



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

September 30, 2020

Moran M. Pope, III, Esq.
Attorney for the City of Hattiesburg
Post Office Box 17527
Hattiesburg, Mississippi 39404

Re: Assessments pursuant to Section 21-19-11 of the Mississippi Code

Dear Mr. Pope:

The Office of the Attorney General has received your request for an official opinion.

Background

In exercising its authority to clean up property that has been determined to be in such a state of uncleanliness as to be a menace to public health, safety and welfare of the community, the City of Hattiesburg (the “City”) has consistently opted to assess the cost of such cleanups against the property as authorized by Mississippi Code Annotated Section 21-19-11(4). You state that in some instances the cost to clean up the property exceeds the value of the property.

Question Presented

You ask if the City has discretion to accept less than the amount declared as an assessment for costs associated with cleaning up property under Section 21-19-11, or to waive the cost and penalty entirely, if the governing authorities determine it is in the best interest of the City to do so.

Brief Response

No. Such assessments are liens on the property and cannot, in whole or part, be reduced, waived or postponed. Those assessments must be collected pursuant to the provisions of Section 21-19-11(4)(a) and (b).

Applicable Law and Discussion

Section 21-19-11 authorizes municipalities to clean property located within their corporate limits and provides that the cost and penalty is to be collected as a civil debt or as an assessment against the property. The statute provides, in pertinent part:

[T]he expense of cleaning of the property, except as otherwise provided in this section for removal of hazardous substances, shall not exceed an aggregate amount of Twenty Thousand Dollars (\$20,000.00) per year, or the fair market value of the property subsequent to cleaning, whichever is more.

...

(4)(a) If the governing authority declares that the cost and any penalty shall be collected as an assessment against the property, then the assessment above provided for shall be a lien against the property and may be enrolled in the office of the chancery clerk of the county as other liens and encumbrances are enrolled, and the tax collector of the municipality shall, upon order of the board of governing authorities, proceed to sell the land to satisfy the lien as now provided by law for the sale of lands for delinquent municipal taxes. The lien against the property shall be an encumbrance upon the property and shall follow title of the property.

(b)(i) All assessments levied under the provisions of this section shall be included with municipal ad valorem taxes and payment shall be enforced in the same manner in which payment is enforced for municipal ad valorem taxes, and all statutes regulating the collection of other taxes in a municipality shall apply to the enforcement and collection of the assessments levied under the provisions of this section, including utilization of the procedures authorized under Sections 17-13-9(2) and 27-41-2.

(ii) All assessments levied under the provisions of this section shall become delinquent at the same time municipal ad valorem taxes become delinquent. Delinquencies shall be collected in the same manner and at the same time delinquent ad valorem taxes are collected and shall bear the same penalties as those provided for delinquent taxes. If the property is sold for the nonpayment of an assessment under this section, it shall be sold in the manner that property is sold for the nonpayment of delinquent ad valorem taxes. If the property is sold for delinquent ad valorem taxes, the assessment under this section shall be added to the delinquent tax and collected at the same time and in the same manner.

Miss. Code Ann. § 21-19-11.

Pursuant to Section 21-19-11(4)(a), when municipal governing authorities declare that the cost and penalty of cleaning property will be an assessment on the property, that assessment shall be a lien on the property, shall be an encumbrance upon the property, and shall follow the title of the property.

Section 100, Mississippi Constitution of 1890 provides:

No obligation or liability of any person, association, or corporation held or owned by this state, or levee board, or any county, city, or town thereof, shall ever be remitted, released or postponed, or in any way diminished by the Legislature, nor

shall such liability or obligation be extinguished except by payment thereof into the proper treasury; nor shall such liability or obligation be exchanged or transferred except upon payment of its face value; but this shall not be construed to prevent the Legislature from providing by general law for the compromise of doubtful claims.

MISS. CONST. art. IV, § 100. We have previously opined that there is no authority for a municipality to cancel or release a lien placed on property pursuant to Section 21-19-11. Doing so would violate Section 100 of the Mississippi Constitution. MS AG Op., *Lawrence* at *1 (Feb. 14, 2014); MS AG Op., *Hollingsworth* at *1–2 (May 1, 2012) (finding no authority to reduce amount of clean-up assessment owed to municipality, even when fair market value of subject property was less than amount owed to municipality); MS AG Op., *Lawrence* at *2 (Sept. 20, 2013). Accordingly, we are of the opinion that the City may not reduce, waive, or postpone assessments made pursuant to Section 21-19-11(4).

Additionally, your request indicates that, in some instances, the cost to clean up the property exceeds the value of the property. A municipality is explicitly prohibited from expending funds for the cleanup of properties, pursuant to Section 21-19-11, other than for the removal of hazardous substances, in an amount that exceeds “an aggregate amount of Twenty Thousand Dollars (\$20,000.00) per year, or the fair market value of the property subsequent to cleaning, whichever is more.”

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/ *Phil Carter*

Phil Carter
Special Assistant Attorney General