



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

September 30, 2021

William C. Purdie, Esq.
Attorney for City of Clinton
Post Office Box 156
Clinton, Mississippi 39060

Re: City's Authority to Accept Real Property in Lieu of Cash Payment on a Debt

Dear Mr. Purdie:

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

Background Facts

The City of Clinton (the "City") has completed construction of a roadway and associated improvements through the special improvement and special assessment process contemplated by Mississippi Code Annotated Section 21-41-1, *et seq.* According to your request, there is only one benefited property owner along this road; this property owner is the only entity on the assessment roll and is solely responsible for the entirety of the special assessment amount.

Questions Presented

1. Does the City have authority to accept real property in lieu of cash payment for a debt currently owed to the City?
2. If the answer to Question 1 is "yes," what is the process for properly determining the value of the real property being accepted?

Brief Response

1. Yes. There is no law prohibiting the proposed arrangement. Therefore, it is our opinion that pursuant to Section 21-17-5(1)—municipal "Home Rule" authority—a debt, or portion thereof, may be satisfied by the transfer of real property, so long as the property accepted is used for proper municipal purposes and will benefit the citizens of the municipality.

2. Acquisitions of real property by a municipality are subject to the process set forth by Section 43-37-3.

Applicable Law and Discussion

Section 21-41-1, *et seq.* authorizes and governs the special assessment improvements process, which allows the costs of improvements to be “recovered ‘by levying and collecting special assessments as provided in this chapter, and may finance such local improvements in the manner provided in this chapter.’” *Edwards v. Bridgetown Cmty. Ass’n, Inc.*, 486 So. 2d 1235, 1239 (Miss. 1986). Upon completion of any authorized improvement, the governing authorities must determine the cost of the improvement, declare the same by resolution, and enter the same on the “assessment roll.” Miss. Code Ann. § 21-41-13.

Section 21-17-1(1) provides, in relevant part:

(1) Every municipality of this state shall be a municipal corporation and shall have the power to sue and be sued; *to purchase and hold real estate, either within or without the corporate limits, for all proper municipal purposes*, including parks, cemeteries, hospitals schoolhouses, houses of correction, waterworks, electric lights, sewers, and other proper municipal purposes

Miss. Code Ann. § 21-17-1(1) (emphasis added).

No law prohibits the city from accepting real property in payment and satisfaction—complete or partial—of the special assessment. It is well within the municipality’s authority to purchase the real property. Pursuant to Section 21-17-1(1), a city has authority to purchase and hold real estate for all proper municipal purposes. Furthermore, Section 21-17-5(1)—the municipal “Home Rule” statute—grants municipalities broad authority over the “care, management and control of the municipal affairs and its property and finances” so long as their actions are not inconsistent with the Mississippi Code, or any other state law.

This office has previously opined that a city would violate the constitutional prohibition against unlawful donations by attributing the value of a *prior* loan or donation as credit or payment toward a current debt. MS AG Op., *Heidel* at 1* (June 9, 2000). However, we stated that even though a prior loan or donation could not satisfy a current debt, that was “not to say that a debt, or a portion thereof, may not be satisfied by future cash payment, loans of equipment or provision of services.” *Id.* Consistent with *Heidel*, we find no statutory prohibition against a city accepting real property for a debt owed at the time of conveyance, in lieu of cash payment.¹ However, the property accepted must be used for proper municipal purposes and benefit the citizens of the municipality. In response to your second question, acquisitions of real property by a municipality are subject to the process set forth in Section 43-37-3, which provides that “[a]ny person, agency or other entity

¹ We note that in making the improvements pursuant to the special assessment statutes, the city must have described the improvements made, adopted resolutions that determined the amount of the special assessment, and assessed that amount against the benefited property, which was fixed if no objection was made. If the city accepts property in lieu of cash payment of the assessment, some official action might be necessary to correct or adjust the amount of the lien against the property, as non-payment of the assessment may lead to forfeiture of the property.

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acquiring real property for any project or program in which public funds are used shall comply with certain specified requirements. Miss. Code Ann. § 43-37-3(1). Although the City does not plan to purchase the property, because the property is being accepted by the City in lieu of a payment for the assessment, which would constitute public funds, it is the opinion of this office that Section 43-37-3 is applicable. Any factual determinations necessitated by the process are to be made by the municipality and cannot be addressed by official opinion.

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/ Abby Cummings*

Abby Cummings
Special Assistant Attorney General

OFFICIAL OPINION