



TIM GRIFFIN
ATTORNEY GENERAL

Opinion No. 2023-065

September 5, 2023

The Honorable Mindy McAlindon
State Representative
Post Office Box 324
Centerton, Arkansas 72719

Dear Representative McAlindon:

I am writing in response to your request for an opinion regarding a matter in your district. You state that Bentonville School District is considering a proposal from Excellerate Foundation (Excellerate), a 501(c)(3) nonprofit, in which the district would donate approximately nine acres of its real property to Excellerate. Excellerate would then develop the property into affordable housing, some of which would be designated for school district employees. The development would also include a small community center that would “provide classes to both citizens and students of the school district.” You explain that this proposal is needed because Bentonville’s high housing costs have hampered the district’s efforts to recruit teachers. You also note that the district does not have any specific plans or use for the property to be donated.

Against this background, you ask the following questions, some of which I have paraphrased:

1. Under Arkansas law, can Bentonville School District donate nine acres of real property adjacent to the high school to a not-for-profit corporation for the development of affordable housing available for school employees and others in the community?

Brief answer: Yes, based on the information you have provided, I believe that the proposed plan would likely survive constitutional and statutory scrutiny.

2. Pursuant to A.C.A. § 6-21-108, would Bentonville School District’s donation of real property to a not-for-profit corporation for development of affordable housing for district employees and others “serve a beneficial educational service for the citizens of the school district”?

Brief answer: Yes, based on the information you have provided, I believe the donation would likely “serve a beneficial educational service for the citizens of the school district.”

3. Pursuant to A.C.A. § 6-21-108, would the development of affordable housing for district employees and citizens in the community be considered improving or upgrading the donated land?

Brief answer: Yes, based on the information you have provided, I believe the proposed development would likely be considered an improvement or upgrade to the donated land.

DISCUSSION

As an initial caveat, I must point out that the Attorney General’s Office is not a factfinder when issuing opinions. Therefore, this opinion is based solely on the information you have provided in your request for an opinion.

Question 1: Under Arkansas law, can Bentonville School District donate nine acres of real property adjacent to the high school to a not-for-profit corporation for the development of affordable housing available for school employees and others in the community?

Both the Arkansas Code and the Arkansas Constitution restrict the circumstances under which a school district may donate real property. Any potential donation must take into account both the statutory and constitutional requirements.

1. Statutory requirements. The statute you have asked about, A.C.A. § 6-21-108, allows a school district to donate real property only if the following four conditions are met:

- The school district board of directors must determine that the real property “is not required for the present or future needs of the school district”;
- The school district board of directors must determine that the donation would “serve a beneficial educational service for the citizens of the school district”;
- The recipient of the property must be a “publicly supported institution of higher education, a technical institute, a community college, a not-for-profit organization, a county, a city, an incorporated town, or any entity thereof”; and
- The donation must fulfill one of the limited purposes enumerated in the statute.¹

Your request states that the district has not identified any specific use for the property on its ten-year facilities plan and that Excellerate is a not-for-profit organization. This suggests that the first and third statutory requirements have been met. And because the proposal

¹ A.C.A. § 6-21-108(b)(1).

includes plans for a community center that will “provide classes to both citizens and students of the school district,” it appears that the second requirement may be met as well, provided that the school board finds that these classes “serve a beneficial educational service.” The only remaining statutory question, then, is whether the land donation fulfills one of the following limited purposes:

- Having the real property preserved, improved, upgraded, rehabilitated, or enlarged by the donee;
- Providing the publicly supported institution of higher education, technical institute, or community college with the donated property in which to hold classes; or
- Providing community programs and beneficial educational services, social enrichment programs, or after-school programs.²

The donation need only be for one of these three purposes, but the information you have provided suggests that the proposed donation could fulfill both the first and third purpose. The development of housing and a community center on the donated land would be considered an improvement to the property.³ And the community center classes would likely qualify as community programs, beneficial educational services, social enrichment programs, or after-school programs, depending on their content.

2. Constitutional requirements. The Arkansas Constitution requires the state to “maintain a general, suitable and efficient system of free public schools,”⁴ and it prohibits “money or property belonging to the public school fund, or to this State, for the benefit of schools or universities” from being used for any other purpose.⁵ Furthermore, the public-purpose doctrine, which the Arkansas Supreme Court has rooted in due process, requires that the appropriation and expenditure of public funds be for a public purpose.⁶ Taken together, these constitutional provisions require that any donation of a school district’s real property

² *Id.*

³ The terms used in A.C.A. § 6-21-108(b)(1)(A) are not defined in statute or case law. But in a legal context, “improve” generally means “to develop, as land.” Brian A. Garner, *GARNER’S DICTIONARY OF LEGAL USAGE* 434 (3d ed. 2011). Likewise, “improved land” means “[l]and that has been developed,” especially “land occupied by buildings and structures,” regardless of whether such developments “enhance the value of the land.” *BLACK’S LAW DICTIONARY* 1049 (11th ed. 2019). Thus, building housing and a community center on the donated land would “improve” the property.

⁴ Ark. Const., art. 14, § 1.

⁵ Ark. Const., art. 14, § 2.

⁶ *See* Ark. Const., art. 2, § 8 (“No person shall be ... deprived of life, liberty or property, without due process of law.”); *Chandler v. Bd. of Trs. of Teacher Ret. Sys.*, 236 Ark. 256, 258, 365 S.W.2d 447, 448 (1963) (“No principle of constitutional law is more fundamental or more firmly established than the rule that the State cannot, within the limits of due process, appropriate public funds to a private purpose.”).

benefits the district's students, not just its citizens.⁷ The information you have provided suggests that the proposed donation and development of the property would meet this requirement. Not only would students be able to attend classes at the community center, but the development of affordable housing could allow the school district to recruit quality teachers who might otherwise be unable to accept employment with the district.

3. Conclusion. Because the plan you have described fulfills the statutory and constitutional conditions necessary for a school district to donate real property, it is my opinion that Bentonville School District's proposed land donation to Excellerate Foundation would be lawful.

Question 2: Pursuant to A.C.A. § 6-21-108, would Bentonville School District's donation of real property to a not-for-profit corporation for development of affordable housing for district employees and others "serve a beneficial educational service for the citizens of the school district"?

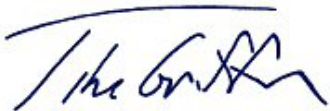
Yes, as explained in my response to your first question, the facts you have provided suggest that the land donation would "serve a beneficial educational service for the citizens of the school district."

Question 3: Pursuant to A.C.A. § 6-21-108, would the development of affordable housing for district employees and citizens in the community be considered improving or upgrading the donated land?

Yes, as explained in my response to your first question, building affordable housing and a community center on the donated land would be considered "improving" the property.

Senior Assistant Attorney General Kelly Summerside prepared this opinion, which I hereby approve.

Sincerely,



TIM GRIFFIN
Attorney General

⁷ See, e.g., Ark. Att'y Gen. Ops. 2017-105, 2015-105, 2013-116, 2012-060.