



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

October 1, 2021

Carroll Rhodes, Esq.  
Attorney for Hazlehurst City School District  
Post Office Box 588  
Hazlehurst, Mississippi 39083

Re: Reclassification and Lease of Sixteenth Section Land

Dear Mr. Rhodes:

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

### **Background**

You state that the Hazlehurst City School District (“HCSD”) has a 24 acre, more or less, tract of land on Sixteenth Section Land that has been classified as agricultural land and hunting and fishing land. According to your request, since May 13, 1986, the HCSD has leased the tract several times for agricultural or hunting and fishing purposes. The land has not been leased since 2003, although it has been advertised for leasing. The City of Hazlehurst has approached the HCSD about reclassifying the property as “other land” and then leasing it to the City to be used as a rubbish site to dump leaves and limbs picked up by the City.

### **Question**

If the HCSD Board of Trustees (the “Board”) has been unable to lease the Sixteenth Section land in question as hunting and fishing land, is it permissible for the Board to reclassify the land as “other land” and lease it to the City of Hazlehurst to be used as a rubbish site?

### **Brief Response**

While the Board has authority to reclassify Sixteenth Section land due to a change in conditions, the reclassification is limited to the highest and best use for maximizing revenue. Whether placing storm rubbish on the land would meet the requirements of reclassification and whether it would reduce the marketability or value of the property are factual determinations that must be made by the Board.

### **Applicable Law and Discussion**

Opinions of this office are limited to prospective questions of state law. Miss. Code Ann. § 7-5-25. This office does not validate nor invalidate past actions. Therefore, to the extent your request deals with a past action, we must decline to respond with an official opinion of this office. MS AG Op., *Brock* at \*1 (Nov. 8, 2019).

“[S]chool trust lands must be classified according to their highest and best use for maximizing revenue.” MS AG Op., *Cheney* at \*2 (Sept. 24, 2004). Additionally, “[t]he board of education is under an obligation to obtain the highest return possible from sixteenth section land as a trustee for the school children of that district.” *Id.* (citation omitted). Although Mississippi Code Annotated Section 29-3-39 states that boards of education have a duty to periodically reclassify Sixteenth Section land when conditions change, when a reclassification leads to a reduction in annual rent, reclassification of a tract to a classification that is not the highest and best use for maximizing revenue is a breach of the Board’s obligation as trustee of school trust lands. *See* MS AG Op., *Frierson* at \*2 (July 18, 1997) (outlining duties and obligations of Pearl River County School Board of Trustees).

Mississippi courts have held that the school district, as trustee of the land, does not have “authority to lease real property held in trust for substantially less than the fair value thereof.” *Benson v. Neshoba Cnty. Sch. Dist.*, 102 So. 3d 1190, 1193 (Miss. Ct. App. 2012) (quoting *Hill v. Thompson*, 564 So. 2d 1, 9 (Miss. 1989)). It is well-settled that waste on Sixteenth Section lands is forbidden. *See* MS AG Op., *Mayfield* at \*1 (Aug. 4, 2000) (quoting Miss. Code Ann. § 29-3-85).

We have also said that:

[A] trustee is held to great strictness in his dealings with the property in his hands, and is required to protect the trust estate from waste.” 90 C.J.S. Trusts Sec. 271. The Mississippi Supreme Court has specifically defined “waste” in the context of sixteenth section lands in the following manner:

Waste is defined to be any substantial injury done to the inheritance, by one having a limited estate, during the continuance of his estate .... What constitutes waste is determined by the consideration as to whether or not the act done results in injury to the inheritance.

MS AG Op., *Maher* at \*2 (June 19, 1991) (citing *Moss Point Lumber Co. v. Board of Supervisors of Harrison County*, 42 So. 290, 300–01 (Miss. 1906)).

As noted in your letter, this office has previously opined that the location of a rubbish site on Sixteenth Section land, where the rubbish site would apparently be the permanent location of waste material, would inevitably result in the reduction in marketability and value of the property and is not permissible. MS AG Op., *McCafferty* at \*1 (Aug. 18, 1993). In the short term, leasing the subject land as a rubbish site would generate revenue on what is currently a non-revenue producing tract of Sixteenth Section land. However, regardless of this office’s affirmative finding of waste in *McCafferty*, whether a rubbish site would detrimentally harm the land and constitute waste

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requires a factual determination that must be made by the Board. To the extent previous opinions of this office—including *McCaffery*—are inconsistent with this finding, they are modified to conform hereto.

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

OFFICIAL OPINION