



# 2015-017

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE  
ATTORNEY GENERAL

November 21, 2014

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

Honorable Stevan H. Parsons  
Mayor, Town of Sylvan Springs  
100 Rock Creek Road  
Sylvan Springs, Alabama 35118

Municipalities – Streets – Conflicts of  
Interest – City Council Members – Real  
Property – Donations – Jefferson County

A member of the Town Council for the  
Town of Sylvan Springs (“Town”) may not  
convey lots in a subdivision that he or she  
developed to the Town upon an express  
condition that the Town will complete and  
maintain the streets of the subdivision.

Dear Mayor Parsons:

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

### QUESTION

May a member of the town council for the Town  
of Sylvan Springs deed lots within a subdivision to the  
Town in exchange for the Town undertaking to  
complete streets within the subdivision where the  
member is also the developer of the subdivision?

### FACTS AND ANALYSIS

According to your request, a sitting council member is a real estate  
developer who began construction of Maple Grove subdivision in 2003. Due to  
the economic climate, several lots within the subdivision were never sold.  
Additionally, the roads within the subdivision were never dedicated to the  
Town, nor has the Town accepted responsibility for the roads. The roads are

incomplete and deteriorating. The situation has escalated to the point where the Town believes that litigation against the developer and the Town is imminent. It has been proposed that the remaining lots within the subdivision be gifted to the Town in exchange for the Town undertaking the responsibility for the completion and maintenance of the subdivision streets. Pursuant to this proposal, it is suggested that the lots could eventually be sold by the Town to recover its costs.

Section 11-43-12 of the Code of Alabama states as follows:

***(a) No alderman or officer or employee of the municipality shall be directly or indirectly interested in any work, business or contract, the expense, price or consideration of which is paid from the treasury, nor shall any member of the council or officer of the municipality be surety for any person having a contract, work or business with such municipality for the performance of which a surety may be required.***

ALA. CODE § 11-43-12(a) (2008) (emphasis added).

Additionally, section 11-43-53 of the Code provides the following:

(a) No member of any city or town council shall, during the time for which he has been elected, be appointed to any municipal office which shall be created or the emoluments of which shall be increased during the term for which he shall have been elected; nor shall he be interested, directly or indirectly, in any contract or job for work or material, or the profits thereof or services to be performed for the corporation, except as provided in this title.

ALA. CODE § 11-43-53(a) (2008).

This Office has previously determined that these provisions of the Code prohibit a municipal officer from entering into a contract to sell property to the city for which he or she serves. Opinion to Honorable L.D. Owen, III, Attorney, City of Bay Minette, dated April 4, 2002, A.G. 2002-201. This Office has also previously opined, however, that these sections do not prohibit a municipal officer from donating property to a municipality if the city determines that the property is useful for municipal purposes. Opinion to Honorable David A. McDowell, Attorney, City of Prattville, dated October 16, 2013, A.G. No.

Honorable Stevan H. Parsons  
Page 3

2014-009; *Owen* at 4. Where donations were considered, the gifts were unconditional, and the municipalities intended to use the property donated. *Id.*

The facts set forth in your request place significant conditions on the donation of the property. The gifting of the lots is conditioned upon the agreement of the Town to complete and maintain the streets within the subdivision.

Additionally, the Town has no intention to use the lots being donated. Rather, the Town intends to sell the lots to pay for the completion and maintenance of the streets. Indeed, the arrangement proposed in your request appears more closely to be that of a contract than a mere donation.

Moreover, according to your request, the situation has escalated to the point where the Town believes that litigation against the council member in his capacity as the developer of the subdivision is imminent. Accordingly, the council member in question has a direct interest in the decision of the Town to accept the lots and thereafter complete and maintain the streets.

#### CONCLUSION

A member of the Town Council for the Town of Sylvan Springs may not convey lots in a subdivision that he or she developed to the Town upon an express condition that the Town will complete and maintain the streets of the subdivision.

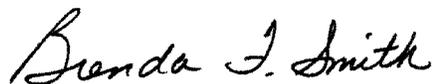
I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE

Attorney General

By:



BRENDA F. SMITH

Chief, Opinions Division

LS/BB  
1848372/18106