



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 29, 2021

Moran M. Pope, III, Esq.
Attorney for City of Hattiesburg
Post Office Box 17527
Hattiesburg, Mississippi 39404-7527

Re: Private Company Using City's Branding and/or Logo

Dear Mr. Pope:

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

Background

The City of Hattiesburg (the "City") has been approached by a private company seeking to enter into a non-exclusive agreement with the City that would grant the company the right to use the City's branding on marketing and advertising materials sent by the company to property owners in the City. The cost of the marketing and advertising materials would be covered solely by the company leaving no cost to the City. According to your request, the City would essentially be entering into an agreement to endorse the company and would be paid an annual license fee for each property owner who signs up for the company's services.

Question Presented

May the City enter into a non-exclusive agreement whereby the City would allow a private company to use the City's branding on the company's advertisements, in return for payment by the company?

Brief Response

A municipality may enter into a non-exclusive agreement that allows a private company to use its branding marks and then receive payment for that authorized use. However, a municipality may only engage in activities that constitute proper government purposes and may not engage in private enterprise.

Applicable Law and Discussion

The municipal "Home Rule" statute grants broad authority to municipalities in adopting any orders, resolutions, or ordinances with respect to municipal affairs, property and finances that are

not otherwise inconsistent with any other laws. Miss. Code Ann. § 21-17-5(1). However, “it is fundamental that cities may only engage in activities that constitute proper government purposes and may not engage in private enterprise.” MS AG Op., *Doty* at *1 (Jan. 12, 1994) (citing Miss. Code Ann. § 21-17-1).

In previous opinions, we have noted the authority of public entities to license intellectual property. MS AG Op., *Poole and Arentson* at *1 (Apr. 17, 2015). We have further opined that a public entity is authorized to receive funds in exchange for the authorized use of its logo or marks so long as the funds received were properly accounted for and spent according to the law. MS AG Op., *Logan* at *1 (June 21, 2013). Upon review of the authority granted to municipalities by the Legislature, we similarly opine that pursuant to the municipal Home Rule statute, a municipality may enter into a non-exclusive agreement that allows a private company to use its branding marks and then receive payment for that authorized use. We note that any agreement into which the City enters must comply with all laws governing municipal contracts, and any funds received as a result should be properly accounted for and expended pursuant to all laws governing the expenditure of public funds.

According to your request, “the City would be paid an annual license fee for each property owner who signs up for the company’s services.” This office has repeatedly opined that municipalities may not engage in profit-making ventures or in private enterprise. MS AG Op., *Mallette* (May 1, 2012); MS AG Op., *Murdock* at *1 (Sept. 20, 2019); *see also* MS AG Op., *Holmes-Hines* (June 15, 2012) (finding municipality may not engage in private business enterprise unless granted authority by Legislature); MS AG Op., *Odom* (Aug. 15, 1997) (finding no authority for municipality to rent equipment to individuals in private sector as profit-making venture); MS AG Op., *Doty* (Jan. 12, 1994) (finding municipal fireman may not unlock vehicles for a fee as such is not a proper governmental purpose and would constitute a private business venture); MS AG Op., *Shepard* (Dec. 18, 1991) (finding manufacture and sale of Christmas ornaments is a business venture and is unauthorized); MS AG Op., *Allen* (Aug. 15, 1990) (finding rental of municipal personal property is of a commercial nature and not a proper governmental activity). In this context, we have said that an endeavor undertaken by a municipality “may not result in a profit.” MS AG Op., *Russell* at *1 (July 18, 2014).

We have also opined that a sheriff’s department could not, among other things, allow a company to identify the sheriff’s office on a calendar “in return for the company agreeing to pay a percentage of the proceeds from sales of advertisements” on the basis that “such an arrangement appears to be undertaken solely as a profit making venture.” MS AG Op., *Shepard* at *1 (Sept. 19, 2014). Whether the arrangement described in your request constitutes a profit-making venture requires a factual determination that must be made by the City. Notably, however, we have opined that “there is nothing that would prohibit [a] municipality from accepting any ‘profits’ offered to it in the form of a donation made by the for-profit organization.” MS AG Op., *Ringer* at *1 (Nov. 8, 2013).

As an additional matter, your request suggests that the City’s proposed arrangement with the company would constitute the City’s endorsement of such company. We find no authority suggesting that a municipality endorsing a private company constitutes a proper government purpose for municipalities under Section 21-17-1. However, whether the City’s actions described in your request constitute an “endorsement” is a factual determination that must be made by the City Council.

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 Overby*

Abby Overby
Special Assistant Attorney General

OFFICIAL OPINION