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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

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501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

Honorable Garey Reynolds, Superintendent
Clay County Board of Education
Post Office Box 278
Ashland, Alabama 36251

Education, Boards of – Schools – School Lands – Nonprofit Corporations – Public Purpose – Valuation of Property – Real Property

The Clay County Board of Education may transfer real property in exchange for various services related to educational and community development and/or monetary consideration, as long as the value to be derived is more than nominal consideration. The Board is responsible for determining the value of any nonmonetary services to be received.

Dear Superintendent Reynolds:

This opinion of the Attorney General is issued in response to your request on behalf of the Clay County Board of Education.

QUESTIONS

(1) Can the Clay County Board of Education donate the permanently closed Millerville School to the Bibb Graves Alumni and Friends Association, Inc.?

(2) If the answer to the first question is no, can the Clay County Board of Education sell this property to the Bibb Graves Alumni and Friends Association, Inc., for $10 and other valuable consideration?

(3) If the answer to either Question 1 or Question 2 is yes, what are the correct steps to complete this transfer?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that the Clay County Board of Education ("Board") owns Millerville School ("School") and approximately 11.38 acres of land surrounding the School. The School was permanently closed because of a population decrease and has remained dormant since that time with no constructive use being made of the property. Because there were many instances of criminal activity that took place once the School was closed, a recent appraisal shows that the School has "no value."

You further informed this Office that a group of citizens living in and around the community of Millerville, however, have come together and formed a not-for-profit corporation known as the Bibb Graves High School Alumni and Friends Association, Inc. The corporation is organized exclusively for charitable, historical, educational, and benevolent purposes. The corporation's vision is to save the Millerville School buildings and campus from further deterioration and provide a community center for arts, entertainment, education, and public safety.

Ultimately, this organization seeks to use the buildings to host recreational activities, including Little League games and sports; to host cultural and trade shows so that children can see and learn about different cultures; to be used as a voting location; to host reunions and singings; to assist in securing funds to make available facilities for housing community emergency shelter, fire, EMS and rescue services; and other similar community purposes that would be beneficial to the community and children as a whole. This organization has come to the Board regarding the purchase of the School. The Board proposes to either donate the property to Bibb Graves High School Alumni and Friends Association, Inc., or to sell said property to the corporation for $10 and other valuable consideration.

Section 16-8-40 of the Code of Alabama authorizes a county board of education to convey the title to real property it owns as long as the proceeds of the sale are applied to school purposes within the authority and jurisdiction of the school board. ALA. CODE § 16-8-40 (2001). Repeatedly, this Office has stated that the Board must receive fair and adequate consideration for the real property sold or leased by it, and the proceeds of the transaction must be used for school purposes.

The fair and adequate consideration required may be in the form of monetary or other benefits to the Board. Any nonmonetary benefit should relate to school purposes. The Board should determine the value of any nonmonetary benefits. *See* opinion to Honorable H. Jerome Thompson, Attorney, Lawrence County Board of Education, dated May 2, 2005, A.G. No. 2005-122, opinion to Honorable Broox G. Garrett, Jr., Attorney, Escambia County Board of Education, dated September 6, 2000, A.G. No. 2000-228.

Initially, you question whether the Clay County Board of Education may donate the permanently closed Millerville School to the Bibb Graves Alumni and Friends Association, Inc. If the Board were to donate the property, then the Board would conceivably be receiving less than adequate consideration, i.e., fair market value, for the property. Opinion to Honorable W. Gregory Ward, Attorney, Chambers County Board of Education, dated January 10, 1995, A.G. No. 95-00085.

A donation of property would be considered a gratuitous transfer. A board of education is not authorized to convey real property for either nominal or no consideration. Opinion to Honorable Carl E. Johnson, Jr., Attorney at Law, dated June 22, 1989, A.G. No. 89-00335, *citing State v. Jefferson County Bd. of Educ.*, 282 Ala. 303, 211 So. 2d 146 (1968).

Section 94 of the Recompiled Constitution of Alabama, as amended, prohibits political subdivisions of the state from granting money or any other thing of value in aid of a private individual, corporation, or association. ALA. CONST. art. IV, § 94 (amend. 558). Section 94, however, is not violated when the questioned transfer or action promotes some public purpose that is consistent with the goals and the authority or power of the public entity. *See, generally,* opinion to Honorable Clay Tinney, Counsel for the City of Roanoke, dated February 29, 2012, A.G. No. 2012-041. The determination of whether the transfer serves a public purpose must be made by the public entity involved.

Ostensibly, the proposed transaction would not be a gratuitous transfer because, in your request, you noted several beneficial educational projects for children within your community. The nature and degree of the use of this facility for the students and other members of the community for recreational and instructional purposes would be relevant in determining the value of the nonmonetary benefits the Board expects to receive as a result of the transfer.

Whether a donation of certain educational programs for the children within your community in exchange for the Board donating or transferring the School and additional acreage for $10 constitutes adequate consideration

involves questions of fact that cannot be determined by this Office. *Thompson* at 5; opinion to Honorable James H. Carter, Superintendent, Selma City Schools, dated March 26, 2004, A.G. No. 2004-105 at 3; *Ward* at 4. This Office notes, however, that although an appraisal determined that the school building was of zero value, the 11.38 acres associated with the School should contain some value. As such, the Board should determine the value of the acreage in relation to the nonmonetary benefits that will be received by the Board.

A similar inquiry to the one you raise was previously addressed by the Attorney General for the State of Texas. In that opinion, a nonprofit corporation sought to obtain certain property owned by Texas Southern University ("TSU"). The property owned by TSU obtained an appraisal that showed a portion of the property had zero value, with an adjacent parcel valued at $11,250. The nonprofit corporation offered, among other things, to donate historical papers to TSU in exchange for the property. In responding to this request, the Texas Attorney General stated, in pertinent part, the following:

> The TSU board of regents has general statutory authority to acquire and convey land on behalf of the University. . . . Property belonging to a state university such as TSU is state property. . . .
>
> Article III, sections 51 and 52 of the Texas Constitution are complementary provisions limiting the Legislature's appropriation of public funds and resources for private purposes, either directly or by authority vested in an agency or local entity. . . . Therefore, TSU is constitutionally prohibited from making a purely gratuitous transfer of real property to a private entity.
>
> However, a transfer of property interests or rights in exchange for adequate consideration is not a gratuity. . . . [W]hether a donation of historical papers . . . constitute[s] adequate consideration for a conveyance of real property involves questions of fact that cannot be determined in an attorney general opinion. Instead, the adequacy of consideration is a determination for the governing board of the granting entity to make.

Tex. Att'y Gen. Op. GA-0894 (Tex.A.G.), 2011 WL 6156902.

The conclusions reached, and the analysis in the Texas Attorney General's opinion, are not unlike the reasoning for this jurisdiction. Accordingly, it is the opinion of this Office that a board of education may not make gratuitous transfers of real property, even if the real estate is valued at zero. To the extent opinions from this Office in the past have stated otherwise, those opinions are hereby overruled:

- Honorable Tilman Parnell, Superintendent, Washington County Board of Education, dated November 30, 2001, A.G. No. 2002-077;

- Honorable Stanley E. Munsey, Attorney, Colbert County Board of Education, dated April 10, 2000; A.G. No. 2000-122.

Finally, you seek guidance regarding the correct steps to be taken to complete a transfer of this nature. This Office is charged with answering questions of law. Thus, your final inquiry is too fact-specific and subjective for this Office to provide assistance.

CONCLUSION

The Clay County Board of Education may transfer real property in exchange for various services related to educational and community development and/or monetary consideration, as long as the value to be derived is more than nominal. The Board is responsible for determining the value of any nonmonetary services to be received.

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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