



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

July 25, 2023

Robert Lee Thomas, Esq.
Attorney, City of Philadelphia
435 Center Avenue
Philadelphia, Mississippi 39350

Re: Returning Donated Funds

Dear Mr. Thomas:

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

Background

You provide in your request that the city of Philadelphia (“City”) is the owner of the Booker T. Washington Gymnasium and has recently undertaken substantial improvements to the structure for community purposes. The Community in Action Philadelphia/Neshoba County, a 501(c)(3) corporation, has approached the Board of Aldermen with a request for the City to accept donations from the community to air condition the Booker T. Washington Gymnasium. The City is aware that it may accept donations for a particular purpose, that said funds shall be held in the municipal treasury, that said funds shall be expended as municipal funds, and that said funds may be returned in limited circumstances. The City is requesting clarification on what classifies as a “limited circumstance” and what procedures must be followed to facilitate the return of said funds in the event the project is not undertaken.

Questions Presented

1. Under what limited circumstances (as specified in MS AG Op., *Ginn* (June 17, 2016)) may the City return funds, donated by private individuals or groups for a specific purpose, if the City fails to carry out said purpose?
2. What, if any, procedures must the City follow to return said funds to said individuals/groups?

Brief Response

1. Pursuant to prior opinions of this office, a donation made to a municipality for a restricted purpose and which cannot or will not be used for that specified purpose may be returned to the donor. We refer you to the Office of the State Auditor for guidance on the return of any donated funds.
2. In accordance with the authority prescribed in Mississippi Code Annotated Section 7-7-211, we refer you to the Office of the State Auditor for best practices and procedures.

Applicable Law and Discussion

After a subsequent conversation, we understand that the City began accepting donations specifically for the Booker T. Washington Gymnasium, but not specifically for air conditioning, and with the understanding that the funds could not be returned to donors. While this office cannot by opinion validate or invalidate past action pursuant to Section 7-5-25, we can still answer your prospective question of whether the funds may be returned.

As stated in your request, this office has previously recognized that funds donated for a specific purpose may be returned in limited circumstances when a municipality fails to carry out the specific purpose for which the donation was made. *See* MS AG Op., *Ginn* at *4 (June 17, 2016) (internal citations omitted); *see also* MS AG Op., *Clark* at *1 (Nov. 8, 2002). We refer you to the Office of the State Auditor for further guidance. Alternatively, the Community in Action non-profit, rather than the municipality, may collect and hold the donated funds for the intended purpose and return them if necessary.

In response to your second question, Section 7-7-211 prescribes the powers and duties of the Mississippi Department of Audit (“Department”). The Department shall “identify and define for all public offices of the state and its subdivisions generally accepted accounting principles.” Miss. Code Ann. § 7-7-211(a). Further, the Department shall “provide best practices, for all public offices of regional and local subdivisions of the state, systems of accounting, budgeting and reporting financial facts relating to said offices in conformity with legal requirements and with generally accepted accounting principles.” Miss. Code Ann. § 7-7-211(b). Accordingly, we likewise refer you to the Office of the State Auditor regarding best practices and procedures for any returns of donated funds.

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