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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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County Commissions – Leases – Economic
Development – Public Purpose – Liabilities
– Real Property

A county commission may lease real property to a private for-profit business for less than fair market value to promote economic and industrial development.

The county may enter into a 30-year lease under section 94.01 of the Recompiled Constitution of Alabama, as amended. The county may enter into the lease for less than fair market value of the leased premises provided the county satisfies the conditions of section 94.01(c) of the Constitution.

Dear Ms. Campbell:

This opinion of the Attorney General is issued in response to your request on behalf of the Greene County Commission.

QUESTION 1

May the Greene County Commission lease property it owns to a private for-profit business to develop a race car drag strip in Greene County?

FACTS AND ANALYSIS

The county commission has been presented with a proposal from a private business to develop a race car drag strip on a 26-acre parcel owned by the county. The parcel is located near the county's recreation center. If the county can lease the property, it does not want to incur any liability for any injuries associated with the race car drag strip. The business proposes to lease the property from the county for 30 years at a rate of \$2000 per year. It also proposes to employ about twelve people. The business makes the proposal based on the premise that House Bill 319, which authorizes the county to perform certain actions for the purpose of economic and industrial development, allows the county to lease the premises for a race car drag strip. The county also wants some guidance in the steps and considerations it should make if it can lease the property.

House Bill 319 was enacted by the Legislature and became Act 2004-94. It was submitted to the voters on November 2, 2004 as a proposed constitutional amendment. It was proclaimed ratified on December 23, 2004, and became section 94.01 (amendment 772) of the Recompiled Constitution of Alabama, as amended.

Section 94.01 of article IV of the Recompiled Constitution of Alabama, as amended, states, in pertinent part, as follows:

(a) The governing body of any county, and the governing body of any municipality located therein, for which a local constitutional amendment has not been adopted authorizing any of the following, shall have full and continuing power to do any of the following:

.....

(2) *Lease*, sell, grant, exchange, or otherwise convey, on terms approved by the governing body of the county or the municipality, as applicable, all or any part of any *real property*, buildings, plants, factories, facilities, machinery, and equipment of any kind or industrial park project to any *individual, firm, corporation, or other business entity, public or private*, including any industrial development board or other public corporation or authority heretofore or

hereafter created by the county or the municipality, for the purpose of *constructing, developing, equipping, and operating industrial, commercial, research, or service facilities of any kind.*

ALA. CONST. art. IV, § 94.01 (amend. 772) (emphasis added). This section clearly authorizes a county commission to lease real property, owned by the county commission, to a private for-profit business to operate a commercial business to promote economic development of the county.

CONCLUSION

A county commission may lease real property, owned by the county commission, to a private for-profit business to operate a commercial business to promote the economic development of the county.

QUESTIONS

(2) If the county commission is allowed to lease the property, are there limitations on the number of years of the lease term?

(3) May the county enter into such a lease for less than fair market value of the leased premises?

(4) Is there any liability to the county for any injuries on the leased premises?

(5) What procedure should the county follow before entering into such a lease with a private business?

FACTS AND ANALYSIS

Section 11-14-2 of the Code of Alabama states that the county commission shall have control of all property belonging to the county and may, by an order entered into its minutes, dispose of any real property that can lawfully be disposed. ALA. CODE § 11-14-2 (1989).

In an opinion to Honorable William E. Shinn Jr., it was decided that a county, under section 11-14-2 of the Code, may lease property owned by it that is not needed; is free from trust, conditions, or dedications; and has not been dedicated for public use. Opinion to Honorable William E. Shinn, Jr., Morgan County Attorney, dated February 3, 1992, A.G. No. 92-00157. The Alabama Supreme Court, in *Corning v. Patton*, concluded that the lease of a site of a former courthouse by the Jefferson County Commission for a period of 50 years was not void on the ground that it was contrary to public policy in that it extended beyond the term of the commission making the lease and usurped the power of the succeeding commission. *Corning v. Patton*, 236 Ala. 354, 182 So. 39 (1938). In view of this case, it is the opinion of this Office that a 30-year lease by the Greene County Commission to a private business would be lawful.

Section 94.01(a)(3) (amendment 772) of the Recompiled Constitution of Alabama, as amended, authorizes a county commission to lend its credit to or grant public funds and things of value in aid of or to any individual, firm, corporation, or other business entity, public or private, for the purpose of promoting the economic and industrial development of the county. ALA. CONST. art. IV, § 94.01(a)(3) (amend. 772). The amendment states that in carrying out its purpose, the county shall not be subject to section 93 or 94 of the Constitution. ALA. CONST. art. IV, § 94.01(b) (amend. 772). A lease by a county commission for less than the fair market value of the leased premises, as proposed in your request, is clearly a grant of a thing of value in aid of a private business as authorized by the amendment.

This Office cannot specifically state under what circumstances a county may be held liable for the activities occurring on its leased property. The county might consider requiring the lessee to have a commercial general liability policy that names the county as an additional insured.

Section 94.01(c) of the Recompiled Constitution of Alabama, as amended, mandates that a county cannot lend its credit to or grant any public funds or thing of value to or in aid of any private entity under the authority of the amendment unless prior thereto both of the following are satisfied:

- (1) The action proposed to be taken by the county or municipality is approved at a public meeting of the governing body of the county or municipality, as the case may be, by a resolution containing a determination by the governing body that the expenditure of public funds for the purpose specified will serve a valid and

sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(2) At least seven days prior to the public meeting, a notice is published in the newspaper having the largest circulation in the county or municipality, as the case may be, describing in reasonable detail the action proposed to be taken, a description of the public benefits sought to be achieved by the action, and identifying each individual, firm, corporation, or other business entity to whom or for whose benefit the county or the municipality proposes to lend its credit or grant public funds or thing of value.

ALA. CONST. art. IV, § 94.01(c) (amend. 772).

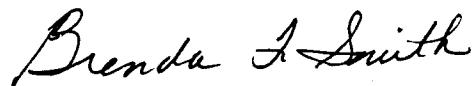
CONCLUSION

The county may enter into a 30-year lease under section 94.01 of the Recompiled Constitution of Alabama, as amended. The county may enter into the lease for less than fair market value of the leased premises provided the county satisfies the conditions of section 94.01(c) of the Constitution.

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

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division