



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

January 19, 2023

Brock Campbell, Esq.  
Attorney, City of Crystal Springs  
Post Office Box 473  
Crystal Springs, Mississippi 39059

Re: Municipal Regulation of Residential Property

Dear Mr. Campbell:

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

### **Background**

Crystal Springs, a code charter municipality, enacted an ordinance regulating rental property and establishing licensing requirements for landlords who are renting property to third parties. The City's ordinance is similar to the one upheld in *Crook v. City of Madison*, 168 So. 3d 1169 (Miss. 2014) *rev'd*, 168 So. 3d 930 (Miss. 2015) but with different warrant requirements.<sup>1</sup> The City is encountering landlords who are using installment sales contracts or contracts for deed to evade the requirements of the rental property regulation. Ownership remains in the landlord's name.

### **Question Presented**

May the City of Crystal Springs amend its ordinance regulating rental property to include regulation of property where ownership remains in the landlord's name but a contract for deed or installment sales contract has been entered into with a third party?

### **Brief Response**

Pursuant to a municipality's authority to adopt ordinances with respect to municipal affairs, we find no statutory prohibition against a municipality continuing to regulate property where a landlord ultimately owns a piece of real property but enters into an installment sales contract or

---

<sup>1</sup> Because it amounted to a lesser standard than probable cause, the Mississippi Supreme Court struck down the inspection provision of Madison's ordinance as facially unconstitutional because it allowed a warrant to be obtained by the terms of the rental license, lease, or rental agreement. *See Crook v. City of Madison*, 168 So. 3d 930 (Miss. 2015).

contract for deed with a third party if the city determines that the agreement remains rental in nature. Whether a certain agreement may be regulated as a rental agreement is a factual determination to be made by the governing authorities on a case-by-case basis. Where a municipality does not find that a contract for deed or installment sales contract is in fact rental in nature, we find no authority for a municipality to regulate the same.

### **Applicable Law and Discussion**

Mississippi Code Annotated Section 7-5-25 authorizes this office to opine on questions of law only and does not authorize factual determinations by official opinion. Your question ultimately turns on a factual determination to be made by the governing authorities on a case-by-case basis. We offer the following for general guidance.

As an initial matter, we understand that a contract for deed and installment sales contract are the same thing—a contract conveying possession of the property to the buyer but not the deed. *MS Real Estate Contracts and Closings* § 1:5 (2d ed.). “The deed is delivered only when the buyer has finished making a series of periodic installment payments totaling the sale price.” *Id.*

Section 21-17-5 of the Mississippi Code grants municipalities general authority to adopt ordinances, and amend the same, with respect to municipal affairs so long as such ordinances are not inconsistent with the state constitution and other statutory provisions. Section 21-19-1 authorizes municipal governing authorities to make regulations to secure the general health of the municipality and prevent, remove, and abate nuisances. Further, Section 21-19-15 grants municipal governing authorities the power to preserve good order and peace of the municipality and to prevent injury to, destruction of, or interference with public or private property. A municipality is permitted to both adopt and amend an otherwise lawful ordinance and carry out its regulatory authority with respect to rental properties. Whether residential property governed by an installment sales contract or contract for deed between a landlord and third party is actually a rental contract is a fact question to be decided on a case-by-case basis.

The Court of Appeals in *Crook v. City of Madison* found that even where a landlord and tenants had entered into option-to-purchase contracts, which were alleged attempts to disguise rental relationships, the testimony of the parties to the contract proved the agreement to be rental in nature; therefore, the option-to-purchase did not change whether the City could regulate the property. *Crook v. City of Madison*, 168 So. 3d 1169, 1180 (Miss. Ct. App. 2014), *rev'd* 168 So. 3d 930 (Miss. 2015) (*See supra* note 1).

Consistent with the court’s determination, it is our opinion that where an installment sales contract or contract for deed between a landlord and an individual for a piece of property is ultimately found to be rental in nature, a municipality may regulate such property in accordance with a lawfully enacted ordinance. However, if a contract for deed or installment sales contract is not ultimately determined to be rental in nature, the municipality may not regulate such property.

Brock Campbell, Esq.  
January 19, 2023  
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/ Abigail C. Overby*

Abigail C. Overby  
Special Assistant Attorney General

OFFICIAL OPINION