



ALAN WILSON  
ATTORNEY GENERAL

July 8, 2013

The Honorable Katrina F. Shealy  
Senator, District No. 23  
PO Box 503  
Lexington, SC 29071

Dear Senator Shealy:

This Office received your request for an opinion determining whether the Town of Lexington followed proper legal procedure in entering into a contract to sell Barr Pond a/k/a Wildlife Pond and in accepting \$60,000.00 as the sales price. Our understanding of the facts you presented is that you have reviewed the Town of Lexington Minutes that are online, relating to the sale of the Town's Property Interest at Barr Pond, and it appears that there was a contract entered into by the Mayor which had a provision that states "approval shall be deemed granted should no notice be given to the Purchaser after the expiration of said sixty (60) day period." The sixty days expired on May 3, 2013, and the final reading was on May 20, 2013, after the contract evidently was automatically valid.

Please be aware that whether or not the Town of Lexington followed proper legal procedure in its sale of the property and whether or not the Town acted properly in accepting \$60,000.00 for the sale can not be determined in this Opinion because such are factual matters beyond the scope of an opinion. See Op. S.C. Atty. Gen., December 12, 1983. The decision to sell the property rests with the Town of Lexington and only a Court could interfere with such sale. However, this Office can assist you by providing you with the law regarding such matters.

#### LAW/ANALYSIS

##### Municipality Entering into a Contract to Sell Land

Section 5-7-40 of the South Carolina Code states that:

All municipalities of this State may own and possess property within and without their corporate limits, real, personal or mixed, without limitation, and may, by resolution of the council adopted at a public meeting and upon such terms and conditions as such council may deem advisable, sell, alien, convey, lease or otherwise dispose of personal property and in the case of a sale, alienation, conveyance, lease or other disposition of real or mixed property, such council action must be effected by ordinance.

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S.C. Code Ann. Sec. 5-7-40 (1976 Code, as amended).

The South Carolina Code further states that “In addition to other acts required by law to be done by ordinance, those acts of the municipal council shall be by ordinances which...(6) Sell or lease or contract to sell or lease any lands of the municipality... S.C. Code Ann. Sec. 5-7-260 (1976 Code, as amended).

South Carolina law makes it clear that a municipality can own land and that it must effect an ordinance to sell or contract to sell the land.

South Carolina law explains the form and procedures for municipalities introducing ordinances. Section 5-7-270 of the South Carolina Code says that “Every proposed ordinance shall be introduced in writing and in the form required for final adoption. Each municipality shall by ordinance establish its own rules and procedures as to adoption of ordinances. No ordinance shall have the force of law until it shall have been read two times on two separate days with at least six days between each reading.” S.C. Code Ann. Sec. 5-7-270 (1976 Code, as amended).

It appears that the Town of Lexington held the two mandatory readings on the proposed ordinance. This Office has not examined any ordinances of the Town of Lexington and thus is unaware of any further requirements by the township for the adoption of an ordinance.

#### **Sales Price of Land**

The next issue is whether or not the Town of Lexington acted properly in accepting \$60,000.00 as the sales price for the property. “[N]o state law requires an appraisal before a city council may buy or sell real estate.” See Op. S.C. Atty. Gen., No. 86 – 54, May 1, 1986 (1986 WL 192014). Similar to that Opinion, this Office has not examined any ordinances of the Town of Lexington and thus is unaware of any possible local requirements for appraisal.

However, as stated in Op. S.C. Atty. Gen., No. 89 - 140, December 12, 1989 (1989 WL 406229) (quoting Op. S.C. Atty. Gen., No. 85 - 91, August 27, 1985 (1985 WL 166061)), “We caution that the applicable law requires that a public entity receive ‘reasonably equivalent value’ of the sale of public property. Haesloop v. City Council of Charleston, 123 S.C. 272, 115 S.E. 596, 600 (1923). In this context we have previously said that:

Article III, sec. 31 [Constitution of South Carolina, 1895, as amended], provides that ‘lands belonging to or under the control of the state shall never be donated, directly or indirectly, to private corporations or individuals...’ While our Court has clearly stated that neither this provision nor the Due Process Clause in themselves require public bidding or a maximum price for the sale of property, Elliott v. McNair, 250 S.C. 75, 156 S.E. 2d 421 (1967), it is also clear that the consideration from such a sale must be of ‘reasonably equivalent value...’ or ‘adequately equivalent...’ Haesloop v. City of Charleston, 123 S.C. 272, 115 S.E. 596, 600 (1923). In determining ‘what is a fair and reasonable return for disposition of its properties,’ a public body ‘may properly consider indirect benefits resulting to the public...’ McKinney v. City of

Greenville, 262 S.C. 227, 242, 203 S.E.2d 680 (1974). But such benefits must not be ‘of too incidental or secondary a character...’ Haesloop, supra. In short, when public officials sell the state’s land, they are acting in a fiduciary relationship with the public and are thus held to the ‘standard of diligence and prudence that [persons]...of ordinary intelligence in such matters employ in their own like affairs.’ Haesloop, 123 S.C. at 284.”

“While our Supreme Court has held that Art. III, sec. 31 is inapplicable to political subdivisions, see Haesloop, supra, the Court has clearly recognized that public officials at the local level act in a fiduciary capacity with respect to the subdivision’s property. Accordingly, local officials may not transfer municipal property to a private use, but must receive ‘in return some consideration of reasonably equivalent value...’ Haesloop, 123 S.C. at 282-283, 115 S.E. 596.” Op. S.C. Atty. Gen., January 12, 2012 (2012 WL 440539).

A municipality can sell property without an appraisal and without a public bidding process. But the sales price must be for reasonably equivalent value. The consideration which the Town of Lexington should receive for the property is a factual question based upon the factors listed above and can not be determined in this opinion.

### CONCLUSION

In conclusion, a municipality must effect an ordinance to sell or contract to sell land. However, each municipality can establish its own procedures regarding adoption of ordinances. This Office is unaware of any possible local requirements of the Town of Lexington but we have not reviewed its ordinances.

A municipality is allowed to sell property without an appraisal and without a public bidding process. But the sales price must be fair and reasonable and for reasonably equivalent value.

Ultimately, the decision to sell real property and the sales price rests with a municipality and only a Court can interfere with such sale. Thus this Office can only offer an opinion.

Sincerely,



Elinor V. Lister  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General