



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 30, 2021

The Honorable Nancy Depreo
Mayor, City of Diamondhead
5000 Diamondhead Circle
Diamondhead, Mississippi 39525-3260

Re: Use of Public Funds to Promote Non-binding Referenda

Dear Mayor Depreo:

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

Issue Presented

May the City of Diamondhead expend funds to promote a non-binding referendum? Pursuant to our discussions by phone clarifying the matters at issue in your request, we do not answer the remaining questions as they relate to past action and/or to duties not relevant to your office.

Brief Response

The City of Diamondhead may not lawfully expend municipal funds to promote non-binding referenda, where such promotion is meant to influence the outcome of the referenda.

Applicable Law and Discussion

Mississippi Code Annotated Section 7-5-25 authorizes the Attorney General to issue official opinions to various public officials and bodies “upon any question of law relating to their respective offices.” This office cannot “provide opinions to one entity [or individual] regarding duties of another” MS AG Op., *Criswell* at *1 (Aug. 26, 2016). Therefore, we are unable to respond by official opinion to your questions regarding the authority of other local entities. Moreover, this office may only opine on prospective questions of law. An Attorney General’s opinion can neither validate nor invalidate past action. MS AG Op., *Magee* at *1 (Aug. 29, 2008). Thus, we offer this opinion for future guidance.

Both the Mississippi Supreme Court and this office have found that public entities cannot expend public funds to influence the outcome of an election. In *Smith v. Dorsey*, 599 Sd. 529, 535 (Miss. 1992), the court found that there is nothing in our state’s statutory or common law that would authorize a public entity’s use of public funds to actively campaign for a favored position on a

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bond issue or, similarly, to actively campaign against it. The court further stated that a school board may, however, spend funds to inform the community in a fair presentation of both sides of the issue of a proposed bond referendum but may not spend funds to influence the outcome of the election, finding that “in a nutshell, the school board can inform, but not persuade.” *Id.* at 542. Citing the court’s language in *Smith*, our office has found that a county board of supervisors “or any other public body, may not use public funds to advocate for or against the question of whether to sell or lease the Hospital with an option to sell.” MS AG Op., *Trainer* at *3 (July 28, 2017).

Accordingly, this office is of the opinion that the City of Diamondhead may not lawfully expend municipal funds to promote non-binding referenda, where such promotion is meant to influence the outcome of the referenda.

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