



STATE OF ARKANSAS  
ATTORNEY GENERAL  
LESLIE RUTLEDGE

Opinion No. 2015-105

May 26, 2016

The Honorable Uvalde Lindsey  
State Senator  
2257 Gentle Oaks Lane  
Fayetteville, Arkansas 72703

Dear Senator Lindsey,

You have asked for my opinion on whether it would be constitutional for the Greenland School District to donate surplus school property to the Winslow Community Center Association. As background for your questions, you explain the following:

[T]he Winslow School District was annexed into the Greenland School District in 2005. The building and property [that composed the Winslow School District] are not being used by the Greenland School District, nor is it anticipated that the building and property will be necessary to the Greenland School District in the future. The building is currently being used by the Washington County Library System for the Winslow Branch Library, while the Greenland School District continues to be responsible for maintaining the grounds and building. Greenland School District sought an appraisal of the building and property in preparation for a public auction and was informed that an appraisal would cost the Greenland School District an estimated \$4,000 to \$6,000 and that since there are no comparable sales in Northwest Arkansas the appraisal would likely not be defensible. The District was further advised that former school buildings are selling for “bargain-basement prices.” Because the Greenland School Board [believes that paying that amount for an appraisal] and then selling the property at, what the appraisal termed,

“bargain-basement prices” appears imprudent, the District therefore is interested in donating the property to the Winslow Community Center Association to benefit the Winslow community.

You also explain that the Winslow Community Center would use the property mainly to conduct a variety of school-related programs for the children of Winslow, most of whom are now students in Greenland School District:

I have enclosed a letter of intent from the Winslow Community Center Association advising that the intended use for the center, if acquired from Greenland School District, shall include, but not be limited to, tutoring, after-school activities, including educational, physical, recreational and social activities for the children of the Winslow community, working in conjunction with the Greenland School District to provide a year-round laboratory for students to have access to their projects after school, mentoring and counseling students and their families, musical productions in the auditorium, a computer lab, as well as growing a sustainable garden.

With this background in mind, you ask two questions:

1. Although statutorily permitted, does the constitution permit the District (under these facts and circumstances) to donate surplus property to the Winslow Community Center Association to be used for the stated purposes?
2. A similar question came about in Attorney General’s Opinion No. 2013-116. Do the circumstances set out in this case differ significantly enough in favor of the donation to warrant an opinion that the proposed transfer of property would be deemed constitutional?

## **RESPONSE**

Based on the information before me, the answer to both questions is, in my opinion, that the proposed donation would not violate the Arkansas constitution.

## DISCUSSION

Before directly addressing your questions, I will start by briefly explaining the statutory framework that governs your questions. Then I will address what the constitution adds.

### *Statutory Framework*

The legislature has established a general framework governing the donation of school property. The statutes require that the property be surplus and that its donation “serve a beneficial educational service for the citizens of the school district.”<sup>1</sup> If both conditions are met, then the realty can be donated to a limited pool of recipients whose use of the property is restricted:

[If the two preconditions are met,] then the school district may donate real property to 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 for the following limited purposes:

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

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<sup>1</sup> Ark. Code Ann. § 6-21-108(b)(1) (Supp. 2015): “If the board of directors for a school district determines that real property owned or controlled by the school district is not required for the present or future needs of the school district and that the donation of the real property would serve a beneficial educational service for the citizens of the school district....”

<sup>2</sup> *Id.*

Your factual background seems designed to address the statutory framework. First, you provide facts that, if accurate, show that the two threshold conditions are met. You say that the school board has determined that the building and property in question are surplus: “The building and property are not being used by the [District], nor is it anticipated that [they] will be necessary to the [District] in the future.” And you say that the donation would provide several beneficial educational services to the district’s citizens and students.

Accordingly, the only remaining *statutory* questions about the proposed donation’s legality are (1) whether the Winslow Community Center Association is a permissible recipient and (2) whether the Association’s proposed uses of the property are permissible. Based on the facts you have provided, the answer to each of these questions is “yes.” The Association appears to be a permissible recipient because it is a “not-for-profit organization.”<sup>3</sup> And based on the facts you have provided, the Association’s intended uses are permissible. Specifically, the Association intends to host a variety of community and educational programs for the district’s students. This meets the use restriction set out in subsection 6-21-108(b)(1)(C). Therefore, based on the information provided, it seems that the proposed donation complies with the statutory requirements.

### ***Constitutional Framework***

Your questions assert that the foregoing *statutory* framework is met and ask whether the *constitutional* framework is also met. The Arkansas Constitution, as interpreted by the Arkansas Supreme Court, adds an additional criterion that one must use to determine whether the proposed donation is permissible. While the statute requires that the donation benefit the district’s *citizens*, the constitution goes a step further to require that the donation benefit the district’s *students*.<sup>4</sup>

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<sup>3</sup> *Id.* (“[T]he school district may donate real property to...a not-for-profit organization...” You say that the Association is organized “exclusively for educational purposes under section 501(c)(3) of the Internal Revenue Code.”).

<sup>4</sup> Ark. Const. art. 14, § 1 (“the State shall ever maintain a general, suitable and efficient system of free public schools...”). See *Fort Smith Sch. Dist. v. Beebe*, 2009 Ark. 333, 11–12, 322 S.W.3d 1, 7–8 (“This court has decreed that the State of Arkansas must provide *the children* of this State with an adequate and substantially equal education.”) (citing *Lake View Sch. Dist. No. 25 v. Huckabee*, 362 Ark. 520, 210 S.W.3d 28 (2005) (emphasis added)). See also Ark. Const. art. 14, § 2 (“No money *or property* belonging to the public school fund ... shall ever be used for any other than for the ... purposes to which it belongs”), and Ark. Const. art. 2, § 8 (“No person shall ... be deprived of life, liberty or property, without due process of law”), as interpreted in *Chandler v.*

You provide facts that, in my opinion, show that the district's students would benefit from the proposed donation. Donating the surplus building will improve Greenland School District's monthly budget by freeing it from paying for unused buildings. In my opinion, this cash-flow improvement benefits the students and therefore satisfies the additional criterion set by the constitution.

Therefore, the answer to your first question is, in my opinion, "yes."

Your second question specifically asks whether the proposed donation would be permissible under Arkansas Attorney General Opinion No. 2013-116. That opinion stated that the school district could donate surplus property to avoid a drain on the district's resources only if the property were unmarketable:

In terms of constitutional propriety, it is difficult to distinguish between selling surplus property to anyone for any reason in order to realize revenues for education—a practice that is statutorily sanctioned and that does not appear to have triggered any constitutional challenge—and donating at least unmarketable surplus property in order to avoid an ongoing drain of school-district revenues. *At least with respect to unmarketable surplus property*, then, subsection (b)(1)'s authorization of donations to a limited range of donees might well pass constitutional muster.<sup>5</sup>

While your background facts indicate that the property at issue is unmarketable, I am not persuaded that the constitution requires the property be unmarketable. Opinion No. 2013-116 does not provide a rationale for the unmarketability condition, and I cannot find such a condition in the text of the constitution or in the relevant case law. As noted above, and as detailed in footnote 4 of this opinion, the constitution requires the state to maintain free public schools and to devote school property to its proper purposes. A school district's relieving itself of a building that is a financial drain on the district's finances is – at least under the facts you describe – consistent with these constitutional requirements. There is no

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*Board of Trustees*, 236 Ark. 256, 258, 365 S.W.2d 447 (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.”).

<sup>5</sup> Op. Att’y Gen. No. 2013-116, pp. 7–8 (emphasis added).

clear basis in the constitution itself or in relevant case law for suggesting that the constitution absolutely requires sale, rather than donation, of property having some market value.

Sincerely,



Leslie Rutledge  
Attorney General