



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS

May 13, 2020

Mayor Alton Shaw  
Town of Wesson  
Post Office Box 297  
Wesson, Mississippi 39191

Re: Authority of Town to Remove Dilapidated Building

Dear Mayor Shaw:

The Office of the Attorney General is in receipt of your request for the issuance of an official opinion.

### **Question Presented**

If it is determined by the Wesson Board of Aldermen, at a hearing conducted in accordance with Miss. Code Ann. Section 21-19-11 that a property is a menace to public health, safety and welfare, can the dilapidated building located thereon, occupied by the owner as a residence, be removed pursuant to Section 21-19-11?

### **Background Facts**

Approximately two years ago, a residence in the Town of Wesson was destroyed by fire. The occupant of the residence now has moved into an outbuilding or shed on the property and has made it his permanent residence. The building is in extremely poor condition and the municipal governing authorities have received numerous complaints from citizens about its condition.

### **Brief Response**

A municipality may remove dilapidated buildings and structures in accordance with the authority granted by Section 21-19-11 if it provides due process to the property owner and makes the requisite factual findings upon its official meeting minutes.

### **Applicable Law and Discussion**

Section 21-19-11 authorizes a municipality to clean-up private property it has determined to be a menace to the public health and safety of the community. Section 21-19-11 requires notice, a hearing and adjudication to be provided to the property owner as shown below. In pertinent part, Section 21-19-11(1) states that:

To determine whether property or parcel of land located within a municipality is in such a state of uncleanness as to be a menace to the public health, safety and welfare of the community, a governing authority of any municipality shall conduct a hearing, on its own motion, or upon the receipt of a petition signed by a majority of the residents residing within four hundred (400) feet of any property or parcel of land alleged to be in need of the cleaning. Notice shall be provided to the property owner by:

(a) United States mail two (2) weeks before the date of the hearing mailed to the address of the subject property and to the address where the ad valorem tax notice for such property is sent by the office charged with collecting ad valorem tax; and

(b) Posting notice for at least two (2) weeks before the date of a hearing on the property or parcel of land alleged to be in need of cleaning and at city hall or another place in the municipality where such notices are posted.

Any notice required by this section shall include language that informs the property owner that an adjudication at the hearing that the property or parcel of land is in need of cleaning will authorize the municipality to reenter the property or parcel of land for a period of one (1) year after final adjudication without any further hearing if notice is posted on the property or parcel of land and at city hall or another place in the municipality where such notices are generally posted at least seven (7) days before the property or parcel of land is reentered for cleaning. A copy of the required notice mailed and posted as required by this section shall be recorded in the minutes of the governing authority in conjunction with the hearing required by this section.

If, at such hearing, the governing authority shall adjudicate the property or parcel of land in its then condition to be a menace to the public health, safety and welfare of the community, the governing authority, if the owner does not do so himself, shall proceed to clean the land, by the use of municipal employees or by contract, by cutting grass and weeds; filling cisterns; removing rubbish, abandoned or dilapidated fences, outside toilets, abandoned or dilapidated buildings, slabs, personal property, which removal of personal property shall not be subject to the provisions of Section 21-39-21, and other debris; and draining cesspools and standing water therefrom. . . .

We have recognized the authority of a municipality, pursuant to Section 21-19-11, to remove dilapidated buildings and structures it has determined to be a menace to the public health and safety

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of the community, provided it has strictly complied with the notice and hearing requirements and made the requisite factual findings. MS AG Op., *Dawes* (August 8, 2008); MS AG Op., *Daughdrill* (April 6, 2007). Thus, if the Board of Aldermen has fulfilled the due process requirements of notice and a hearing and makes an adjudication the building in question is a menace to the public health, safety and welfare of the community, it is authorized under Section 21-19-11 to remove such dilapidated building from the property.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Avery Mounger Lee*

Avery Mounger Lee  
Special Assistant Attorney General

OFFICIAL OPINION