



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

August 2, 2022

Charles Bruce Brown, Esq.  
Attorney, Towns of Mathiston and Sturgis  
Post Office Box 228  
Starkville, Mississippi 39760-0228

Re: Use of Municipal Property

Dear Mr. Brown:

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

### **Questions Presented**

Based on the Covid-19 pandemic, you present the following questions regarding the authority of the towns of Mathiston and Sturgis:

1. Can the Town allow a local hardware store to place inventory on Town property, including on the edge of the right-of-way, in the street, in parking spaces, and on the sidewalk?
2. Can the Town allow an ice cream and/or snow cone stand to place tables and chairs in public on-street parking spaces to be used by customers of the ice cream and/or snow cone stands?
3. Would the answer to Question 2 be impacted by a Town employee having an ownership interest in the ice cream and/or snow cone stand?
4. Can the Town designate a single parking space in front of a private business, limited for customers to use to pick up items purchased from such business for a period of 10 minutes or less, and exclude other citizens from using such parking space for other purposes, including downtown shopping?

### **Brief Response**

1. Because the Town has already allowed the business owner to place inventory on public property, we must decline to respond to this question.

2. The Town is not authorized to allow on-street parking spaces to be utilized exclusively by the patrons of a private business to the exclusion of other members of the public. However, under emergency powers provided to the governor and municipalities, there may be exceptions to this law.
3. Question 3 potentially raises an issue under Mississippi's Ethics in Government Laws, which may be addressed by the Ethics Commission.
4. Please see our response to Question 2.

### **Applicable Law and Discussion**

In response to your first question, your request notes that a business owner “has been placing” certain inventory on property owned by the Town. Pursuant to Mississippi Code Annotated Section 7-5-25, an Attorney General’s opinion can only be applied prospectively and can neither validate nor invalidate past action. MS AG Op., *Magee* at \*1 (Aug. 29, 2008). Because your first question relates to past action, we are unable to answer with an official opinion.

With respect to your second question, you indicated that the public parking spaces referenced are parking spaces situated along the public streets, but the Town does not wish to close the public streets and declare them surplus property. We have previously opined that a municipality could not lease a public alleyway to a private entity or individual for use as an outdoor dining area by a restaurant. MS AG Op., *Jacks* at \*1–2 (Mar. 15, 2013). In that opinion, the requestor claimed the city was “not currently in need of the alley and believe[d] the closure would benefit the general downtown area.” *Id.* at \*1. This office concluded that the only way for the adjoining property owner to utilize the alleyway was “to close and vacate the alley, in accordance with Mississippi Code Annotated Section 21-37-7.” *Id.* at \*2 (citing MS AG Op., *Herring* (Sept. 11, 2006)).

Further, Section 21-27-1 prohibits a municipality from granting “to any person, firm or corporation any exclusive franchise or any exclusive right to use or occupy the streets, highways, bridges, or public places in such municipality for any purpose.” Additionally, “[t]he streets of a municipality, including the sidewalks, ‘from side to side and from end to end,’ are for the use of the public, and, in the absence of legislative authority, a board of aldermen, or city council, have no power to permit a permanent obstruction thereof.” *Caldwell v. George*, 50 So. 631 (Miss. 1909) (holding that “[t]he permission . . . given appellee by the board of aldermen to extend his warehouse over the sidewalk in question, was void, and afforded him no protection.”). Whether city streets and sidewalks are being used by private businesses to the exclusion of others is a fact determination that can only be made by the governing authorities of the municipalities.

Municipal actions that may be appropriate when emergency powers are employed may differ when there is no state of emergency. *See* Miss. Code Ann. § 33-15-11(c)(1) (authorizing the Governor to suspend the application of certain statutes during an emergency proclaimed pursuant to Section 33-15-1 *et seq.*). Additionally, municipalities also have certain emergency powers conferred on them by the Legislature, with Section 21-19-3 specifically granting the governing authorities of municipalities “the power to make regulations to prevent the introduction and spread of contagious

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or infectious diseases; to make quarantine laws for that purpose, and to enforce the same within five miles of the corporate limits . . . .” The Mississippi Supreme Court has held that the Legislature’s right to enact reasonable health regulations rests in the state’s police power, which may be delegated to municipalities for appropriate purposes. *Hartman v. May*, 151 So. 737, 738 (Miss. 1934). Municipalities may exercise this police power “for the protection of the health of their inhabitants.” *Id.*

Accordingly, this office is of the opinion that absent a declared emergency in which certain municipal powers may be expanded, the Town is not authorized to allow on-street parking spaces to be utilized exclusively by the patrons of a private business to the exclusion of other members of the public.

Your third question potentially raises an issue under Mississippi’s Ethics in Government Laws, which may be addressed by the Ethics Commission.

Finally, your fourth question asks about a town’s authority to grant the sole use of public parking spaces to private businesses. Please see our response to Question 2.

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  
Assistant Attorney General