



Lynn Fitch
ATTORNEY GENERAL

OPINIONS DIVISION

January 31, 2020

Jolly W. Matthews, Esq.
Attorney, Pat Harrison Waterway District
910 South 34th Street
Hattiesburg, Mississippi 39402

Re: Authority of Pat Harrison Waterway District to enter into an agreement

Dear Mr. Matthews:

Attorney General Lynn Fitch has received your opinion request and has assigned it to me for research and reply.

OFFICIAL **Background** OPINION

Your request is a follow-up to a previous request by which you asked whether the Pat Harrison Waterway District ("the District") possessed the authority to execute a Consent, Non-Disturbance, Attornment and Subordination Agreement in connection with the lease of Little Black Creek Water Park ("the Park"), by which the lender to the proposed lessees thereunder would acquire a security interest in and to the leasehold and premises. By an opinion to you dated November 1, 2019, this office stated:

While the District possesses broad authority to contract, it may not enter into this contract which purports to grant the lender a security interest, not just in the lease, but in the state owned property that is the subject of the lease. See MS AG Op., *Cartier* (November 8, 1989)(Lender can only foreclose on and receive title to the leasehold interest of the borrower and in no event can acquire fee simple title to property owned by the State). The proposed agreement clearly states that the lender. . . will hold from time to time a . . . security interest on the Premises and the Lease securing the loan . . .

Issue Presented

Your current request, dated January 8, 2020, inquires as follows:

The Lessee, Little Black Creek Campground and Park, LLC, has now requested that the Citizens Bank be allowed to take the lease, only, as collateral for a loan. Does the Pat Harrison Waterway District (PHWD) have authority to do such a loan?

Response

The District may enter into an agreement which grants lessee's lender a security interest in the leasehold interest but not in the state-owned premises itself.

Applicable Law and Discussion

The District is given broad authority under its enabling statutes to accomplish its statutory purposes and projects. Section 51-15-119(m) of the Mississippi Code Annotated grants the District the authority "[to] make contracts and to execute instruments necessary or convenient to the exercise of the powers, rights, privileges and functions conferred upon it by this article." Section 51-15-119(p) confers to the District the power "[to] do all other acts or things necessary, requisite, or convenient to the exercising of the powers, rights, privileges or functions conferred upon it by this article or any other law."

This office is aware of no authority which would prohibit the District from entering into an agreement granting lessee's lender a security interest in the leasehold interest. Of course, should the deed of trust be foreclosed upon, the lender would take the leasehold interest subject to all of the terms and conditions of the lease and subject to all of the terms and conditions imposed by law pursuant to Sections 51-15-1, *et seq.* See MS AG Op., *Webb* (September 13, 1996).

As for the agreement itself, this office does not construe or interpret contractual provisions, and we do not opine on contractual obligations or rights. Whether the terms of the proposed agreement are acceptable to and in the best interests of the District is ultimately a determination for the District.

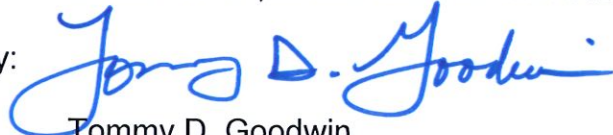
Jolly W. Matthews, Esq.
January 31, 2020
Page 3

If we may be of further service, please let us know.

Very truly yours,

LYNN FITCH, ATTORNEY GENERAL

By:



Tommy D. Goodwin
Special Assistant Attorney General

OFFICIAL OPINION