



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

October 5, 2020

Gene Barton, Esquire
City Attorney, City of Okolona
Post Office Box 147
Okolona, Mississippi 38860

Re: Use of municipal auditorium by private organizations

Dear Mr. Barton:

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

Background Facts

Your letter states that the City of Okolona (the “City”) has an auditorium that is used for municipal court and board meetings. The City’s policy in the past has been to allow entities, other than the City, to rent the auditorium on a fee schedule basis.

Questions Presented

You ask the following questions:

1. Is it necessary to charge a fee to entities, other than the City, when such entities are not working in concert with the City for the use of the auditorium?
2. May a fee be waived with respect to the local chamber of commerce if it is put in the minutes that it is part of the City’s contribution to the chamber of commerce?

Brief Response

With respect to your first question, no. A municipality is not required to charge a fee when allowing non-municipal individuals or entities to use municipal property. However, such use must accord with a uniform policy enacted by the municipal governing authorities. Furthermore, the municipality must collect from the user any expenses that the municipality is required to expend as a result of the municipal facility being used—i.e., cleaning fees or charges for utilities; otherwise, such uncompensated use would constitute a donation, which is prohibited by Article 4, Section 95 of the Mississippi Constitution unless explicitly authorized by law.

Turning to your second question, should the City's governing authorities determine, consistent with the facts, that the local chamber of commerce is qualified to receive a donation, the governing authorities may waive any fee charged for using municipal facilities.

Applicable Law and Discussion

"Public entities are authorized to permit the use of [their] facilities, provided that a uniform policy, which passes constitutional muster, is established and implemented for the organizations/individuals using the space in the facility." MS AG Op., *Short* at *1 (Apr. 24, 2009). A county or municipality may not enact a use policy that favors one organization or individual over another. MS AG Op., *Barefield* at *1 (June 13, 2003). We have opined that such "[p]olicies may include fees to be charged for the use of the property or facility." MS AG Op., *Baum* at *1 (Feb. 17, 2006). "Fees which are charged for the use of municipal facilities are not for the purpose of bringing a profit to the municipality, but should be reasonably tailored to compensate the municipality for expenses directly related to the use of the property by the organization, group or individual (use of utilities, municipal personnel, janitorial services, etc.)." *Id.*

However, we are aware of no requirement that a municipality charge a fee for use of municipal property. See MS AG Op., *Hatcher* (Nov. 16, 2001) ("Although the governing authorities may adopt a policy of allowing individuals and groups to use the city hall free of charge for commercial ventures, such as insurance sales, the governing authorities may also adopt a policy that individuals, groups and organizations may only use the city hall for nonprofit purposes.").

"As a general rule, a municipality is prohibited from donating land owned or controlled by public entities to private corporations or individuals in accordance with Article 4, Section 95 of the Mississippi Constitution." MS AG Op., *Manley* at *2 (May 1, 2015). Accordingly, while there is no requirement to charge a fee for using municipal property, such use must not result in an unconstitutional donation. See MS AG Op., *Gamble* at *1 (Feb. 6, 2004) ("However, it is important to note that the church should reimburse the county for the use of the facility, such as the cost of utilities and custodial services, so that the county is not contributing public funds toward a private purpose.").

Turning to your second question, municipalities are specifically authorized to contribute, donate or appropriate funds from the general funds to Main Street programs and local economic development organizations. Miss. Code Ann. § 21-19-44-44.1. We have also opined that municipal governing authorities may, in their discretion, waive all, or part, of the fees charged for use of municipal property, upon a finding that the group, organization or individual is qualified to receive a donation, in accordance with Sections 21-17-1(3)(a)(1) and 21-17-1(3)(b)(ii), relating to a qualified bona fide, not-for-profit, civic or eleemosynary corporation. MS AG Op., *Manley* at *1 (May 1, 2015).

Citing Section 21-19-44, this office has previously addressed a municipality's authority to provide space within a municipal building to a local chamber of commerce:

We have stated by prior opinion that a municipality may provide space in a municipal building rent free for the Chamber of Commerce pursuant to Section 21-

19-44 and 21-19-44.1. MS AG Op., *Jones* (August 4, 2000). Municipalities may contract to provide office space or in kind services to the Main Street Project or local economic development organizations for consideration. Municipalities may donate to the Main Street Project and local economic development organizations office space and in kind services pursuant to the above statutes.

MS AG Op., *Farmer* at *2 (Dec. 20, 2002); *see also* MS AG Op., *Jones* at *2–3 (Aug. 4, 2000); *see also* MS AG Op., *Denton* at *1 (Mar. 12, 2012) (“It is clear that a municipality is authorized to donate office space to the local Chamber of Commerce, in accordance with Mississippi Code Annotated Sections 21-19-44 and 21-19-44.1.”).

While the above-cited opinions issued by this office have concluded that a local chamber of commerce is, *per se*, qualified to receive a donation by a municipality, it is the opinion of this office that the governing authorities of a municipality must determine, consistent with the facts, that the local chamber of commerce may receive a donation pursuant to Sections 21-19-44–44.1, Section 21-17-1(3)(a)(1), (3)(b)(ii), or another applicable statute. MS AG Op., *Baum* at *1 (Feb. 17, 2006) (“On a case-by-case basis, the municipal governing authorities may, in their discretion, entertain a request to waive fees established in a policy providing for use of municipal facilities, and upon a finding that the group, organization or individual is qualified to receive a donation, the governing authority may determine to waive all or a part of the fees.”). To the extent this opinion conflicts with our prior opinions—namely, our *Denton*, *Farmer*, and *Jones* opinions cited herein—the conflicting portions of those prior opinions are hereby modified.

Accordingly, should the City’s governing authorities determine, consistent with the facts, that the local chamber of commerce is qualified to receive a donation, the governing authorities may waive any fee charged for using municipal facilities.

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