



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

August 31, 2020

Nicole Sullivan, Esq.
City Attorney, City of Ocean Springs
Post Office Box 1618
Pascagoula, Mississippi 39568-1618

Re: Cost of Personal Service Line to Existing City Utilities

Dear Ms. Sullivan:

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

Questions Presented

In your request, you ask three questions regarding the legality of providing a water/sewer personal service line to an individual property owner within the City of Ocean Springs ("City"):

1. Is the City or the individual property owner responsible for the cost of extending a personal service (tap) line to the City's water/sewer main?
2. Should this office determine that the City is responsible for the cost, does the board retain the authority to make a factual determination on whether the costs of such personal service line outweigh the benefits?
3. Should this office determine that the City is responsible for the cost, is the individual property owner entitled to reimbursement if he moves forward with construction of the personal service line prior to the issuance of an opinion?

Background

According to your request, the City has been asked by a property owner to pay for a personal tap to the City's water/sewer main. The subject property was once part of one platted parcel that contained seven different lots. In 2015, the property was divided into three separate parcels, two of which had never had a water/sewer tap line since neither had ever been developed as individual properties. In February 2020, Parcel 2 was sold to an individual who wishes to build a single

family home on the property. The new property owner has asked the City to pay for a water/sewer tap from the City's water/sewer main to his property line at Parcel 2. This water/sewer tap would serve the property owner only.

Brief Response

1. A municipality is authorized to create and maintain the main sewer line to the point of connection with the service line, and the property owner has the responsibility to connect and maintain the service line from the point of connection with the main line to the residence.
2. When extending the main line for water and sewer services, a municipality may consider whether such extension is economically reasonable.
3. Because we did not determine that the City is responsible for the cost of extending a personal service (tap) line to the City's water/sewer main, your third question is moot. However, we note that reimbursing a private property owner for his construction costs would likely be an unlawful donation in violation of Section 66 of the Mississippi Constitution.

Applicable Law and Discussion

It appears that the municipality and the private property owners are in a dispute over whether the extension of water services would require an extension of the main water line, which would be the responsibility of the municipality, subject to the limitations further discussed below, or whether the property owner can access water services simply by connecting a private service line to the City's main water line, in which case the private property owner would bear the cost of installation. This is not a matter that can be resolved by official opinion. Whether a water line is part of the main line or is a private service line connecting an individual property owner is a question of fact to be determined by the governing authorities, subject to review by a court of competent jurisdiction. For general guidance, please see our comments below.

"In accordance with Mississippi Code Annotated Section 21-27-23, a municipality is authorized to create and maintain a sewage disposal system by extending sewer main lines within the municipal limits so that individuals and businesses may connect service lines onto the main line." MS AG Op., *Brannon* at *2 (Dec. 21, 2012). "[A] municipality has the authority to maintain the main sewer line to the point of connection with the service line, and the property owner has the responsibility to maintain the service line from the point of connection with the main line to the residence." MS AG Op., *Baker* at *1 (July 19, 2001). We have also opined that a municipality is not required to extend the main line for water and sewer services to residents if doing so would not be economically reasonable. MS AG Op., *Chandler* at *1 (Apr. 1, 2005).

With regard to a municipality's authority to extend utility lines, we have previously opined that:

a city may and is legally obligated to extend its service to furnish adequate water supply to its residents where there is a reasonable demand for the service and” a reasonable extension of the service can be made to meet the demand, considering the cost of the extension and the maintenance of the service, the present and prospective number of subscribers or customers, the present development and the prospective growth and development of the locality to be served, and the present and prospective revenue to be obtained from furnishing water in the territory to be served by such extension. *Ladner v. Mississippi Public Utilities Co.*, 131 So. 78, 79 (Miss. 1930). *See also, Greenwood v. Provine*, 143 Miss. 42, 108 So. 284 (1926). “The city has a duty to construct its mains as to enable it to comply with its duty to furnish adequate water supply to its patrons.” *Brown v. Meridian*, 102 Miss. 384, 59 So. 795 (1912). If the city finds an extension is necessary for the proper operation of the system and the benefit of the public, taking into consideration the above factors, then it may extend its water main to provide such service.

MS AG Op., *Mayo* at *2 (May 24, 2019) (citing MS AG Op., *Hammack* (Apr. 12, 1995)); *see also* MS AG Op., *Rutledge* at *1 (Sept. 30, 2005).

As such, whether a municipality is required to provide or extend sewer service is a factual determination to be made by the municipal governing authorities and is subject to review by a court of competent jurisdiction.

Your third question asks whether the City is responsible for reimbursing the property owner if this office determines that the City is responsible for the costs and the property owner proceeds with the construction of a personal service line prior to the issuance of this opinion. As stated above, whether the City is responsible for such a cost is a factual determination to be made by the City and is subject to judicial review. Generally speaking, a public entity reimbursing a private entity for construction costs could potentially result in an unlawful donation in violation of Section 66 of the Mississippi Constitution of 1890. However, it is worth noting that a municipality has the authority to settle claims pursuant to Mississippi Code Annotated Section 25-1-47.

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/ Beebe Garrard

Beebe Garrard
Special Assistant Attorney General