



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

January 3, 2023

Rocky W. Eaton, Esq.  
Attorney, City of Petal  
Post Office Box 564  
Petal, Mississippi 39465

Re: Forgiveness of Past Due Garbage Charges

Dear Mr. Eaton:

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

### **Background**

In your request, you state that one of the citizens of the City of Petal (“the City”) owes the City for past due garbage charges. Some of these past due charges were incurred during a period of time when the City had removed the citizen’s City-supplied garbage can due to non-payment of charges. The citizen now requests that the City forgive the garbage charges on her account, along with associated interest and penalty charges, for the time period when the City had removed the garbage can, asserting that she did not receive the service for which she had been charged and that the City incorrectly charged her during the subject time period.

### **Questions Presented**

1. Assuming that the City did not pick up garbage from the citizen’s residence during the time that the garbage can had been removed from the residence, may the City forgive the charges on the citizen’s account, along with associated interest and penalty charges, for the time period when the City had removed the garbage can, upon a finding that the citizen did not receive the benefits of the utility service?
2. If the answer to question one is “no,” may the City forgive the charges upon an additional finding that the removal of the garbage can caused an unreasonable increase in charges owed to the City because of unforeseen circumstances?

3. If the answer to question two is “yes,” would the removal of the garbage can by the City equate to an unforeseen circumstance when the citizen received billing statements from the City indicating a past due amount?

### **Brief Response**

1. If the City makes a factual determination that the citizen did not receive the benefit of the garbage service for a specific period of time, then the citizen does not owe any payment for a service that the citizen did not receive during that time period. Therefore, the City could cancel the charge for the time period when the citizen was not receiving the benefit of the service.
2. Due to our response to your first question, your second question is moot.
3. Due to our response to the previous questions, your third question is moot.

### **Applicable Law and Discussion**

Pursuant to Section 7-5-25, this office may only opine on prospective questions of law. An official opinion can neither validate nor invalidate past action. MS AG Op., *Magee* at \*1 (Aug. 29, 2008). Furthermore, opinions of this office cannot be issued which require our office to make a factual determination. MS AG Op., *St. Pé* at \*1 (Sept. 6, 2019). We offer no opinion on the validity of any past garbage charges in question and offer the following for prospective purposes only.

The definition of a municipal utility “system” includes a garbage disposal system. Miss. Code Ann. § 21-27-11. Section 21-27-27, however, expressly prohibits a municipality from providing free utilities to any private person. Additionally, Section 100 of the Mississippi Constitution provides:

No obligation or liability of any person, association, or corporation held or owned by this state, or levee board, or any county, city, or town thereof, shall ever be remitted, released or postponed, or in any way diminished by the Legislature, nor shall such liability or obligation be extinguished except by payment thereof into the proper treasury; nor shall such liability or obligation be exchanged or transferred except upon payment of its face value; but this shall not be construed to prevent the Legislature from providing by general law for the compromise of doubtful claims.

This office has previously opined that a board of supervisors has no authority pursuant to Article 4, Section 100 of the Mississippi Constitution to forgive delinquent garbage fees where there is no dispute as to garbage services provided to the address. MS AG Op., *Woodard* at \*1 (Aug. 21, 2009). “With respect to whether a debt is owed to the municipality, we have consistently opined that a municipality may not reduce or forgive a utility bill of a customer when the customer has received the benefits of the utility service.” MS AG Op., *Glidewell* at \*1 (Aug. 14, 2009).

In your request, however, you note that the citizen owed the City for past due garbage charges, but some of these charges were incurred during a period of time when the City had removed the

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citizen's garbage can, and the citizen purportedly did not receive garbage pickup. If the citizen did not receive the benefit of the garbage service during the time the City removed the garbage can, then the citizen does not owe a debt for an unpaid charge. The City would need to make a factual determination as to whether the citizen received the benefit of the service; if the citizen did not, then the citizen does not owe any charges for that time period. The City would need to cancel the portion of the charges incurred when the citizen did not receive the benefit of the garbage service.

Due to our response to your first question, your second question is moot.

Consequently, based on our responses to your first two questions, your third question is also 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/ Gregory Alston*

Gregory Alston  
Special Assistant Attorney General

OFFICIAL OPINION