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STATE OF ALABAMA
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Honorable Frank W. White
Executive Director
Alabama Historical Commission
468 South Perry Street
Montgomery, Alabama 36130-0900

Historical Commission – Public
Purpose – Real Property –
Conveyances

If the Alabama Historical
Commission determines that there
is a public purpose served by the
transfer of property to the Friends
of the Mansion, there would be no
violation of section 93 or section
99 of the Constitution of Alabama.

Dear Mr. White:

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

QUESTION

Does either section 93 or section 99 of
the Constitution of Alabama prohibit the
transfer of property owned by the Alabama
Historical Commission (“Commission”) on
Perry Street in Montgomery to the Friends of
the Mansion?

FACTS AND ANALYSIS

The Alabama Historical Commission owns an older duplex
apartment located on Perry Street in Montgomery directly across from
the Governor’s Mansion (“Mansion”). The Commission is considering

the transfer of this property to a private, nonprofit support group, the Friends of the Mansion, which would then attempt to find a buyer who would commit to a restoration consistent with the character of the duplex that would also enhance the setting of the Mansion and the historic district in general.

This Office has recognized that a governmental entity may, consistent with section 93, transfer governmental property to a private entity if this is done to serve a public purpose and that the determination of whether a public purpose is being served is within the discretion of the governmental entity. Opinion to Honorable Jim Folsom, Jr., Lieutenant Governor, dated October 30, 2009, A. G. No. 2010-008; Opinion to Honorable M. Barnett Lawley, Commissioner, Department of Conservation and Natural Resources, dated April 5, 2005, A. G. No. 2005-100. This Office has also recognized that this reasoning extends to section 99, which generally prohibits the transfer of state lands to private entities. Opinion to Honorable F. Lawrence Oaks, Executive Director, Alabama Historical Commission, dated October 16, 1995, A.G. No. 96-00011.

With regard to the determination of whether a public purpose is being served, this Office has stated the following:

To determine whether such a purpose is public, the [governing body] must look to the statutes setting forth the powers of [the entity]. If, within such powers, there exists the authority to promote [the action at issue], then the [body] need only decide whether the transfer of the real property to this Board will help to accomplish that purpose.

Opinion to Honorable W. Phil Eldridge, Attorney, Geneva County Commission, dated May 7, 2007, A.G. No. 2007-093 at 2, *quoting* opinion to Honorable Robert S. Presto, Escambia County Attorney, dated August 24, 1995, A.G. No. 95-00299 at 4.

In section 41-9-240 of the Code of Alabama, which states the purpose of the Alabama Historical Commission, the preservation of historic buildings is described as a matter of great concern to Alabama and its people. ALA. CODE § 41-9-240 (2000). Under section 41-9-249(7)(a) of the Code, the Commission is authorized to transfer or convey real property in furtherance of the lawful objectives of the

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Commission. ALA. CODE § 41-9-249(7)(a) (2000). Based on these two statutory provisions, it is clear that the Commission could determine that the transfer contemplated would not violate sections 93 or 99.

CONCLUSION

Therefore, if the Alabama Historical Commission determines that there is a public purpose served by the transfer of property to the Friends of the Mansion, there would be no violation of section 93 or section 99 of the Constitution of Alabama.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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