



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

August 31, 2020

Mike Espy, Esq.  
Board Attorney, Madison County Board of Supervisors  
Post Office Box 608  
Canton, Mississippi 39046

Re: Eminent Domain

Dear Mr. Espy:

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

### **Question Presented**

Must Madison County offer “just compensation,” pursuant to Mississippi Code Annotated Section 43-37-3(c)(i), to commercial stores that are parties to a “cross parking agreement,” though none have an ownership interest in the property the county seeks to acquire?

### **Background**

Madison County intends to acquire a right-of-way in order to expand a heavily trafficked county roadway. The property is owned by one store, located within a commercial shopping center. However, all stores in the shopping center are parties to a “cross parking agreement.” The property the county seeks to acquire does not touch upon, lessen, diminish or reduce any part of the parking lot or access area(s) within the shopping center.

### **Brief Response**

Pursuant to Mississippi Code Annotated Section 7-5-25, the Office of the Attorney General is authorized to issue official opinions upon questions of state law only. Thus, we cannot by official opinion interpret the terms or provisions of an agreement or contract or infer facts that may be relevant to our opinion. Thus, this opinion is not based on any term or provision of the referenced cross parking agreement, a copy of which was not provided with your request. Further, this office

has relied solely upon the background facts as were provided by your request and as recited above in the issuance of its official opinion.

Madison County must only pay just compensation to the owner of the real property being acquired, in accordance with Section 43-37-3.

### **Applicable Law and Discussion**

Our constitution mandates that private property shall not be taken or damaged for public use except upon due compensation to the *owner* thereof. MISS. CONST. art III, § 17 (emphasis added).

Due compensation has two components: The value of the property taken and the damage, if any, to the remainder. *Trustees of Wade Baptist Church v. Miss. State Highway Comm'n*, 469 So. 2d 1241, 1244 (Miss. 1985) (citing *Miss. State Highway Comm'n v. McArn*, 246 So. 2d 512, 514 (Miss. 1971)). Stated differently, when a part of a larger tract is taken, the property owner is entitled to the difference between the fair market value of the whole tract, immediately prior to the taking, and the fair market value of the remaining tract, immediately after the taking. Neither access nor parking are attributes or capabilities of land subject to separate valuation in eminent domain proceedings. They may be considered only insofar as they affect the value of the property remaining after the taking. *Trustees of Wade Baptist Church*, 469 So. 2d at 1245; *Muse v. Miss. State Highway Comm'n*, 103 So. 2d 839, 847 (Miss. 1958).

The facts set forth in your request, however, do not mention an alteration or restriction of either access or parking by virtue of Madison County's intended acquisition.

Mississippi Code Annotated Section 43-37-3 sets forth the necessary procedures and prerequisites for the acquisition of real property using public funds. This section requires that every reasonable effort be made to negotiate with the owner of the real property prospectively being acquired. *See* Miss. Code Ann. § 43-37-3(a), (c)(i). Only the owner of the real property being acquired is entitled to just compensation and, where appropriate, additional compensation may be warranted for damages to the remaining real property. Miss. Code Ann. § 43-37-3(c)(i). Section 43-37-3 makes no provision for just compensation to be paid to others.

It is, therefore, the opinion of this office that Madison County may only pay just compensation to the owner of real property the county acquires, pursuant to Section 43-37-3.

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/ Kim P. Turner

Kim P. Turner  
Assistant Attorney General