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ATTORNEY GENERAL

**State of Louisiana**  
DEPARTMENT OF JUSTICE  
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**MAR 04 2013**  
**OPINION 13-0012**

Hon. Charles E. Mizell  
Mayor, City of Bogalusa  
Post Office Drawer 1179  
Bogalusa, Louisiana 70429-1179

90-A-1 PUBLIC FUNDS & CONTRACTS  
La. Const. art. VII, Sec. 14  
La. R.S. 33:4712

La. R.S. 33:4712 authorizes the City of Bogalusa to lease public property to a private entity when such property is no longer needed for a public purpose. However, the property that the City wishes to lease is subject to restrictive covenants which must be amended in order to allow a charter school or a business operating a skating rink to lease property in the industrial park.

Dear Mayor Mizell:

You have requested an opinion of this office regarding whether the City of Bogalusa may lease a public building to a private charter school or to a private business which plans to open and operate a skating rink.

According to your request, the City of Bogalusa owns an industrial park with buildings and vacant land. One of the buildings in the industrial park was constructed as a call center in 2001 at a cost of approximately \$3 million and has been vacant for over a year. Your request further states that there is a need for a building to house a charter school and the vacant building in the industrial park would meet the needs of housing the charter school. Therefore, you ask whether the City may enter into a lease with a private party to use the building in the industrial park to house a charter school. You have also asked whether the vacant building could be leased to a private business which would open and operate a skating rink in the building.

Municipalities are authorized pursuant to La. R.S. 33:4712 to sell, lease, or exchange public property with private parties once it is determined the property is no longer needed for public purpose. The statute provides as follows:

A municipality may sell, lease for a term of up to ninety-nine years, exchange, or otherwise dispose of, to or with other political corporations of this state, or private persons, at public or private sale, any property, or portions thereof, including real property, which is, in the opinion of the governing authority, not needed for public purposes.

Except as otherwise provided in this Section, before disposition can be made of property under the provisions of this Subpart, an ordinance must be introduced, giving the reasons for the action on the part of the governing authority, and fixing the minimum price and terms of the sale, lease, exchange or other contract to be made with reference to the property. In instances of exchanges of municipality owned immovable property valued at one hundred thousand dollars or more, the municipality, prior to introduction of the aforementioned ordinance, shall for a minimum of three times in thirty days advertise for and receive other proposals for the exchange of property comparable with the exchange of properties proposed by the municipality. . . . Thereafter, notice of the proposed ordinance must be published three times in fifteen days, one week apart, in a newspaper published in the municipality, or, if there is no such newspaper, in a newspaper having a general circulation in the municipality, and if there is no newspaper of general circulation in the municipality, by posting in three public and conspicuous places in the municipality.

This statute gives the City the authority to lease property after it determines it is no longer needed for a public purpose. The advertising and ordinance requirements set forth above must be complied with.

When transferring public property in the manner described above, the City must ensure compliance with La. Const. art. VII, Sec. 14, which provides, in pertinent part, as follows:

Section 14(A) Prohibited Uses. Except as otherwise provided by this constitution, the funds, credit, property or things of value of the state or of any political shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private...

This constitutional provision is violated whenever a public entity gratuitously transfers public property. See *Board of Directors of the Industrial Development Board of the City of Gonzales, Louisiana, Inc. v. All. Taxpayers, Property Owners, Citizens of the City of Gonzales, et al.*, 2005-2298 (La. 9/6/06), 938 So. 2d 11, 20 (the "Cabela's" case).

When a municipality transfers public property pursuant to La. R.S. 33:4712, it has consistently been the opinion of this office that in order to comply with the mandates of La. Const. art. VII, Sec. 14, the municipality must receive fair market value in exchange for the alienation of public property. Our office has previously opined that fair market value means "the price at which property would change hands between a willing buyer and a willing seller when neither party is under any compulsion to buy or sell and both parties have reasonable knowledge of relevant facts." La. Atty. Gen. Op. Nos. 09-0293, 08-0226, 06-0236. Black's Law Dictionary provides a similar definition of 'fair market

value': "[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction; the point at which supply and demand intersect." Black's Law Dictionary, 9th ed. 2009.

Although La. R.S. 33:4712 authorizes the City to lease public property no longer needed for a public purpose to a private entity, we note our concern that the restrictive covenants currently in place for the industrial park in question may need to be amended in order to lease property to a tenant for operation of a charter school. City of Bogalusa Ordinance No. 1094 of 1982 ("Ordinance"), which established restrictive covenants associated with the industrial park, provides that the "industrial park is established in order that there be an area within the community where it is deemed desirable to locate industry, manufacturing, processing and related operations." Ordinance, Article I, Section 100. Section 107 of the Ordinance sets forth the permitted uses for the land and buildings located in the industrial park and provides that "any industrial warehouse, office building, or manufacturing or processing establishment is permitted; but no lot, land premises, place or building shall be used and no building or structure shall be erected or placed which is arranged, intended or designed to be used for any purpose [sic] or business which is considered dangerous or unsafe, or which constitutes a nuisance, or which is noxious or offensive because of emission of dust, odor, has, smoke, fumes, or noise." Section 108 of the Ordinance provides that "no land or building shall be used or occupied which does not conform to the standards set forth herein."

The Ordinance makes it clear that the purpose of the industrial park is to attract "manufacturing, processing, and related operations." In our opinion, a charter school does not constitute the type of lessee which is permitted in the industrial park under its current restrictive covenants. Article I, Section 101 of the Ordinance provides that "these covenants shall be in effect until January 1, 2015, provided that at any time the owners of a majority of the acreage may, by written declaration signed by them and recorded in the Clerk of Court's Office, change, alter, amend, or extend such restrictions, covenants and agreements as they desire." It is our opinion that the restrictive covenants will have to be amended in order to permit a building in the industrial park to be used to house a charter school.

Based on the foregoing, it is the opinion of this office that La. R.S. 33:4712 authorizes the City of Bogalusa to lease public property to a private entity when such property is no longer needed for a public purpose. However, the property that the City wishes to lease is subject to restrictive covenants which must be amended in order to allow a charter school to lease property in the industrial park.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

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By:   
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