

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

August 31, 2018

Fred C. Permenter, Jr., Esq.  
Attorney, Town of Walnut  
105 East Spring Street  
Ripley, Mississippi 38663

Re: Purchase of real property for commercial purposes

Dear Mr. Permenter:

Attorney General Jim Hood has received your request for an opinion and has assigned it to me for research and response.

**Issues Presented**

You inquire as to whether a municipality may purchase real property for the purpose of leasing said property to a retail and manufacturing business. Specifically, you ask the following:

As the attorney for the Town of Walnut, Mississippi, I have been requested by the mayor and the board of aldermen to obtain an official opinion from your office concerning the purchase of property by the municipality. The Town of Walnut is contemplating the purchase of real estate and the construction of one or more commercial properties to be rented to potential retail and manufacturing businesses. The question that I pose to you and your staff regarding this situation is as follows:

- (1) Pursuant to Section 21-17-1, does the municipality have the authority to purchase real estate and construct commercial buildings to attract manufacturing or retail businesses to the town? It would be the intent of the town to either lease or sell these properties once a tenant is found.

**Response**

In accordance with Mississippi Code Annotated Section 57-7-1, a municipality has

express authority to set aside surplus real property and improve said property for industrial and commercial purposes. Section 57-7-1 provides as follows:

In the event that any municipality, county, supervisors district, municipal airport authority, regional airport authority or other governmental subdivision shall have surplus airport land or other lands which are not needed for airport purposes or for other governmental purposes, then such property so designated and described may be set aside and improved for industrial and commercial purposes and the same may thereafter be operated or the same may be leased or sold upon such terms and conditions as a municipality, county, municipal airport authority, regional airport authority or governmental subdivision shall prescribe.

In order to provide for the improvement of such property for industrial and commercial purposes, the municipality or other authority shall be authorized to provide all necessary utilities therefor and to lay out, construct and/or improve and hard-surface roadways, streets, driveways and access roads, railroads and spur tracks, and provide for the grading, drainage, sewer, lights and water, and all other necessary or proper utilities as may be necessary or proper to make such land desirable or useful as a site or sites for industrial and commercial enterprises. The cost and expense of such improvements to said real estate shall be paid for from funds made available from the lease or sale of such lands to the extent such funds are available.

In the past, we have interpreted the powers granted to municipalities and counties in Section 57-7-1, as well as other corresponding statutes found in Chapters 1, 3, and 5 of Title 57<sup>1</sup>, as sufficient authority to permit the purchase of real property for the purpose of promoting industrial and commercial development. See MS AG Op., Carnathan (November 21, 2003)(municipality may purchase property for the purpose of leasing to a private business under authority granted in Section 57-7-1); MS AG Op., Wolfe (February 2, 2001)(county may purchase real property for purpose of promoting industrial development). With respect to the leasing of said property, we caution the municipality that the subject lease may be voidable as a result of the prohibition against binding successor boards. MS AG Op., Carnathan (November 29, 2005).

As to the authority of a municipality to perform construction on such real property, Section 57-7-1 specifically authorizes a municipality to make a broad range of improvements for the purpose of making the land "desirable or useful as a site or sites for industrial and commercial purposes." Your request provides that the municipality will "construct commercial buildings" for the purpose of attracting businesses. In our opinion, the authority granted under Section 57-7-1 only authorizes improvements to the

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<sup>1</sup> We note that in order to enjoy the powers granted in Chapters 1, 3, and 5 of Title 7, there are additional steps (i.e., the establishment of industrial parks, the issuance of a certificate of public convenience and necessity, etc.) that must be performed.

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site and would not support the construction of a building entirely. It should be noted that while Section 57-7-1 permits improvements to be made to the real property contemplated in its provisions, the "cost and expense of such improvements to said real estate shall be paid for from funds made available from the lease or sale of such lands to the extent such funds are available." Furthermore, to ensure that an unlawful donation is not made, the disposal of such property must be made for "good and valuable consideration." MS AG Op., Thomas (April 7, 2017); MS AG Op., Montgomery (March 31, 2006).

If our office may be of further assistance, please advise.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Leigh Triche Janous  
Special Assistant Attorney General

OFFICIAL OPINION