



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

October 11, 2021

Jeffrey J. Turnage, Esq.
Attorney, City of Columbus
Post Office Box 1366
Columbus, Mississippi 39703-1366

Re: Recreation Department Expenditures

Dear Mr. Turnage:

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

Questions Presented

1. May the City of Columbus' (the "City") Recreational Department (the "Department") provide art and craft supplies to participants at a recreation authority neighborhood park facility free of charge?
2. Assuming your answer to question number 1 is "no," may the Department collect a fee for participation in a program that is sufficient to cover the cost to the recreation authority for the provision of the art and craft supplies?
3. The Department also provides after-school programs at its recreation authority facilities. Is it legally allowed to staff the recreation facilities with employees to oversee the recreation functions for free, or does it have to collect a fee from the program participants sufficient to cover the salary of the employees?
4. If all the above questions are answered in the negative, may the City enter into an Interlocal Agreement with the local school district in order to provide the service at its recreation authority facility?

Preface

Columbus is a special charter municipality, and as such, the powers of the municipality flow directly from its charter. Ordinarily, questions about the workings of a municipality operating under a special charter should be answered by reference to the specific provisions of that charter; however, if the special charter is silent on a particular matter, general statutory provisions would

apply. MS AG Op., *Carouthers* at *1 (June 28, 2019). You have indicated that the special charter of the City of Columbus is silent on the matters raised herein, and this office accepts your assertion. Thus, this opinion applies general statutory provisions.

Brief Response

1. Assuming the City has made the proper factual findings that the program is consistent with Mississippi law, the Department may expend public funds for arts and crafts supplies to be used by participants at a recreation authority neighborhood park facility, at no cost to the participants.
2. Your second question is premised on a negative response to your first question. Because we answered your first question in the affirmative, your second question is moot.
3. Assuming the City has made the proper factual findings that the program is consistent with Mississippi law, the City is authorized to spend municipal funds to pay operational costs of the park, which includes hiring personnel to run authorized programs.
4. Your fourth question is premised on negative responses to questions 1 through 3. Because we have answered questions 1 and 3 in the affirmative, your fourth question is moot.

Applicable Law and Discussion

Pursuant to Mississippi Code Annotated Section 7-5-25, official opinions of the Attorney General are limited to questions of law for future guidance and can neither validate nor invalidate past action. Therefore, to the extent the Department currently operates an after-school program, we provide guidance for prospective application only.

In response to your first question, multiple statutes authorize a municipality to create and fund parks, playgrounds, and recreation facilities and to equip, maintain, and operate the same.¹ See, e.g., Miss. Code Ann. §§ 17-1-3 (“The governing authority of each county and municipality may create playgrounds and public parks, and for these purposes, each of such governing authorities shall possess the power, where requisite, of eminent domain and the right to apply public money thereto, and may issue bonds therefor as otherwise permitted by law.”); 21-17-1 (authorizing municipalities to purchase real estate for “all proper municipal purposes, including parks”); 55-9-1 (authorizing any available surplus funds to be used for “constructing, equipping, maintaining and operating . . . recreational centers . . . or parks.”). Additionally, this office has previously opined that municipalities have authority to implement recreational and athletic programs. MS AG Op., *Danos* at *1 (Aug. 22, 2014) (relying on “Home Rule” authority set forth in Section 21-17-5). Clearly, municipalities are vested with broad authority to establish, regulate, and fund parks and recreational facilities.

¹ This opinion presumes the City of Columbus has not established a park commission, pursuant to Section 21-37-33 *et seq.*

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Moreover, Section 17-3-1 authorizes counties and municipalities to expend public funds on advertising, which includes “newspaper and magazine advertising and literature, publicity, expositions, public entertainment or other form of advertising or publicity, which in the judgment of such board or boards will be helpful toward advancing the moral, financial and other interests of such municipality or county” Miss. Code Ann. §§ 17-3-1–3.

Based on the broad authority set forth above, this office is of the opinion that if the City makes the requisite factual findings that the program is consistent with Mississippi law, the Department—through its duly-authorized budget—may expend public funds for arts and crafts supplies to be used by participants at a recreation authority neighborhood park facility, at no cost to the participants. *See* MS AG Op., *Taylor* at *1 (May 10, 1996) (finding municipal governing board decides how municipal funds will be allocated for municipal parks, and the parks and recreation director will thereafter decide “how funds which are not specifically designated for certain purposes by the board of aldermen within the budget of the department will be spent”); *see also* MS AG Op., *Short* at *1 (Oct. 9, 1998) (opining that a recreation department may provide free transportation to and from participants’ residences, to recreation facilities, and on field trips).

Your second question is premised on a negative answer to your first question. Because we answered your first question in the affirmative, your second question is moot.

With respect to your third question, in light of our response to your first question, if the City makes the requisite factual findings, the Department may staff recreational facilities with employees to oversee the Department’s authorized recreational functions at no cost to program participants. This office has found that a municipality may operate its own baseball program for community children, either through a municipal park commission or through the city itself. MS AG Op., *Smith* at *1 (Jan. 17, 1990); *see also Danos*, at *1 (recognizing a municipality’s authority to operate recreational and athletic programs and to spend municipal funds in pursuit of such programs). Operating the program would include hiring personnel to run the program and the purchasing of necessary supplies, equipment, and uniforms. *Smith* at *1. It is the opinion of this office that the City may use public funds to staff authorized programs.

Your fourth question is premised on negative responses to questions 1 through 3. Because we have answered questions 1 and 3 in the affirmative, your fourth question is moot.

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