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STATE OF ALABAMA
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Honorable Martin R. Pearson
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Chatom, Alabama 36518

Municipalities – Surplus Property – Council Members – Conflicts of Interest – Sales – Real Property – Washington County

A town may sell real property to a company that has a councilman as a member of that company, if the councilman does not participate in the discussion of the consideration of the sale by the town council, for an amount determined by the council to be adequate consideration.

The best public policy is to sell such property by competitive bidding.

Dear Mr. Pearson:

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

QUESTIONS

(1) May the Millry Town Council sell a building to a company with a councilmember as a member of that company?

(2) If so, must the sale be by competitive bid?

FACTS AND ANALYSIS

Your request states as follows:

> The Town of Millry owns a small building known as the Medical Clinic Building. Until a few years ago, the building sat vacant for a number of years. Then the town leased it to a company that opened and is operating a medical clinic. Subsequent to the lease, one of the members of the company was elected to the town council. Recently, some of the other councilmembers have discussed selling the building. The councilmember who is a member of the company has announced a conflict and abstained from any discussion.

Section 11-47-20 of the Code of Alabama authorizes, as follows, for the disposition of unneeded real estate by a municipality:

> 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).

Section 11-43-54 of the Code states as follows:

> ***No councilman shall be entitled to vote on any question in which he***, his employer, or employee ***has a special financial interest at the time of voting or was so interested at the time of his election***. For violating this section or Section 11-43-53, a councilman may be removed.

ALA. CODE § 11-43-54 (2008) (emphasis added).

This Office recently addressed this issue in the context of a municipality's leasing its real property, observing as follows:

> ***[T]his Office has repeatedly stated that a city may sell real property to the mayor and a council member if they do not participate in the discussion of and do not***

> ***vote on the sale.*** Opinions to Honorable Jeffrey C. Smith, Attorney, Town of Brookwood, dated March 29, 2002, A.G. No. 2002-192; Honorable Keith A. Howard, City Attorney, Town of Wetumpka, dated October 19, 1998, A.G. No. 99-00008; Honorable Billy J. Blackmon, Mayor, City of Ozark, dated May 28, 1993, A.G. No. 93-00194; Honorable J. E. White, Mayor, Town of Hayden, dated June 10, 1988, A.G. No. 88-00327; Honorable C. P. Guin, Mayor, Town of Guin, dated March 22, 1974.

Opinion to Honorable Timothy Prevatt, Mayor, Town of Avon, dated September 9, 2013, A.G. No. 2013-067 at 2 (emphasis added). These opinions also held that the property must be sold for fair market value.

The *Prevatt* opinion determined that a town may lease surplus real property in an amount determined by the town council to be adequate consideration. In doing so, that opinion overturned opinions stating that the rent had to be the fair market rate. The *Prevatt* opinion was based on another line of opinions that considered real estate transactions without the question of a conflict. The *Prevatt* opinion explained the rationale of those opinions as follows: "The Alabama Supreme Court has upheld both leases and conveyances of property by municipalities without requiring the municipality to prove that it has received fair market value for the property." *Id.* at 4 (*citing Dothan Area Chamber of Commerce v. Shealy*, 561 So. 2d 515 (Ala. 1990)). This rationale treats lease and sale price equally. Accordingly, the *Smith/Howard/Blackmon/White/Guin* line of opinions quoted in the *Prevatt* opinion above, finding that a municipality must receive fair market value, is overruled to the extent that they conflict with this opinion. Thus, a municipality may sell surplus property for an amount determined by the council to be adequate consideration.

Regarding your second question, although a municipality is not required to sell its real property by competitive bid, it is the best public policy to do so. Opinions to Honorable Keith A. Howard, City Attorney, Town of Wetumpka, dated October 19, 1998, A.G. No. 99-00008; Honorable Billy J. Blackmon, Mayor, City of Ozark, dated May 28, 1993, A.G. No. 93-00194.

This Office does not opine on ethical issues and advises you to seek an opinion from the Alabama Ethics Commission.

CONCLUSION

A town may sell real property to a company that has a councilman as a member of that company, if the councilman does not participate in the

discussion of the consideration of the sale by the town council, for an amount determined by the council to be adequate consideration.

The best public policy is to sell such property by competitive bidding.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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