



2004 - 191

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Craig Ford
Member, House of Representatives
Post Office Box 8208
Gadsden, Alabama 35902

Commercial Property – Commercial
Development Authority – Fair
Market Value – Real Property –
Public Purpose – Municipalities –
Etowah County

In general, a municipality is not authorized to purchase property for future development with the municipality providing infrastructure and selling all the parcels to a developer for resale to the public. A municipality, however, is authorized to undertake redevelopment and urban renewal projects to clean up and prevent blighted areas or slums. When a public purpose will be served by the conveying of property for nominal consideration, a city may make such grant without violating section 94 of the Constitution of Alabama.

Dear Representative Ford:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

(1) Can a municipality purchase and develop commercial property and resell this land

for less than fair market value or less than adequate consideration?

(2) If the answer to Question 1 is "no," can a commercial development authority purchase land and develop and resell this land for less than fair market value or less than adequate consideration?

(3) In a revitalized and/or redevelopment project area, can either a municipality or a commercial development authority purchase and develop commercial property and resell this land for less than fair market value or less than adequate consideration?

(4) Would selling a municipality's property and/or property of a commercial development authority at less than fair market value or less than adequate consideration, with the municipality expecting a revenue stream and mix-use development (condominiums, apartments, retail, and restaurant/banquet space), be allowed by Alabama law?

FACTS AND ANALYSIS

According to the information that you provided to this Office, the City of Gadsden is seeking ways to increase its revenue stream in the new East Gadsden revitalized project area. The City of Gadsden proposes to purchase millions of dollars of commercial buildings and property that will be developed for resale. On February 26, 2004, Charles Ball, the City Planner for the City of Gadsden, told the Chamber of Commerce at a meeting that the city will sell the property, if necessary, to a group at less than fair market value.

Also, according to your information, the City of Gadsden is selling 4.34 acres of commercial property near the Gadsden Mall, which fronts Rainbow Drive and also the Coosa River. The purchaser, Mango Properties, Inc., will purchase the property for \$785,000. The City of Gadsden requires that the purchaser agree to develop the project that will include

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condominium space, apartment/retail space, and restaurant/banquet space. You state that if at least 50 percent of the condominium units have not been presold after six months of aggressive marketing, then the developer, with approval of the city council, may place other uses on that portion of the property designated for condominiums.

You inform this Office that the 4.34 acres has been appraised at \$1,190,000 in an unimproved state. The City of Gadsden will spend approximately \$29,000 to have a building removed from the site. The developer agrees to convey back to the city approximately 1.3 acres for \$10 to be developed with public area improvements and public infrastructure by the City of Gadsden. The city and developer have agreed that the city will be responsible for constructing various public amenities on the property and that the estimated value of these amenities is \$700,000. The City of Gadsden is anticipating a revenue stream, a mix-use development, and the creation of jobs in the Public Development Agreement.

This Office has opined that a town may not purchase land for development purposes such as a shopping center or commercial enterprise. Opinion to Honorable David H. Livingston, Mayor, Town of Arley, dated May 21, 1987, A. G. No. 87-00191. The *Livingston* opinion relied on an earlier opinion from this Office issued to Honorable J. Scott Greene, Attorney for the City of Fultondale, dated February 12, 1986, A. G. No. 86-00144.

In the *Greene* opinion, this Office was asked to opine on a proposed shopping center development in the City of Fultondale that was to be financed, in part, by Fultondale. This Office opined that the proposal by the city to secure a loan and purchase property that would later be sold to a commercial enterprise, even though the loan would be repaid, would violate section 94 of the Constitution of Alabama, as amended, that prohibits a city from lending its credit to a corporation. This Office further explained in the *Greene* opinion that section 11-47-20 sets forth the procedure for the disposal of real property. This Office reasoned that cities "buy real property for public or municipal purposes and dispose of it only when it becomes a surplus. Buying land with the intent of selling it is not authorized." A. G. No. 86-00144 at 2-3; *also see* Opinion to Honorable Roger W. Kirby, City Attorney, City of Gadsden, dated July 14, 2003, A. G. No. 2003-192 (opining that a municipality is not authorized to purchase property for future development with the municipality providing infrastructure and selling all the parcels to a developer for resale to the public).

You, however, indicate in your opinion request that this is a redevelopment project. Redevelopment projects are governed by sections 24-2-1 through 24-2-10 of the Code of Alabama. The Legislature determined the following:

(1) That there exist in many communities within this state blighted areas, as defined herein, or areas in the process of becoming blighted;

(2) That such areas impair economic values and tax revenues, cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the state, and that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection and other public services and facilities;

(3) That the clearance, replanning and preparation for rebuilding of these areas and the prevention or the reduction of blight and its causes are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern;

(4) That redevelopment activities will stimulate residential construction which is closely correlated with general economic activity and that the undertakings authorized by this chapter will aid the production of better housing and more desirable neighborhood and community development at lower costs and will make possible a more stable and larger volume of residential construction, which will assist materially in achieving and maintaining full employment; and

(5) That it is in the public interest that advance preparation for such projects and activities be made now.

(b) The necessity in the public interest for this chapter is hereby declared as a matter of legislative determination.

ALA. CODE § 24-2-1 (2000) (emphasis added). The Alabama Supreme Court has determined that this chapter does not violate the Alabama Constitution's prohibition of lending credit or a grant. *Opinion of the Justices*, 254 Ala. 343, 48 So. 2d 757 (1950). The Court has also determined that this section applies to commercial and industrial properties, as well as residential property. *City of Birmingham v. Tutwiler Drug Co., Inc.*, 475 So. 2d 458 (Ala. 1985).

Section 24-2-2 of the Code sets out a municipality's authority in a redevelopment plan as follows:

Any . . . city or town may carry out any work or undertaking, hereafter called a "redevelopment project":

(1) To acquire blighted areas, which are hereby defined as areas, including slum areas, with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals or welfare of the community;

(2) To acquire other real property for the purpose of removing, preventing or reducing blight, blighting factors or the causes of blight;

(3) To clear any areas acquired and install, construct or reconstruct streets, utilities and site improvements essential to the preparation of sites

for uses in accordance with the redevelopment plan;

(4) To sell or lease land so acquired for uses in accordance with the redevelopment plan; or

(5) To accomplish a combination of the foregoing to carry out a redevelopment plan.

ALA. CODE § 24-2-2 (2000).

A municipality is authorized to undertake redevelopment projects to clean up blighted areas or slums and urban renewal projects for the prevention of blighted areas or slums. ALA. CODE § 24-2-1, *et seq.*; § 24-3-1, *et seq.* (2000). The redevelopment statutes authorize the city to “clear any areas acquired and install, construct or reconstruct streets, utilities and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan.” ALA. CODE § 24-2-2(3) (2000). The urban renewal statutes authorize “acquisition of real property and demolition, removal or rehabilitation of buildings and improvements thereon” and “installation, construction or reconstruction of streets, utilities, parks, playground and other improvements necessary for carrying out the objectives of the urban renewal project.” ALA. CODE § 24-3-2(c) (2000). Your request does not indicate whether the property proposed to be purchased fits within the description of these projects. If so, the city may acquire and develop property consistent with these provisions.

With regard to the second part of your question regarding selling the property for less than fair market value, this Office has opined in the past that a city cannot donate real property for immediate resale at less than fair market value without violating section 94 of the Constitution of Alabama, as amended. ALA. CONST. art. IV, § 94; ALA. CONST. amend. 558; opinion to Honorable P. Richard Hartley, City Attorney, City of Greenville, dated November 20, 1987, A. G. No. 88-00063. That opinion was rendered, however, before the Alabama Supreme Court case of *Slawson v. Alabama Forestry Commission*, which held that a public entity, such as a municipality, may donate money or other thing of value to a private person, corporation, or association without violating section 94 of the Constitution if it is for the benefit of the general public and for a public purpose. 631 So. 2d 953, 955 (Ala. 1994).

The purpose for which a city transfers land is the key element in determining if the city can convey the property for nominal consideration and less than fair market value. If no public purpose will be served, the city cannot convey the land to a prospect for nominal consideration. The Legislature, however, has determined that projects under the redevelopment and urban renewal statutes are in the public's interest. When a public purpose will be served by the conveying of property for nominal consideration, a city may make such grant without violating section 94 of the Constitution of Alabama.

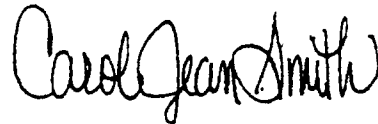
CONCLUSION

In general, a municipality is not authorized to purchase property for future development with the municipality providing infrastructure and selling all the parcels to a developer for resale to the public. A municipality, however, is authorized to undertake redevelopment and urban renewal projects to clean up and prevent blighted areas or slums. When a public purpose will be served by the conveying of property for nominal consideration, a city may make such grant without violating section 94 of the Constitution of Alabama.

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

Sincerely,

TROY KING
Attorney General
By:



CAROL JEAN SMITH
Chief, Opinions Division