



A SELECTED READING

© Alabama League of Municipalities

Sale or Lease of Unneeded Municipal Property

The League receives numerous inquiries from municipal officials and employees concerning the procedures for the sale or lease of unneeded municipal property. This article explains the state laws governing such sales and leases. Sample ordinances and resolutions for a governing body to adopt when authorizing sales and leases are included.

Sale of Unneeded Real Property

The Alabama Legislature has adopted a simple method for municipalities to dispose of real property not needed for public or municipal purposes. This can be found in Section 11-47-20, Code of Alabama 1975, which reads as follows:

“The governing body of any city or town in this state may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto, and a conveyance made by the mayor in accordance with such ordinances invests the grantee with the title of the municipality.”

In enacting this statute, the legislature did not intend to authorize the sale of property held by a city in trust, such as property subject to a common law dedication for use by the public as a park. The intent was to authorize Alabama cities and towns to dispose of property which is not dedicated. *Moore v. Fairhope*, 171 So.2d 86 (Ala. 1965). A municipality has no implied power to dispose of property **dedicated** to public use, but ordinarily its property abandoned from public use or not devoted thereto may be disposed of by the managing authorities when acting in good faith and without fraud. *O’Rorke v. Homewood*, 237 So.2d 487 (Ala. 1970).

Before real property may be sold, Section 11-47-20, Code of Alabama 1975, requires an ordinance finding that the property is no longer needed for public purposes. *Jones v. Dothan*, 375 So.2d 462 (Ala. 1979). However, the fact that a city adopts an ordinance to the effect that a certain piece of property is no longer needed for public purposes will be of no avail as long as the property is being used for public purposes. Section 11-47-20 of the Code of Alabama prohibits a municipality from disposing of real property while such property is being currently used by the municipality. AGO 2012-091.

For example, Section 11-47-20 of the Code does not give a municipal governing body the authority to declare property used for a public cemetery to be unneeded municipal property subject to being sold for industrial expansion. *Anderson v. Adams*, 283 So.2d 416 (Ala. 1973). In *Tuskegee v. Sharpe*, 288 So.2d 122 (Ala. 1973), the Alabama Supreme Court held that Section 11-47-20 does not give a municipality the power to grant an option to purchase real estate owned by the municipality. Property must be **declared** surplus even when it is being transferred to another public entity. *Vestavia Hills Board of Education v. Utz*, 530 So.2d 1378 (Ala. 1988). However, a municipality may not purchase property that it has already determined will not be used for a municipal purpose. AGO 2015-056. The ordinance adopted by the municipal governing body should:

- describe the property to be sold;
- recite that in the opinion of the governing body of the municipality the property is not needed for public or municipal purposes; and
- direct the mayor to execute a deed to the purchaser.

The Alabama Supreme Court held that neither Section 11-47-20 nor Section 11-47-21, Code of Alabama 1975, requires that the ordinance contain a detailed recitation of facts supporting the statement that the land is no longer used for public purposes. *Dothan Area Chamber of Commerce, Inc. v. Shealy*, 561 So.2d 515 (Ala. 1990)

In directing the mayor to make title to the property, the ordinance should recite the circumstances under which the mayor is to execute the deed – whether it is to a particular individual, after the ordinance becomes permanent or whether he or she should execute a deed to the highest bidder in the event bids are called for.

Ordinances adopted pursuant to sections 11-47-20 or 11-47-21 of the Code of Alabama, which authorize the disposal or leasing of real property, should be considered ordinances “intended to be of a permanent nature” because both affect the

general public and operate as definitive, long-term actions. Section 11-47-21 of the Code specifically authorizes a city to enter into a lease term for a maximum of 99 years. Section 11-47-21, Code of Alabama 1975. Therefore, such ordinances should be adopted pursuant to the requirements specifically enumerated within section 11-45-2(b) of the Code. Before such ordinance can become effective, it must be published as required by Section 11-45-8 of the Code of Alabama 1975. AGO 2011-069.

The law does not require a municipality to advertise for bids on the property before it can be sold, yet there is no prohibition against receiving bids. The governing body may determine the manner in which the property may be disposed of, bearing in mind the interest of the municipality. A municipality cannot sell any property owned by it for less than adequate consideration. Nominal consideration will not suffice. However, a city may sell real estate for less than adequate consideration to a private entity only if the city determines that a public purpose is served. AGO 2003-008; AGO 2016-016.

Further, a municipality may sell surplus property to a mayor or councilmember as long as the mayor or council member do not participate in the discussion of the consideration of the sale and the council receives adequate consideration for the surplus property. The best public policy is to sell such property by competitive bidding. AGO 2014-076.

The Land Sales Act, codified at Sections 9-15-70, *et seq.*, of the Code of Alabama, provides for the competitive bidding process for sales of state (not municipally-owned) land. Section 9-15-70 to 9-15-84, Code of Alabama 1975. The act excepts a transfer to a municipal governing body on the condition that a subsequent transfer to a "private person, firm or corporation" must be competitively bid. Section 9-15-82, Code of Alabama 1975. Pursuant to Section 11-54-186 of the Code of Alabama, the transfer from a municipality to a commercial development authority, of land acquired from the state, and the subsequent transfer of the land by the authority, is exempt from the competitive bid requirements of the Land Sales Act, codified at Section 9-15-70 *et seq.* AGO 2007-131.

Sample Ordinance

A sample ordinance dealing with the sale of unneeded real property is printed below.

AN ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF _____, ALABAMA, AS FOLLOWS:

SECTION 1. It is hereby established and declared that the following described real property of the City of _____, Alabama, is no longer needed for public or municipal purposes, to-wit:

[HERE DESCRIBE THE PROPERTY]

SECTION 2. That the mayor and the city clerk be, and they hereby are, authorized and directed to execute and attest, respectively, for and on behalf of the city of _____, Alabama, a warranty deed, a copy of which is on file in the office of the city clerk, whereby the city of _____, Alabama, does convey the premises described in Section 1, hereof to _____ for and in consideration of the sum of _____ dollars (\$_____).

ADOPTED AND APPROVED THIS THE ___ DAY OF _____, 20__.

_____ Presiding Officer

ATTEST:

_____ City Clerk

Lease of Unneeded Real Property

Section 11-47-21, Code of Alabama 1975, which deals with the leasing of unneeded real property states:

"The governing body of any city or town in this state may, by ordinance to be entered on its minutes, lease any of its real property not needed for public or municipal purposes, and a lease made by the mayor in accordance with such ordinance shall be binding for the term specified in the lease, not to exceed a period of 99 years; provided, that in counties having a population of not less than 225,000 and not more than 400,000 inhabitants according to the most recent federal decennial census, such limitation of the term to a period of 99 years shall not apply to any oil, gas or mineral lease made in accordance with such ordinance."

Such ordinances should be adopted and published in the same manner as other ordinances. Except for land obtained from the state, there is no requirement that bids be taken before the municipality allows such property to be leased. However, the consideration for the lease must be adequate and not nominal. The Land Sales Act excepts a transfer to a municipal governing body on the condition that a subsequent lease to a "private person, firm or corporation" must be competitively bid. Section 9-15-82, Code of Alabama 1975.

Sample Ordinance

A sample ordinance for the leasing of unneeded municipal real estate is printed below.

AN ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF _____, ALABAMA, AS FOLLOWS:

SECTION 1. It is hereby established and declared that the following described real property of the city of _____, Alabama, is no longer needed for public or municipal purposes, to-wit:

[HERE DESCRIBE THE PROPERTY]

SECTION 2. The city of _____, Alabama, having received an offer from _____ to lease that real property described in Section 1, above, it is hereby declared to be in the best interest of the public and the city of _____, Alabama, to lease said real property to _____ under the following terms and conditions, to-wit:

[HERE SET OUT THE TERMS OF THE LEASE, NOT EXCEEDING 99 YEARS, THE _____ CONSIDERATION OR RENTAL AND ANY SPECIAL CONDITIONS DEEMED BEST.]

SECTION 3. Pursuant to the authority granted by Section 11-47-21 of the Code of Alabama of 1975, the mayor of the city of _____, Alabama, is hereby directed to execute said lease agreement in the name of the city of _____, Alabama.

SECTION 4. This ordinance shall become effective immediately upon its adoption and publication as required by law.

ADOPTED AND APPROVED THIS THE ___ DAY OF _____, 20__.

_____ Presiding Officer

ATTEST:

_____ City Clerk

Selling Park Property

Alabama Constitutional Amendment 112 and Section 35-4-410, Code of Alabama 1975, state that no municipality can sell or convey public park or recreational property for another use unless the transfer is approved by the citizens of the municipality at a referendum held for this purpose.

What constitutes park and recreation property? In *Harper v. Birmingham*, 661 F.Supp. 672 (N.D. Ala. 1986), the court held that the provisions governing alienation of recreational property apply only where there has been a clear dedication by the property owner, and subsequent acceptance by the public entity, of the property for recreational uses. To establish a dedication, the clearest intention on the part of the owner to dedicate the property for recreational purposes must be shown. *O'Rorke v. Homewood*, 286 Ala. 99, 237 So.2d 487 (Ala. 1970).

In order for the dedication to become effective, the municipality must accept the dedication for park and recreation purposes. *Vestavia Hills Board of Education v. Utz*, 530 So.2d 1378 (Ala. 1988).

There are many ways to accept a dedication. A municipality may adopt an ordinance or resolution to that effect or make improvements to the property which indicate acceptance. The Vestavia Hills case also makes clear that a common law acceptance may occur where the public uses the property for recreational purposes. Such an acceptance is determined on a case-by-case basis by examining the extent of the public's use of the property.

Section 35-4-411, Code of Alabama 1975, establishes the procedure for alienating park property. This section requires the

municipal governing body to adopt a resolution or ordinance describing the proposed conveyance, the consideration for the conveyance, and the names of the parties involved. This ordinance must be published once a week for four consecutive weeks in a newspaper published in the city or town. If there is no newspaper published in the municipality, it must be published in a newspaper having general circulation in the municipality. The ordinance becomes effective only after being approved by a majority of the qualified electors of the municipality.

A water tower may be erected on park property if the council finds that the tower does not interfere with the recreational use of the property. AGO 1996-212.

Sale of Unneeded Personal Property

Section 11-43-56, Code of Alabama 1975, has been interpreted as giving authority to a municipal governing body to dispose of personal property which is no longer needed for public purposes. Although not required by law, a resolution may be adopted by the governing body describing the property to be sold, reciting that the property is no longer needed for public purposes and directing the mayor to sell the property in the manner specified by the council. Bids are not required. However, a municipal governing body should set up procedures to ensure that the municipality receives a fair price for its unneeded personal property. A resolution of this type does not have to be published.

Sample Resolution

A sample resolution authorizing the sale of unneeded personal property belonging to the city is printed below.

A RESOLUTION

WHEREAS, the city of _____, Alabama, has certain items of personal property which are no longer needed for public or municipal purposes; and

WHEREAS, Section 11-43-56 of the Code of Alabama of 1975 authorizes the municipal governing body to dispose of unneeded personal property;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF _____, ALABAMA, AS FOLLOWS:

SECTION 1. That the following personal property owned by the city of _____, Alabama, is not needed for public or municipal purposes:

[DESCRIBE PERSONAL PROPERTY TO BE SOLD]

SECTION 2. That the mayor and city clerk be, and they hereby are, authorized and directed to dispose of the personal property owned by the city of _____, Alabama, described in Section 1, above, to wit:

[HERE SET OUT THE TERMS OF THE SALE or INSERT THE FOLLOWING LANGUAGE: By receiving bids for such property. All such property shall be sold to the highest bidder, provided, however, that the council shall have the authority to reject all bids when, in its opinion, it deems the bids to be less than adequate consideration for the personal property.]

ADOPTED AND APPROVED THIS ___ DAY OF _____, 20__.

_____ Presiding Officer

ATTEST:

_____ City Clerk

Sale of Abandoned and Stolen Property

Section 11-47-116, Code of Alabama 1975, authorizes a municipality to sell abandoned and stolen property found inside the corporate limits of the municipality or the police jurisdiction. Section 11-47-116 requires a municipality to adopt an ordinance listing the date each piece of property was taken, the place where the property was found and a description of the property. The property must be stored for three months or more in a suitable place to protect it from deterioration. If the

property is perishable, it may be sold at once without notice, in which case the proceeds must be held for six months for the account of the owner. If not recovered within that time, the proceeds must be converted into the general fund.

The police chief must sell the abandoned or stolen property every six months at a public auction to the highest bidder for cash. Online auction sites that are open to the public constitute public auctions as it relates to Section 11-47-116 of the Code of Alabama. AGO 2011-095. However, internet auctions that do not involve bid calling present in traditional crying auctions do not constitute auction businesses under Section 34-4-2(6), Code of Alabama 1975. AGO 2018-040.

The municipality must give notice of the time and place of the public auction at least 20 days before the sale. The notice must be published once a week for two successive weeks in a newspaper of general circulation published in the city or town in question. In cities and towns in which no newspaper is published, the notice must be posted in a conspicuous place at the city hall or police station.

The owner of any of the property taken up and stored may redeem the property at any time prior to its sale by paying the reasonable expense of taking the property in charge, its maintenance and storage and a pro rata of the cost of publication.

Each article must be sold separately and a notation in the storage record book must be made of the amount received for each article. The person making the sale has the right to reject any and all bids if the amount bid is unreasonably low. If no bidders are present the municipality has the right to continue the sale from time to time. After deducting and paying all expenses incurred in the taking up, storing, maintaining and selling of the property, the balance, if any, must be paid into the general fund of the municipality making the sale. The city's municipal court does not have authority to condemn unclaimed weapons in the possession of the city's police department. The city must follow the procedure provided in Section 11-47-116, Code of Alabama 1975 for disposal of such weapons. AGO 1991-036.

Sale of Seized or Forfeited Property Including Guns

A police department may sell or trade forfeited property including guns seized in violation of the Alabama Uniform Controlled Substances Act under Section 20-2-93, Code of Alabama 1975. Section 20-2-93 provides that the state, county, or municipal law enforcement agency may retain seized and forfeited property for official use or sell that which is not required to be destroyed by law and which is not harmful to the public.

The proceeds from the sale must be used, first, for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of or custody, advertising, and court costs; and the remaining proceeds from such sale must be awarded and distributed by the court to the municipal law enforcement agency or department, and/or county law enforcement agency or department, and/or state law enforcement agency or department, following a determination of the court of whose law enforcement agencies or departments are determined by the court to have been a participant in the investigation resulting in the seizure, and such award and distribution shall be made on the basis of the percentage as determined by the court, which the respective agency or department contributed to the police work resulting in the seizure.

Any proceeds from sales authorized by this section awarded by the court to a county or municipal law enforcement agency or department must be deposited into the respective county or municipal general fund and made available to the affected law enforcement agency or department upon requisition of the chief law enforcement official of such agency or department. Section 20-2-93, Code of Alabama 1975; AGO 2011-070.

The police chief is not required to obtain the approval from the city council before making expenditures from state forfeiture proceeds. The chief and council should cooperate in planning for such expenditures. The council may disapprove a specific request made by the chief for the expenditure of federal forfeiture proceeds but lacks the authority to expend the proceeds in a manner not proposed by the chief. Expenditures from state and federal forfeiture proceeds are required to be made by competitive bidding. The purchase of law enforcement equipment with forfeiture proceeds does not violate Section 94 of Article IV of the Recompiled Constitution of Alabama. The use of forfeiture proceeds to benefit private persons or entities does not violate Section 94 if a valid law enforcement purpose is served. Forfeiture proceeds may be used to purchase law enforcement equipment in the ordinary course of business. The council may not use federal forfeiture funds to reduce the amount of funds appropriated to the police department. AGO 2019-029.

A police department must obtain a court order, through the district attorney, to forfeit property, including guns, seized in violation of the controlled substances law under Section 20-2-93 of the Code of Alabama. Forfeited property may be used or sold by the department as provided in Section 20-2-93. A police department must obtain a court order, through the district attorney, to destroy property, including guns, seized under Section 20-2-93. Proceeds from sales under Section 20-2-93 must be deposited in the municipal general fund. Proceeds from Section 20-2-93 must be used as determined by the police department. AGO 2009-090.

A police department has the authority to exchange condemned firearms given to the police department, pursuant to Section 20-2-93 "to be used for law enforcement purposes pursuant to the Code of Alabama," if the firearms would be exchanged

with a licensed gun dealer for firearms that the police department could use. The proposed exchange for credit is not subject to Alabama's Competitive Bid Law. The police department must obtain a court order allowing the sale or trade of any component parts remaining after firearms are destroyed or dismantled pursuant to a court order under Section 13A-11-84(b) or other authority. AGO 2003-182.

The police department may not sell condemned guns seized under Section 13A-11-84(b) or the parts thereof. A police department must obtain a court order, through the district attorney, to use or destroy condemned guns seized under Section 13A-11-84(b) of the Code of Alabama. AGO 2009-090. The sheriff cannot sell parts of condemned weapons which have been used for law enforcement purposes without a court order. The sheriff cannot dispose of abandoned weapons without a court order. The sheriff cannot dispose of confiscated property held as possible evidence in a prosecution without a court order. AGO 1992-137.

Guns in the possession of the police department which were not involved in weapons violations, must be disposed as provided in Section 11-47-116, Code of Alabama 1975. If such weapons were involved in violations of Section 13A-11-71 through Section 13A-11-73, they must be disposed under the procedure found at Section 13A-11-84(b). AGO 1991-059.

Revised 2023