



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

January 31, 2023

William C. Hammack, Esq.
Attorney, Clarke County Board of Supervisors
1724A 23rd Avenue
Meridian, Mississippi 39301

Re: Lease of Private Building by County for Nonprofit

Dear Mr. Hammack:

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

Background

According to your request, a Mississippi nonprofit corporation with its offices in Quitman has provided free food for needy individuals in Clarke County ("County") since 1989. Funding for the nonprofit is provided by donations or grants, and food is provided by the Mississippi Food Network and/or purchased locally. You state that the nonprofit has outgrown its current facility, and the County is considering leasing space in a privately-owned building and allowing the nonprofit to utilize the space for its operations. The nonprofit is a private organization.

Question Presented

Is the Clarke County Board of Supervisors authorized to lease a privately-owned building or space within that building and allow the nonprofit to utilize the building or space for its operations rent-free or for nominal rent?

Brief Response

The County may not spend public funds to lease space in a privately-owned building and subsequently allow the nonprofit to exclusively utilize the private building or space for its operations rent-free or for nominal rent because to do so would amount to an unlawful donation.

Applicable Law and Discussion

Mississippi Code Annotated Section 19-3-40(3) prohibits counties from using public funds for any private purpose or granting any donation. *See* MS AG Op., *Krohn* at *2 (June 13, 2008). Additionally, Section 66 of the Mississippi Constitution prohibits the donation of public funds or property to private entities and provides: “No law granting a donation or gratuity in favor of any person or object shall be enacted except by the concurrence of two-thirds of the members elect of each branch of the Legislature, nor by any vote for a sectarian purpose or use.” *Id.*

While Section 19-5-93 authorizes the County to donate funds to certain charitable and patriotic societies and causes, that authority does not extend to the type of donation in your request. We have previously opined that a county board of supervisors could allow groups to use a county-owned community center without paying rent if it finds on its minutes “that a community event constitutes sufficient public service to constitute consideration to the County. . . .” *See* MS AG Op., *Ford* at *2 (Nov. 27, 2018); *see also* MS AG Op., *Gamble* at *1 (Feb. 6, 2004) (opining that counties may allow private, temporary use of space in a public building so long as a constitutionally sound, uniform policy is implemented and any groups reimburse the county the cost of utilities and custodial services “so that the county is not contributing public funds toward a private purpose.”) However, you are asking about the County’s authority to spend public funds to pay for a lease in a privately-owned building and subsequently grant a nonprofit the exclusive use of the space without paying rent or at a minimum, paying a nominal fee. There is no authority for the County to do such.

Therefore, we are of the opinion that the County may not spend public funds to lease a privately-owned building or space within it and subsequently allow the nonprofit to utilize the building or space for its operations rent-free or for nominal rent. Such action by the County would amount to an unlawful donation.

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