



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

February 9, 2023

Lee Turner, Esq.
Attorney, Town of Leakesville
Post Office Box 1492
Leakesville, Mississippi 39451

Re: Voluntary Utility Bill Round-Up Option

Dear Mr. Turner:

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

Background

According to your request, the town of Leakesville is considering implementing a voluntary option for a citizen to round up his or her monthly water and sewer bill to the nearest dollar with the proceeds going to a local community action agency.

Question Presented

May the town of Leakesville implement an option for a citizen to voluntarily round up his or her monthly water and sewer bill to the nearest dollar and then donate those proceeds to a local community action agency?

Brief Response

While the town of Leakesville has the authority to set rates sufficient for the maintenance and operation of a utility system and to pay any related outstanding bonds, the town does not have the authority to intentionally collect a surplus of utility system revenues. Additionally, donations by a municipality are unlawful unless otherwise prescribed by law.

Applicable Law and Discussion

Mississippi Code Annotated Section 21-27-23 authorizes municipalities to establish and operate a combined water and sewage system and the power “to establish, maintain and collect rates for the

facilities and services offered” by the utility system. Miss. Code Ann. § 21-27-23(d), (e). When setting and maintaining rates, the revenues are to be pledged to the payment of any outstanding bonds issued pursuant to Section 21-27-23 related to the system “and to provide for the payment of such cost of operation and maintenance as may be necessary to keep such system at all times in good repair and working order.” Miss. Code Ann. § 21-27-47. The municipality shall revise the rates from time to time to produce the necessary amounts to pay for outstanding bonds, operation, and maintenance. *Id.* If municipalities are charging rates that are consistently higher than needed to satisfy all expenses of the utility system, then the municipal governing authorities should reduce the rates so that there is no surplus created. *See* MS AG Op., *Blocker* (Mar. 28, 2003).

Once those rates are set, Sections 21-27-57 and 21-27-61 prescribe how the municipal governing authorities are to use the revenues collected for the utility system. Section 21-27-57 requires that the municipality “shall set aside monthly and shall pledge the revenues of the system or combined system, in separate and special funds as follows: (1) operation and maintenance fund; (2) depreciation fund; (3) bond and interest fund; (4) contingent fund.” Additionally, when distributing monies into the various funds, municipal “governing authorities may prescribe a reasonable excess amount to be placed in the revenue bond and interest fund from time to time during the earlier years of maturity of such bonds so as to thereby provide and produce a cushion fund to meet any possible deficiencies” in the future. *Id.* Section 21-27-61 requires the following:

The governing authorities of any municipality shall devote all monies of the system derived from any source other than the issuance of bonds . . . to or for the payment of all operating expenses, including such items as are normally required of utilities for sales development; to or for the payment of all bonds and interest on outstanding revenue bonds, if any, of such system; to or for the acquisition and improvement of the system contingencies; to or for the payment of all other obligations incurred in the operation and maintenance of the system and the furnishing of service; and to or for the creation and maintenance of a cash working fund or surplus fund to be used for replacement, extension of systems and emergencies.

These sections provide the intended purposes for utility system revenues and do not contemplate or authorize the donation of those revenues which are intended for the enumerated purposes.

Sections 21-27-57 and 21-27-61 specify how municipal governing authorities are to expend surplus funds, if any exist. The consistent use of “if any” regarding surplus revenues in these statutes indicates that municipal governing authorities should not intentionally collect surplus revenues when setting and collecting utility system rates but should spend them accordingly if an incidental surplus results. Therefore, because the matter turns not on the ultimate use of any surplus funds but on the intentional collection of such surplus, the opinion you reference in your request, MS AG Op., *Sanders* (Jan. 25, 2013), is not distinguishable.

We find no authority for municipalities to intentionally collect surplus utility system revenues and then expend those revenues for purposes other than what is mandated by these statutes. Furthermore, Mississippi Constitution Article 4, Section 66 prohibits donations by a municipality unless otherwise authorized by law. *See McAdams v. Perkins*, 204 So. 3d 1257 (Miss. 2016). Thus,

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this office is of the opinion that the town of Leakesville does not have the authority to implement a voluntary option for a citizen to round up his or her monthly water and sewer bill to the nearest dollar and donate the proceeds to a local community action agency.

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