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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Public Purpose – Colleges and  
Universities – Municipalities –  
Lauderdale County

The City of Florence may enter into an agreement with the University of North Alabama to give the University exclusive use of a municipally owned and operated softball field for a period of 25 years in exchange for the City's use of other University facilities.

Dear President Potts and Mr. Musgrove:

This opinion of the Attorney General is issued in response to your requests on behalf of the University of North Alabama and the City of Florence.

QUESTION

Whether the City of Florence may enter into an agreement with the University of North Alabama ("University") and grant the University exclusive use of a municipally owned and operated softball field for a period of 25 years.

FACTS AND ANALYSIS

The following facts are presented in both requests:

In 1973, the City of Florence, Alabama ("City"), purchased approximately 37.92 acres of land located in the city limits of the City from the North Alabama Fair and Park Association, Inc. The City has never formally dedicated the land as a public park but has, over the years, developed public recreational facilities on the property, including ballfields, a skateboard park, and a playground. In 1985, the City constructed a softball field on the property. The softball field may be reserved in advance by the public or used without a reservation when unoccupied. Since its construction, the field has been used at various times by local high schools and the University of North Alabama for women's softball games.

The women's softball team of the University of North Alabama currently uses the field as its home stadium for intercollegiate events and would like to make significant improvements to the field and appurtenant facilities. The City believes that the improvement and use of the field by the University of North Alabama will enhance the other facilities located on the property and benefit city residents and university students. As additional consideration for the use of the softball field, the University of North Alabama will allow the City to use certain facilities located on the University's campus. Therefore, to allow the University of North Alabama to improve and operate the field as a quality varsity athletic facility, the City would like to grant the University of North Alabama exclusive use and control of the softball field for a period of twenty-five years.

Section 11-47-21 of the Code of Alabama authorizes a municipality, by ordinance, to lease for a period up to 99 years any of its real property not needed for municipal purposes. ALA. CODE § 11-47-21 (1992). Section 94 of the Constitution of Alabama, as last amended by Amendment No. 558, prohibits a political subdivision 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; ALA. CONST. amend. 558. This provision, however, does not prohibit one political subdivision from granting property to another political subdivision. *Rogers v. City of Mobile*, 277 Ala. 261, 279, 169 So. 2d 282, 299 (1964). The University of North Alabama is a public university created under section 16-51-1, *et seq.*, of the Code of Alabama. ALA. CODE § 16-51-1, *et seq.* (2001). Accordingly, the City of Florence may transfer or lease property to the University of North Alabama.

The City's request also questions whether the City must hold an election under section 35-4-410 of the Code of Alabama before leasing the softball field to the University. Section 35-4-410 of the Code of Alabama allows a municipality to alienate public parks, playgrounds, and recreational facilities provided the alienation is approved by the voters of the municipality in a referendum held for that purpose. ALA. CODE § 35-4-410 (1991). This section is applicable only where the property has been dedicated as a public park, playground, or recreational facility. *Harper v. City of Birmingham*, 661 F. Supp. 672 (N.D. Ala. 1986). A "dedication" of property occurs if: (1) the property is conveyed to the city conditioned upon a clear expressed intent by the grantor that the property be used exclusively for a public park or other public recreational facility and the city accepts and consents to those restrictions, or (2) the city's governing body dedicates the property specifically for that use by a resolution or ordinance. *Vestavia Hills Bd. of Educ. v. Utz*, 530 So. 2d 1378 (Ala. 1988); *O'Rorke v. City of Homewood*, 286 Ala. 99, 237 So. 2d 487 (1970); *see also* Opinion to Honorable Emmett O'Neal Griswold, Jr., City Attorney, City of Samson, dated November 30, 1993, A.G. No. 94-00070.

Under the facts presented in this request, the property in question was conveyed to the City of Florence without a clear expressed intent that the property be used for public park or recreational purposes nor has the City of Florence dedicated the property as a public park or recreational facility by resolution or ordinance. Accordingly, the City of Florence may lease the property in question to the University of North Alabama without conducting a referendum on the issue.

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CONCLUSION

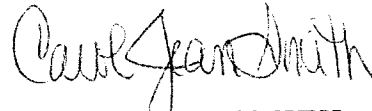
The City of Florence may enter into an agreement with the University of North Alabama to grant the University exclusive use of a municipally owned and operated softball field for a period of 25 years in exchange for the City's use of other University facilities.

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

Sincerely,

TROY KING  
Attorney General

By:



CAROL JEAN SMITH  
Chief, Opinions Division

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