



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

January 20, 2023

Jeffrey S. Bruni, Esq.
Attorney, City of Gulfport
2309 15th Street
Gulfport, Mississippi 39501

Re: Tax Exempt Status of Historical Society's Leasehold Interest Held in
Municipal Property

Dear Mr. Bruni:

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

Background

The City of Gulfport owns certain real property that it is contemplating leasing to the Historical Society of Gulfport for the establishment and operation, by the Society, of a museum dedicated to the history of the City of Gulfport. The Historical Society of Gulfport is a nonprofit corporation established pursuant to Mississippi law and has been granted tax exempt status by the Internal Revenue Service (i.e., the Society is a 501(c)(3) corporation). While the Society does not presently intend to charge admission to the museum, it has not ruled out doing so if conditions should change.

Questions Presented

1. Is a leasehold interest held by a historical association or society in property owned by a municipality exempt from taxation pursuant to Mississippi Code Annotated Section 27-31-1(d)?
2. Would the answer to question one change if a historical society charges admission to the museum contemplated by the parties (but still fully and lawfully functions as a nonprofit)?

Brief Response

1. Pursuant to Section 27-31-1(d), all property, real or personal, belonging to a historical society that is used exclusively for the association or society and not for profit shall be exempt from taxation. However, because the historical society does not own the property in question and because there is no other statutory authority extending a tax exemption to a historical society's leasehold interest in property, it is the opinion of this office that the contemplated leasehold interest to be held by the historical society would not be tax exempt.
2. Because the historical society is not entitled to an exemption, this question is moot.

Applicable Law and Discussion

While in most instances real property belonging to a municipality shall be tax exempt under Section 27-31-1(b), a leasehold interest in municipal property may still be subject to ad valorem taxes. The Mississippi Supreme Court explained that if a municipality owns real property and leases it, the leasehold interest is taxable unless a specific statutory exemption exists. *Board of Supervisors v. Hattiesburg Coca-Cola Bottling Co.*, 448 So. 2d 917 (Miss. 1984); *see also In re Assessment of Ad Valorem Taxes on Leasehold Interest Held by Reed Mfg., Inc.*, 854 So. 2d 1066, 1076 (Miss. 2003) (relying on *Hattiesburg Coca-Cola* when holding that manufacturer's lease of county-owned property was subject to ad valorem taxes once the statutory exemption surpassed the constitutional ten-year limitation). This office has also relied on *Hattiesburg Coca-Cola* when opining that "the leasehold interest [in] property owned by a municipality and leased to a nonprofit corporation is taxable unless the leaseholder is entitled to a specific statutory exemption." MS AG Op., *Vincent* at *1 (Aug. 15, 2003) (internal citations omitted); *see also* MS AG Op., *White* at *1 (May 21, 2010) ("Although [municipal property] is tax exempt, the privately-held leasehold interest is not exempt unless expressly authorized or provided by law.") Notably, exemptions are strictly construed in favor of taxation and against the exemption, and those claiming the exemption have the burden to establish their right to same. *City of Jackson v. Sly*, 343 So. 2d 473, 475 (Miss. 1977).

Section 27-31-1 enumerates property exempt from ad valorem taxation. Included in those exemptions is "[a]ll property, real or personal, belonging . . . to any historical or patriotic association or society, or to any garden or pilgrimage club or association and used exclusively for such society or association and not for profit. . . ." While leasehold interests are specifically addressed and included in other exemptions listed in Section 27-31-1, leasehold interests held by a historical society are neither addressed in the exemption provided in subsection (d) nor is there a separately stated exemption for leasehold interests held by historical societies. Relatedly, Section 27-31-33 authorizes a tax exemption for leasehold interests held in any municipal property, real or personal, but the statute requires that the eligible leasehold interests were created prior to July 1, 1984. Because you are asking about a potential leasehold interest and not a pre-existing one, this statute would not be applicable. Therefore, there is no statutory exemption for a leasehold interest held by a historical society.

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In conclusion, the historical society has a leasehold interest rather than an ownership interest in the property, and since we find no other statutory ad valorem tax exemption for a historical society's new leasehold interest held in city property, it is the opinion of this office that the contemplated leasehold interest to be held by the historical society would not be tax exempt.

Because the society is not entitled to an exemption, your second question is moot.

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