Under section 11-23-7 of the Code of Alabama, or any other applicable law, was it the intent of the Legislature to include, preserve, and protect a property's industrial park status in perpetuity, once designated as an industrial property, regardless of changes in use, changes in borders, or failure to maintain property standards?

FACTS AND ANALYSIS

In your letter of request, you stated the following:

> The Chambers County Commission granted an industrial park status to certain textile mill properties in 1979. The textile industries no longer operate, and the mills have been abandoned for years. These properties are deteriorating and becoming public nuisances to the communities that once served as mill villages. The properties have been sold by the owners to whom the status was originally granted, and the new owners intend to tear down the facilities for scrap and salvage. Some of these properties have already been subdivided and sold for various uses, including church family centers, apartments, offices, and nonprofit service organizations. No actions have been taken by the Chambers County Commission to approve changes in borders of the original parks or to approve changes in use. The county commission has been requested by the two largest cities within the county, Lanett and Valley, to remove the industrial park status of the parks located adjacent to neighborhoods that are the textile mill villages that supported the mills/parks in question, but they have been reluctant to act. The condition of the properties within these parks have not been maintained to any community or international standard and are a dereliction–contrary to widely accepted standards and principles of community development. No actions have been taken by the Chambers County Commission to inspect or enforce any property

> standards within the parks, including the replacement of broken windows and reasonable maintenance of grass and shrubbery.

Pursuant to section 11-23-1, *et seq.*, of the Code, a county commission may establish an industrial park. ALA. CODE § 11-23-1 (2008). Property that has been designated as an industrial park is not required to continue with this designation in perpetuity. Instead, section 11-23-7 of the Code sets forth the manner in which either the industrial park may be abolished or the property therein may be removed. This section states as follows:

> The county commission may abolish an industrial park or remove a portion of the territory from an industrial park if (1) the industries located therein request the abolishment of the industrial park or the removal of a portion of the territory from an industrial park; or (2) the property or a portion of the property within the industrial park ceases to be used for industrial park purposes. The county commission may abolish an industrial park or remove a portion of the territory from an industrial park only by resolution adopted after not less than one public hearing on the question. The resolution of a county commission to abolish an industrial park or remove a portion of the territory from an industrial park shall be effective 30 days after the resolution is adopted by the county commission; provided, that no resort to the courts is taken challenging such action prior to the expiration of such 30 days by a property owner within the area affected. If such action is taken by a property owner, the resolution of the county commission shall be effective only when a judgment adverse to the property owner has been rendered and is final, executory, and definitive. The results of any final action taken under this section which in any way alters the boundaries of the industrial park shall be filed with the clerk of probate court.

ALA. CODE § 11-23-7 (2008).

CONCLUSION

Section 11-23-7 of the Code of Alabama sets forth the mechanism by which an industrial park created pursuant to this statutory authority may be abolished or portions of that property removed therefrom.

QUESTION 2

> Can an industrial park property be sold in parcels or in total to a non-industrial park use and still retain its original status as an industrial park without going through the process of getting the county commission's approval of changes in use and changes in the borders of the original park descriptions?

FACTS AND ANALYSIS

Section 11-23-2 states that an industrial park shall include land that is "used exclusively for industrial purposes or which is primarily suited for industrial development." ALA. CODE § 11-23-2 (2008). Section 11-23-4 of the Code further states that, after a county commission designates an area as an industrial park, "no facilities shall be thereafter located therein that are not industrial in character or reasonably related thereto . . ." ALA. CODE § 11-23-4 (2008). Based on the information that you provided to this Office, it appears that certain persons and/or entities that do not have an industrial purpose have located within the Chambers County Industrial Park. Unfortunately, as determined in Question 1, an industrial park maintains its status until the procedures set forth in section 11-23-7 are taken.

CONCLUSION

Property located within an area designated as an industrial park maintains its status as an industrial park until such time that action is taken by the county commission pursuant to section 11-23-7 of the Code.

QUESTION 3

> If an industrial park is sold to non-industrial uses or in subdivided portions without receiving the

> approval, by resolution, of a county commission, does the industrial park status continue to exist, or is it void because it no longer meets the details of chapter 23 of title 11?

FACTS, ANALYSIS, AND CONCLUSION

This question was answered in response to your first and second questions. As stated above, industrial parks do not automatically lose their status simply because the industrial park is no longer being used for industrial purposes. The county commission must affirmatively act in accordance with the provisions of chapter 23 of title 11 of the Code to abolish any portion of an industrial park.

QUESTIONS 4 & 5

> Does a county commission have a legal responsibility to monitor the use of a property to which is granted industrial park status to ensure it is still being used for the industrial purpose for which the status was granted?
>
> Does a county commission have a legal duty to revoke the industrial park status of a property when the property is no longer used for industrial purposes, has been abandoned for an extended period of time, and there is no realistic probability that the property will be used for industrial purposes in the foreseeable future?

FACTS AND ANALYSIS

Property within an industrial park is largely autonomous and is in essence a microcosm. Services that are typically provided by local governments, such as sewer, water, fire, garbage, and police protection, are provided either on an individual basis by the industries within the industrial park or by those industries as a group. ALA. CODE § 11-23-6 (2008). Industrial parks are, however, still subject to the sheriff and courts of the county in which the industrial parks are located. Further, the rights and responsibilities of the county commission concerning the industrial park are not diminished once an industrial park is created. ALA. CODE § 11-23-8 (2008).

Section 11-23-7 of the Code authorizes a county commission to abolish an industrial park if: "(1) the industries located therein request the abolishment of the industrial park or the removal of a portion of the territory from an industrial park; or (2) the property or a portion of the property within the industrial park ceases to be used for industrial park purposes." ALA. CODE § 11-23-7 (2008). Because a county commission may abolish an industrial park or a portion thereof in instances where that area ceases to be used as an industrial park, it is the opinion of this Office that a county commission should monitor industrial parks to make sure that the industrial parks continue with the stated purpose of industrial development.

You also question whether a county commission has a legal duty to revoke an industrial park status. Sections 11-23-4 and 11-23-7 of the Code both use the permissive language of "the county commission ***may*** . . ." when referring to both enforcing land use restrictions and abolishing an industrial park. ALA. CODE § 11-23-4, 11-23-7 (2008) (emphasis added). Permissive language grants the power to act, but is not strong enough to compel action.

CONCLUSION

A county commission should monitor industrial parks to ensure such areas are being used for industrial purposes.

A county commission has the authority to enforce restrictions and abolish an industrial park that is no longer used for industrial purposes.

QUESTION 6

> Does a county commission have a legal duty to inspect and require the owners of industrial parks to maintain community standards, such as keeping grass cut, cleaning graffiti, controlling access, repairing broken windows, and maintaining building structures?

FACTS AND ANALYSIS

As mentioned earlier, industrial parks are somewhat autonomous. There is no statutory authority that requires a county commission to regulate the manner in which the businesses occupying the industrial park maintain that area. Section 11-3A-2(a) of the Code, however, does authorize a county commission to "provide for its property and affairs; and for the public welfare, health, and

safety of the citizens throughout the unincorporated areas of the county by exercising certain powers for the protection of the county and public property under its control." ALA. CODE § 11-3A-2(a) (2008). This section gives a county the authority to provide for the abatement of weeds, animal control, and junkyard control, among other things. This statute also uses permissive language with regard to a county's authority to regulate these stated aspects. Thus, the county commission has the authority to exercise such powers, but there is no legal duty for the commission to act.

What constitutes community standards are questions of fact, and this Office may only make determinations of law. ALA. CODE § 36-15-1(1)(a) & (b) (2010); opinion to Clarence F. Rhea, Attorney, City of Attalla, dated April 19, 1996, A.G. No. 96-001090, at 2; opinion to Casandra Horsley, Winston County Judge of Probate, dated April 19, 1996, A.G. No. 96-00189, at 1.

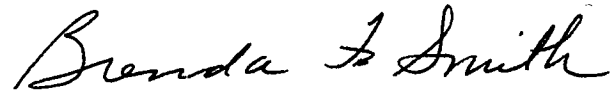
CONCLUSION

The county commission has no legal duty to inspect or require owners of industrial parks to maintain community standards.

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

Sincerely,

TROY KING
Attorney General
By:



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