

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

April 5, 2019

Nicholas H. Manley, Esq.
Attorney, City of Southaven
Post Office Box 171443
Memphis, TN 38187-1443

Re: Mississippi Code Section 21-17-1(2)(b)(i) and (ii)

Dear Mr. Manley:

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 contract with a buyer's broker pursuant to Mississippi Code Section 21-17-1(2)(b)(ii) in addition to obtaining appraisals pursuant to Section 21-17-1(2)(b)(i) when disposing of surplus municipal real property. Specifically, you provide the following:

This firm represents the City of Southaven ("City"). On behalf of the City, I have been asked to seek an opinion from your office regarding Mississippi Code Annotated Section 21-17-1(2)(b)(i) and (ii).

Pursuant to Mississippi Code Annotated Section 21-17-1(2)(b)(i), the City previously surplused property to sell by obtaining two appraisals in lieu of advertising for and accepting competitive bids. Recently, the City was approached by a Mississippi licensed broker representing the buyer for the property. Thus, in accordance with Mississippi Code Annotated Section 21-17-1(2)(b)(i) and previous City Surplus Resolution, the City ordered two appraisals for the property, and the City is currently waiting on the final appraisals for the property. Assuming that the City finds on its minutes that the buyer's broker could also provide professional services to the City as part of the property transaction, may the City also contract with the buyer's broker and pay the broker "reasonable compensation" pursuant to Mississippi Code Annotated Section 21-17-1(2)(b)(ii), in

addition to getting the two appraisals, which establishes the price, as set forth in Mississippi Code Annotated Section 21-17-1(2)(b)(i)?

Response

Assuming that the municipality makes the requisite factual findings provided in Section 21-17-1(2)(a), it is only required to use one of the options available to it in Mississippi Code Annotated Section 21-17-1(2)(b) when disposing of its surplus real property. If the municipality had chosen the method outlined in Section 21-17-1(2)(b)(ii), any procurement of a contract with a real estate broker would have been limited to assisting with the "marketing and sale or lease of the property." Of course, the municipality may procure the services of a real estate broker under its general authority found in Sections 21-17-1 and 21-17-5 provided that such procurement is for valid consideration.

Applicable Law and Discussion

The primary authority by which a municipality may dispose of municipal surplus real property is found at Mississippi Code Annotated Section 21-17-1. Section 21-17-1(2) provides that disposal of surplus real property may be made after publication to the highest bidder or, upon making the requisite factual findings outlined in Section 21-17-1(2)(a), for a fair market price determined by the average of two appraisals or through the use of professional services of a real estate broker. Specifically, Section 21-17-1(2)(b) provides the following:

(b) In any case in which a municipality proposes to sell, convey or lease real property under the provisions of this subsection (2) without advertising for and accepting competitive bids, the governing authority may sell, convey or lease the property as follows:

(i) Consideration for the purchase, conveyance or lease of the property shall be not less than the average of the fair market price for such property as determined by at least two (2) professional property appraisers selected by the municipality and approved by the purchaser or lessee. Appraisal fees shall be shared equally by the municipality and the purchaser or lessee;

(ii) The governing authority of a municipality may contract for the professional services of a Mississippi licensed real estate broker to assist the municipality in the marketing and sale or lease of the property, and may provide the broker reasonable compensation for services rendered to be paid from the sale or lease proceeds. The reasonable compensation shall not exceed the usual and customary compensation for similar services within the municipality; or

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(iii) The governing authority of a municipality may lease property of less than one thousand five hundred (1,500) square feet to any person or legal entity by having two (2) appraisals establish the fair market value of the lease, and on such other terms and conditions as the parties may agree, such lease being lawfully adopted and spread upon its official minutes.

Assuming that a municipality makes the requisite factual findings provided in Section 21-17-1(2)(a), it may dispose of its surplus real property via one of the methods enumerated in Section 21-17-1(2)(b). We note that, as evidenced by the use of the term "or" in Section 21-17-1(2)(b)(i), (ii) and (iii), a municipality is only required to use one of the options available to it in Section 21-17-1(2)(b) when disposing of its surplus real property.

You provide in your request that the municipality elected to dispose of its real property in accordance with the method set forth in Section 21-17-1(2)(b)(i). Had the municipality chosen the method outlined in Section 21-17-1(2)(b)(ii), any procurement of a contract with a real estate broker would have been limited to assisting with the "marketing and sale or lease of the property." Your factual scenario suggests that any professional services provided by a real estate broker as contemplated in Section 21-17-1(2)(b)(ii) would not relate to the marketing or sale of the subject property and should have already been completed on behalf of the municipality. Furthermore, generally-speaking, the options available to a municipality under Section 21-17-1(2)(b)(i-iii) are for the purpose of obtaining a fair price for its surplus real property so as to avoid an unlawful donation. In an effort to be fiscally prudent, the proposed scenario seems to involve additional costs that appear to be unnecessary. Having said that, whether the services of a real estate broker are being procured for a proper municipal purpose is ultimately a determination of the municipality. Of course, a municipality may procure the services of a real estate broker under its general authority found in Sections 21-17-1 and 21-17-5.¹

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:


Leigh Triche Janous
Special Assistant Attorney General

¹Naturally, any contract arising from such procurement would require valid consideration and may not result in an unlawful donation.