

2009-012

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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November 3, 2008

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Honorable W. Phil Eldridge
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Industrial Parks – County Commissions –
Municipalities – Real Property –
Conveyances – Public Purpose

The Geneva County Commission may sell the remaining 85 acres of an abolished industrial park to the City of Hartford for an amount less than the actual cost of the property and the improvements thereto.

Dear Mr. Eldridge:

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

QUESTION

Can the Geneva County Commission sell the remaining 85 acres of an abolished industrial park to the City of Hartford for an amount less than the actual cost of the property and the improvements thereto?

FACTS AND ANALYSIS

In your letter of request, you stated the following:

The Geneva County Industrial Park (“Park”) consists of approximately 90 acres of land, and there is one business in the Park that owns 5 acres of land. The remaining 85 acres are owned by Geneva County. The Park adjoins the east city limits boundary of the City of

Hartford. The county wants to abolish the Industrial Park pursuant to section 11-23-7 of the Code of Alabama and sell the remaining 85 acres to the City of Hartford. The sole business located therein will request the abolition of the Industrial Park. The Geneva County Commission will hold a public hearing on the abolition of the Industrial Park.

The total cost of the property and the improvements thereto are approximately \$500,000. Once the Industrial Park is abolished by the Geneva County Commission, can the commission sell the remaining 85 acres to the City of Hartford for an amount less than the actual cost of \$500,000? If the property is sold to the City of Hartford, they intend to annex this property into the City of Hartford.

Industrial parks are created pursuant to section 11-23-1, *et seq.*, of the Code of Alabama. As you noted in your request, you seek to abolish the county industrial park pursuant to section 11-23-7, which authorizes a county to abolish or remove a portion of the property located within the industrial park. Once the industrial park is abolished, it is the opinion of this Office that such property would again revert to its previous status of being county property. *See, generally*, ALA. CODE § 11-14-2 (1989). Your inquiry questions whether a county may convey its property for less than adequate consideration to a local municipality.

Section 11-14-2 of the Code of Alabama provides that the county commission has control of all property belonging to the county and may direct the disposal of any property that may be lawfully disposed. *Id.* In this matter, the county would seek to sell its property, not to a private individual or company, but instead to a local municipality. This Office has consistently stated that contracts between public entities are not required to be competitively bid. Opinion to the Honorable William E. Shinn, Jr., County Attorney, Morgan County, dated June 11, 2008, A.G. No. 2008-093. Although this matter does not have to be competitively bid, there is still a question of whether the Geneva County Commission may sell this property for less than full and adequate consideration.

Typically, questions regarding the sale of real property for less than full and adequate consideration invoke discussions about section 94 of the Recompiled Constitution of Alabama. Such opinions further contemplate whether a public purpose is served by the given conveyance. Section 94 was created to prevent the expenditure of public funds in the aid of private

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individuals or corporations. *Opinion of the Justices* No. 120, 254 Ala. 506, 510, 49 So. 2d 175, 178 (1950). Accordingly, it is the opinion of this Office that the Geneva County Commission may convey, via contract, real property for less than full and adequate consideration to the City of Hartford. Moreover, even with the disposition of this property from Geneva County to the City of Hartford, the county will continue to be a beneficiary of any development initiated and instituted by the City of Hartford.

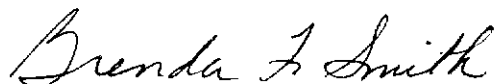
CONCLUSION

The Geneva County Commission may sell the remaining 85 acres of an abolished industrial park to the City of Hartford for an amount less than the actual cost of the property and the improvements thereto.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

TK/MMG
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