



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

October 11, 2022

J. Lane Greenlee, Esq.
Attorney, Town of Kilmichael
Post Office Box 430
Winona, Mississippi 38967

Re: Municipal Responsibility Regarding Excavations Involving Underground
Utilities

Dear Mr. Greenlee:

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

Questions Presented

1. If the Town of Kilmichael (the “Town”) is the owner and/or operator of an underground utility or facility, and its agent meets with the excavator at the site, is it sufficient under Mississippi Code Annotated Section 77-13-9(2) to verbally indicate the location of the utility lines, and does such action fulfill the Town’s responsibility under E811 and its enacting statutes?
2. If verbally indicating the location of the underground utility lines in lieu of marking is sufficient, is it the excavator’s responsibility to modify its plans in order to avoid the utility, and if not, to then be responsible for any resulting damage to the utility?

Brief Response

1. While meeting with the excavator at the site and verbally indicating the location of the utility lines satisfies the requirements of Section 77-13-9(2), it would not encompass all of the Town’s duties under Sections 77-13-1 *et seq.*
2. This office is unable to opine on questions of liability.

Applicable Law and Discussion

Mississippi Code Annotated Sections 77-13-1 *et seq.* govern the regulation of excavations near underground utilities and facilities. The chapter places specific requirements on both excavators and utility owners before any excavation around or near underground utilities or facilities commences.

Every entity or individual owning or operating underground utility lines or underground facilities is required to mark the approximate location of the underground lines and facilities in accordance with Section 77-13-9(1) when notice is received of the pending excavation. With respect to your first question, Section 77-13-9(2) provides, “[i]n lieu of such marking, the operator may request to be present at the site upon commencement of the excavation, so long as the operator complies within two (2) working days of the receipt of the notice.” While meeting with the excavator at the site and verbally indicating the location of the utility lines satisfies the requirements of Section 77-13-9(2), other sections of the chapter specify additional duties and responsibilities of underground utilities and facilities owners and operators. *See* Miss. Code Ann. § 77-13-9(1) (requiring certain investigation and reporting responsibilities for owners and operators of underground utility lines or facilities); § 77-13-9(5) (specifying post-2010 installation requirements for all owners and operators of underground utility facilities); §§ 77-13-17(2), (7) (requiring operators of underground utilities or facilities to be members of Mississippi 811, Inc. and to provide enumerated information).

As to your question about the responsibility for any damage to the utility lines, the Attorney General cannot issue official opinions regarding liability. MS AG Op., *Hammack* at *2 (Oct. 13, 1993) (“We cannot by opinion determine liability.”); MS AG Op., *Lawrence* at *1 (July 20, 2007) (declining to speculate on questions of liability). However, the plain language of Sections 77-13-5(1)(b), 77-13-7(3), and 77-13-13 speaks to the duties and responsibilities of the excavator.

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/ Gregory Alston*

Gregory Alston
Special Assistant Attorney General