

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

November 9, 2018

Kevin Null, Esq.
Attorney, Town of Ackerman
Post Office Box 756
Ackerman, Mississippi 39735

Re: Town of Ackerman

Dear Mr. Null:

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

Issues Presented

You ask whether a municipality may sell a municipal park to a local school district pursuant to Mississippi Code Annotated Section 21-19-49 and whether it may do so without restriction in accordance with Sections 21-17-1(1) and 17-25-25. Specifically, you provide the following:

The town has a park which is currently in use. The local school board wishes to purchase the park to build a football stadium, running track, and field house upon it. The town has deemed the sale to be in the best interest of the town, as it will allow the school district to maintain the stadium within the city limits. The school district is a county-wide district.

Does the city have the authority pursuant to Section 21-19-49 of the Mississippi Code to make this sale to the school district?

Section 21-17-1(1) permits sale of real property consistent with the Section 17-25-25, which deals with the disposal of personal property. Section 17-25-25(1) allows a municipality to sell personal property when the municipality has deemed it to be in the best interest of the municipality. Section 17-25-25(b) permits the sale between governing authorities to be conducted in accordance with the purchase of commodities as provided in Section 31-7-13(m)(vi). Can the town pursuant to the reading of these statutes together sell the park to the school district without restrictions as it has deemed the sale to be in the best interest of the town?

Response

Pursuant to the authority granted to this office in Mississippi Code Annotated Section 7-5-25, official opinions of the Attorney General are limited to questions of law for future guidance of those officials entitled to receive them. Opinions of this office may not be issued which require our office to make factual determinations. Therefore, to the extent that your request requires this office to make factual determinations, we must decline to respond with an official opinion of this office.

As to your first inquiry, Section 21-19-49 of the Mississippi Code authorizes the governing authority of a municipality:

... to appropriate money or **dedicate and convey municipally-owned buildings and property or county-owned buildings and property**, as the case may be, to the school district or districts situated within that municipality or county for the purpose of erecting, purchasing or otherwise providing the school building or a site for such school building of such school district, in cases where the governing authority or board of supervisors are of the opinion that the location of such school building within the corporate limits of the municipality or the county, or in close proximity thereto, will be of special benefit to the inhabitants of the municipality or county.

(Emphasis ours.) Assuming the municipality makes the requisite factual findings outlined in Section 21-19-49, it may sell, or otherwise convey, the subject municipal park to the school district.

Regarding your second inquiry, the municipality relies on Mississippi Code Annotated Sections 21-17-1 and 17-25-25 as its authority to sell the subject municipal park. It should be noted that Section 21-17-1(2)(a) requires a determination that the real property has ceased to be used for municipal purposes. Your factual scenario indicates that the subject property is not surplus as it is currently in use. In comparison, Section 17-25-25(1) addresses the disposal of both real and personal property and states that:

[t]he governing authority of a...municipality may sell or dispose of any personal or real property belonging to the governing authority **when the property has ceased to be used for public purposes or when, in the authority's judgment, a sale thereof would promote the best interest of the governing authority.**

(Emphasis ours.)

We note that the latter part of Section 17-25-25 authorizes the disposal of municipal real property in the absence of a surplus finding when the municipality determines that the sale would promote the best interest of the governing authority. Assuming such determination has been made in the proposed scenario, the municipality would be required to comply with one of the property disposal methods outlined in Section 17-25-25 when disposing of a municipal park. You ask whether the authority granted to a

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municipality in Section 17-25-25(6) is sufficient authority for the disposal of the municipal park without having to comply with any other provisions regarding municipal real property disposal. Section 17-25-25(6) of the Mississippi Code specifically authorizes disposal of property to other governmental entities and provides the following:

(6) If the property may be of use or benefit to any federal agency or authority, another governing authority or state agency of the State of Mississippi, or a state agency or governing authority of another state, it may be disposed of in accordance with Section 31-7-13(m)(vi).


We are of the opinion that the municipality may rely solely on the authority granted to it in Section 17-25-25 provided that the municipality has made the factual determinations outlined in Section 17-25-25.

If we may be of further assistance, please advise.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:


Leigh Triche Janous
Special Assistant Attorney General