



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

September 21, 2022

Derek Dewayne Hopson, Jr., Esq.
Attorney, Town of Gunnison
Post Office Box 266
Clarksdale, Mississippi 38614

Re: Donation of Municipal Property

Dear Mr. Hopson:

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

Background

According to your request, the Town of Gunnison was part of the Mississippi Community Block Grant Program in the 1980s and 1990s, and during that time, two citizens were promised that homes would be constructed for them. The homes, however, were never built, and instead the residents have lived in other municipally-owned property for the past twenty-five plus years. To make up for the Community Block Grant homes not being built, the previous mayor of Gunnison promised to deed to the citizens the homes in which they are currently living. The current mayor of Gunnison wants to honor that promise, and the town has recently drafted two resolutions to deed the properties to the two citizens. You state that the Mississippi Development Authority has approved the transaction.

Question Presented

You ask this office to review and opine on the two resolutions and ask whether the municipality is authorized to execute the resolutions and accompanying deeds, thereby giving the municipally-owned real property to the two individuals.

Brief Response

While we do not opine on the content of resolutions or other local agreements, it is the opinion of this office that unless specifically authorized by statute, the Town of Gunnison does not have the authority to deed municipally-owned property to individual citizens because it would amount to an unlawful donation. However, if the Town of Gunnison is still an active participant in a

Community Block Grant Program, it is possible that it may be afforded the additional authority granted by Mississippi Code Annotated Section 43-35-503.

Applicable Law and Discussion

As an initial matter, pursuant to Section 7-5-25, the Office of the Attorney General is authorized to issue official opinions upon questions of state law only. This office is unable to interpret or opine on local policies or agreements, and cannot by official opinion interpret the terms or provisions of an agreement or contract or infer facts that may be relevant to our opinion. MS AG Op., *Banks* at *1 (May 11, 2018); MS AG Op., *Welch* at *1 (July 23, 2021). To the extent your request asks this office to interpret or opine on proposed resolutions and resultant deeds, we are unable to respond by official opinion.

Under Section 43-35-503, entitled “Housing and community development grants,” a municipality has the authority to apply to and contract with the United States or any of its departments for grants under the authority of the Housing and Community Development Act of 1974, “and to comply with all the terms and conditions of such grant or grants.” Municipalities also have the power under Section 43-35-503 “to carry out programs which are the subject of the grant or grants for which it has so contracted under this section, including, but not limited to, *the power to buy, lease or sell real or personal property obtained through the use of or in connection with such grant or grants*” (emphasis added).

In the early 1990s, when the Town of Gunnison (the “Town”) was a participant in the Mississippi Community Block Grant Program, this office responded to an opinion request from the attorney for the Town regarding real property acquired by the Town from Illinois Central Railroad Company in 1961. MS AG Op., *McKenzie* at *1 (June 27, 1991). According to that request, a house was supposed to be built on the municipally-owned property as part of a Community Development Block Grant Program which envisioned construction of residential housing units on the property for qualified applicants. *Id.* Once built, the home “would be leased-purchased to a qualified applicant according to the relocation policies adopted by the town in connection with the grant.” *Id.* The requestor asked whether the Town could convey the real property “to individuals without advertising for bids provided that the sale is in connection with the Community Development Block Grant Program.” *Id.* This office opined: “Pursuant to Miss. Code Ann. § 43-35-503 . . . the Town of Gunnison may convey property which will be used in a community development block grant project to an applicant pursuant to a lease-purchase agreement without following the procedures set forth in Miss. Code Ann. § 21-17-1.” *Id.* Because the Town was a participant in the Community Block Grant Program, it did not have to follow the requirements of Section 21-17-1.

However, according to your recent request, the proposed housing units in question in the 1991 opinion that were to be constructed on the municipally-owned property were never built. The Town now wants to convey to the individuals different houses, which they have lived in the past twenty-five plus years. You do not state whether the Community Block Grant Program is still in place in the Town, and if it is, what the terms and conditions of the program require.

Derek Dewayne Hopson, Jr., Esq.

September 21, 2022

Page 3

This office has stated previously that for a municipality to have the power to carry out a program contracted for under Section 43-35-503, an entity would have to be “an actual applicant or participant in the grant” with defined duties and responsibilities set forth in the grant or otherwise required for the receipt of program funds. MS AG Op., *Trapp* at *3 (Mar. 25, 2005). A municipality or other entity that is not a party to a contract under the program “does not gain the additional authority granted by Section 43-35-503.” *Trapp* at *3. “Donations of real property by a municipality must be specifically authorized by statute.” MS AG Op., *Thomas* at *1 (Jan. 27, 2006). Therefore, unless the Town has the authority granted under Section 43-35-503 as an actual participant in a current Community Block Grant program and is in compliance with the terms of that program and grant, the Town does not have the authority to deed municipally-owned property to the two individuals who have lived in the municipally-owned property for the past twenty-five plus years. Without current participation in a Section 43-35-503 program, there is no authority for the Town to deed the property in question without following the requirements of Section 21-17-1. Whether the Town is currently participating in a Community Block Grant program is a question of fact to be determined by the governing authorities of the Town.

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