



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

February 24, 2022

The Honorable Scotty L. Dailey
Mayor, Town of Beaumont
Post Office Box 605
Beaumont, Mississippi 39423

Re: Authority of Municipality to Pay Homeowner for Damages Purportedly
Caused by Municipal Water Line Leak After One Year Has Passed

Dear Mayor Dailey:

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

Background

According to your request, in January 2019, the Town of Beaumont's water system developed a leak in a water line, which purportedly caused damage to a homeowner's driveway. The homeowner submitted a repair estimate to the town in February 2020, in the amount of \$9,200.00, plus tax, which the town then submitted to the town's insurance company. The insurer, Mississippi Municipal Liability Plan, denied the claim, stating that the one-year period to file a notice of claim under the Mississippi Tort Claims Act ("MTCA") had passed and, for this reason, the town was not liable.

Question Presented

Does the Town of Beaumont's Board of Aldermen (the "Board") have authority to pay the homeowner for the damage even though the one-year time period to file a notice of claim has passed?

Brief Response

As a general rule, municipalities may settle claims in accordance with Mississippi Code Annotated Section 25-1-47, as long as the governing authorities have determined that the municipality is legally obligated for the claim. However, whether the MTCA applies and whether the claim is subject to applicable defenses —such as the statute of limitations— are questions of fact to be determined by the Board.

Applicable Law and Discussion

Generally, a municipality may not use public funds, labor, or equipment to make improvements to private property because it would constitute an unlawful donation contrary to Section 66 of the Mississippi Constitution. MS AG Op., *Logan* at *1 (Dec. 13, 2013). One of the limited exceptions to this rule is when a claim is made against the municipality by a property owner for alleged damage. *Id.* at *1-2. In such instances, a municipality has the authority to settle the claim pursuant to Section 25-1-47(2), which provides:

Any municipality of this state is hereby authorized and empowered, within the discretion of its governing authorities, to pay and satisfy any negotiated settlement of a claim or any judgment, fine, or penalty which may be made, assessed, or levied by any court against any municipal agent, officer, servant, employee, or appointee as a result of any actions of such municipal agent, officer, servant, employee, or appointee while acting as such.

We have opined that the filing of a lawsuit is not required to trigger a municipality's authority to settle a claim, but the claim must be bona fide and just. *Logan* at *2. Additionally, the municipality must make a factual finding that it is legally obligated for the claim and such claim is not exempt from liability in accordance with the MTCA. *Logan* at *2; MS AG Op., *Ross* at *2 (Dec. 7, 2012).

Claims that fall within the scope of the MTCA are subject to a one-year statute of limitations. Miss. Code Ann. § 11-46-11(3)(a); *Davis v. Singing River Health Sys.*, 298 So. 3d 1042, 1044 (Miss. Ct. App.), *reh'g denied* (June 9, 2020), *cert. denied*, 299 So. 3d 796 (Miss. 2020) ("Section 11-46-11(3)(a) requires that all actions against public institutions or entities protected under the Act be filed 'within one (1) year next after the date of the tortious, wrongful or otherwise actionable conduct'"). Before a claim can be filed, notice of the claim must be served upon the chief executive officer of the entity being sued, at least 90 days prior to such filing. Miss. Code Ann. § 11-46-11(1)-(2).

"Whether a claim is subject to defenses, including the applicability of the Tort Claims Act, is a determination that must be made by the local government based on the facts of the claim." MS AG Op., *Sutton* at *3 (Apr. 22, 2016). The running of the statute of limitations under the MTCA is a defense that cannot be waived. MS AG Op., *Snowden* at *2 (May 8, 2015). We have previously stated that a local governing body "has the duty to assert applicable statute of limitations defenses" and "the assertion of such a defense is not discretionary and may not be waived." MS AG Op., *Ross, Jr.* at *1 (Nov. 3, 2006). Therefore, a municipality must take into consideration whether a statute of limitations has lapsed in order to determine whether a claim is exempt from liability and whether it is ultimately legally obligated for the claim.¹

¹ If the MTCA applies, the applicability of the statute of limitations defense under the Act is a factual matter that requires "a full development and understanding of the nature and timing of the actions causing the harm on the private property." MS AG Op., *Snowden* at *2 (May 8, 2015).

Hon. Scotty L. Dailey

February 24, 2022

Page 3

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

OFFICIAL OPINION