



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

July 31, 2020

Katie Blount, Director
Mississippi Department of Archives and History
Post Office Box 571
Jackson, Mississippi 39205-0571

Re: Reburial of Prehistoric Native American Remains

Dear Ms. Blount:

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

Question Presented

May existing property owned by the Mississippi Department of Archives and History (MDAH) be used for the reburial of prehistoric Native American remains?

Background Facts

The Muscogee Creek Nation contacted MDAH regarding a prehistoric Native American burial desecration. The tribal nation wished to rebury the individual as close to the original site as possible, and inquired whether reburial may be made upon state-owned property. This is not the first request made to MDAH for the reburial of prehistoric Native American remains upon state-owned property. Moving forward, it is the intent of the MDAH to create reburial sites that are optional for those tribal nations which no longer own lands in Mississippi.

Brief Response

Though the Office of the Attorney General may not interpret nor opine upon federal law, please note, Native American remains and associated funerary objects are subject to the Native American Graves Protection and Repatriation Act, 25 U.S.C.A. Section 3001 - 3013 and those federal regulations which implement the Act, 43 C.F.R. 10.

No provision in Mississippi law prohibits the MDAH from using state-owned property or acquiring property for the purpose of reburial of prehistoric Native American remains if the MDAH Board of Trustees has made the necessary factual findings in accordance with Section 39-5-5.

Applicable Law and Discussion

MDAH was created to fulfill the “objects and purposes” as set forth by Miss. Code Ann. Section 39-5-1, which states as follows:

The objects and purposes of the department are the care and custody of official archives, the collecting of materials bearing upon the history of the state and of the territory included therein, from the earliest times, the editing of official records and other historical material, the diffusion of knowledge in reference to the history and resources of this state, the preparation and publication of annual reports, the encouragement of historical work and research and the performance of such other acts and requirements as may be enjoined by law.

To accomplish its statutory objectives, the MDAH Board of Trustees are vested with broad authority pursuant to Section 39-5-5, which provides, in relevant part:

The duties and powers of the Board of Trustees of the Department of Archives and History shall include, in addition to other duties and powers granted or prescribed by law, the following:

(a) To determine the location of places of historical interest within the state;

* * *

(d) To acquire, preserve, restore or operate any real or personal property deemed significant for historical, architectural, archaeological or cultural reasons, to expend funds for such purposes, to enter into contracts or agreements with any agency of the United States or any person, firm, corporation or association for such purposes and to do any and all things which may be necessary or desirable to carry out such purposes;

* * *

The above quoted statute provides MDAH with the authority to determine a location close in proximity to the property at which prehistoric Native American remains were desecrated, and to utilize such property, upon a finding that the same is “significant for historical, architectural, archaeological or cultural reasons,” to rebury those remains; subject, however, to the Native American Graves Protection and Repatriation Act, 25 U.S.C.A. Section 3001 - 3013 and the federal regulations which implement the Act, 43 C.F.R. 10.

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

Katie Blount, Director
July 31, 2020
Page 3

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Kim P. Turner*

Kim P. Turner
Assistant Attorney General

OFFICIAL OPINION