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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Robin F. Reynolds
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139 South Broadnax Street
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Municipalities – Surplus Property – Buildings – Contracts – Tallapoosa County

Section 11-47-20 of the Code of Alabama prohibits a municipality from disposing of real property while such property is being currently used by the municipality.

Dear Mr. Reynolds:

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

QUESTIONS

May the City of Dadeville ("City") move forward with a proposed sale of city hall, while that building is currently being occupied, given that the City intends to abandon the property by sale to a private entity at a later date?

Would the proposed transaction be considered an option contract and thereby unenforceable between the parties?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that the City of Dadeville was currently in the process of negotiating with a private entity for the purchase of the building and land presently occupied and used by

the City as city hall. The City has negotiated with, and intends to sell city hall to, a business entity that currently is located outside the City, but intends to establish a bank in the City of Dadeville. The City seeks to acquire a building that is of sufficient size to consolidate all city services therein. A potential facility has been identified in downtown Dadeville. The City intends to take the earnest money and proceeds from the sale of city hall and apply these moneys towards the purchase of this other building. To purchase the property, a grace period will be required to make the necessary improvements to the future site before occupancy by the City. The sale contract and the purchase contract would have contingent dates that would allow for the properties to be sold and acquired by the City, but the City would retain its right to maintain its physical presence in the current city hall until after the necessary renovations and improvements can be made to the future site of city hall.

Initially, you question whether the City may sell a property while that property is currently being used. Section 11-47-20 of the Code of Alabama authorizes a municipality to dispose of unneeded property. This particular statute states as follows:

> ***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.

ALA. CODE § 11-47-20 (2008) (emphasis added).

Under the established rules of statutory construction, words used in a statute 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. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000). Section 11-47-20 of the Code authorizes a municipality to dispose of real property that is not needed for public or municipal purposes. In the fact situation that you have presented, the real property in question is currently being used for public and municipal purposes.

The Courts have interpreted the identical predecessor statute to section 11-47-20 of the Code to prevent the sale of real property by a

municipality when such property is currently being used by the municipality. *Anderson v. Adams*, 291 Ala. 523, 527-28, 283 So. 2d 416, 418-19 (1973). More pointedly, the authority of a municipality to lease or dispose of real property does not arise until such time that the property ceases to be used. *Id.* at 527, *citing City of Bessemer v. Huey,* 247 Ala. 12, 22 So.2d 325 (1945).

Based on our response to your initial question, your second question is moot.

CONCLUSION

Section 11-47-20 of the Code prohibits a municipality from disposing of real property while such property is being currently used by the municipality.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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