



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

May 17, 2021

Gene Barton, Esq.
Attorney for City of Okolona
Post Office Box 147
Okolona, Mississippi 38860-0147

Re: Request for Reconsideration of Opinions Regarding Okolona's Authority
to Provide Broadband Services as Part of Its Municipal Utility System

Dear Mr. Barton:

The Office of the Attorney General has received your request for reconsideration.

Background Facts

On March 15, 2019, this office issued an opinion to you, in response to your request for us to reconsider another opinion issued to you on May 25, 2018. MS AG Op., *Barton* (Mar. 15, 2019); MS AG Op., *Barton* (May 25, 2018). The issue in those two opinions as well as the instant opinion is whether there is statutory authority for a municipality, the City of Okolona, specifically, to provide broadband service through its municipal utility system.

Question Presented

You ask us to reconsider two previous opinions issued by this office—MS AG Op., *Barton* (Mar. 15, 2019) and MS AG Op., *Barton* (May 25, 2018)—and to opine that the City of Okolona is authorized to offer broadband service through the Okolona Electric Department. Your request contains no new information, nor does it follow any relevant statutory change.

Brief Response

A municipality does not have authority to provide broadband service to its residents as part of its municipal utility system. We reaffirm our two previous opinions to you.

Applicable Law and Discussion

In our May 2018 opinion, we stated that broadband services are not included in the enumerated systems that municipalities are authorized to provide as utilities. MS AG Op., *Barton* at *3 (May 25, 2018).¹

One year later, upon your request for reconsideration of that opinion, we examined your assertion that our opinion violated Mississippi Code Annotated Section 77-5-257 and responded that Sections 77-5-201 through 77-5-259 “specifically apply to the authority of electric power associations.” MS AG Op., *Barton* at *1 (Mar. 15, 2019).² It should be noted that opinions of the Attorney General’s Office are advisory in nature only. While they afford the official who requests, and then acts in good faith in accordance with the opinion, some protection from civil and/or criminal liability, Miss. Code Ann. § 7-5-25, our opinions cannot prohibit the requestor from taking any action, nor require the requestor to take any action.

In that same opinion, we did, however, also direct your attention to the then-newly enacted “Mississippi Broadband Enabling Act,” Mississippi Code Annotated Sections 77-17-1 through 77-17-15, which provides for electric cooperatives to own and/or operate broadband systems. We noted in that opinion, that the determination of whether the Okolona Electric Department qualifies as an electric cooperative under said statute is a factual determination made by the municipality. Your current request does not indicate whether such a determination was sought and/or obtained.

Finding no additional information sufficient to support your claim that a municipality has the statutory authority to provide broadband service through its utility system, we reaffirmed our previous opinion. MS AG Op., *Barton* at *2 (Mar. 15, 2019).

Today, with no additional information nor any statutory changes offered for consideration, we reaffirm our two previous opinions to you.

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/ *Misty Monroe*

Misty Monroe
Special Assistant Attorney General

¹ The Legislature had not at the time of the 2019 reconsideration, nor has, at this time, added broadband to the extensive list in the definition of “system” in Section 21-27-11(b).

² Also, as noted in that opinion, we did not consider or answer whether any federal law or TVA regulation addressed your questions. Attorney General Opinions are intended to address only questions of state law. Official opinions cannot answer questions of federal law, questions of fact, mixed questions of fact and law, or questions of executive, legislative, or administrative policy.