



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

August 17, 2023

Josie Mayfield Hudson, Esq.
Attorney, Town of Bolton
Post Office Box 389
Vicksburg, Mississippi 39181

Re: Mississippi Code Annotated Section 21-19-11

Dear Ms. Hudson:

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

Background

The town of Bolton (“Town”) wishes to clean up private property within the Town pursuant to Mississippi Code Annotated Section 21-19-11. As part of this effort, the Town wants to remove dilapidated vehicles from private property. Because Section 21-19-11 states that personal property shall not be subject to the provisions of Section 21-39-21, the Town inquires about the disposal process for dilapidated vehicles once they have been removed.

Questions Presented

1. Does personal property, as stated in Section 21-19-11, include dilapidated vehicles on private property?
2. If the answer to Question 1 is yes, may dilapidated vehicles be sold and any proceeds from the sale used for cleanup costs? Or, if the vehicles are of no value, may they be disposed of by the Town?

Brief Response

1. The term “personal property” as used in Section 21-19-11 includes dilapidated vehicles on private property.
2. In the instance a dilapidated vehicle is removed from a property pursuant to Section 21-19-11 and is later found to be an abandoned motor vehicle as defined in Section 63-23-3, it

may then be sold or disposed of in accordance with Sections 63-23-5, 63-23-7, and 63-23-9.

Applicable Law and Discussion

Section 21-19-11 provides the process for a municipality to clean private property determined to be “a menace to the public health, safety and welfare of the community.” The statute sets forth various due process safeguards such as requiring notice to the property owner, a determination that the property is a menace to the public health, safety, and welfare of the community, and — assuming the property is adjudicated in need of cleaning— an opportunity for the property owner to clean the property himself. Miss. Code Ann. § 21-19-11(1), (2).

If the property owner does not clean the property himself, the governing authority of the municipality shall do so. *Id.* As part of the cleanup process, the governing authority is authorized to remove “personal property.” *Id.* Regarding your first question, dilapidated vehicles plainly fall within the definition of “personal property” as used in Section 21-19-11. Title 1, Chapter 3 of the Mississippi Code defines terms commonly used in Mississippi statutes for statutory construction purposes. These definitions are “applicable to every statute unless its general object, or the context of language construed, or other provisions of law indicate that a different meaning or application was intended from that required by this chapter.” Miss. Code Ann. § 1-3-1. Pursuant to Section 1-3-41, “[t]he term ‘personal property,’ when used in any statute, means all tangible and intangible personal property.” Thus, assuming compliance with the provisions of Section 21-19-11, it is the opinion of this office that the statute’s allowance for the removal of “personal property” includes the authority to remove dilapidated vehicles on private property. However, whether a vehicle is “dilapidated” is a determination of fact to be made by the governing authorities and on which this office may not opine. Miss. Code Ann. § 7-5-25.

Regarding your second question, Section 21-19-11 does not address the sale or disposal of personal property removed in accordance therewith. However, subsections (1) and (2) of Section 21-19-11 state that “removal of personal property shall not be subject to the provisions of Section 21-39-21,” which speaks to lost, stolen, abandoned, or misplaced personal property and authorizes the sale of the same. It is therefore the opinion of this office that Section 21-39-21 does not authorize the sale or disposal of personal property, including but not limited to dilapidated vehicles, removed by the Town pursuant to Section 21-19-11. All prior opinions to the contrary are modified prospectively to conform herewith.

This said, we refer you to Section 63-23-3, which defines an “abandoned motor vehicle” as a motor vehicle:

- (a) which has been left by the owner, or some person acting for the owner, with an automobile dealer, repairman or wrecker service for repair or for some other reason and has not been called for by such owner or other person within a period of forty (40) days after the time agreed upon or within forty (40) days after such vehicle is turned over to such dealer, repairman or wrecker service when no time is agreed upon.

(b) which is left unattended on a public street, road or highway or other public property for a period of at least five (5) days.

(c) which has been lawfully towed onto the property of another at the written request of a law enforcement officer and left there for a period of not less than forty (40) days without any one having made claim thereto.

Whether a vehicle is an abandoned vehicle is a question of fact. In the instance a vehicle is determined to be abandoned as set forth in Section 63-23-3, Sections 63-23-5, 63-23-7, and 63-23-9 provide when and how such vehicle may be sold or disposed of, including the requisite notice that must be given. Section 63-23-5(4) addresses what to do with the excess proceeds of any sale of an abandoned motor vehicle. It is thus the opinion of this office that in the instance a dilapidated vehicle is removed from a property pursuant to Section 21-19-11 and is later found to be an abandoned vehicle as defined in Section 63-23-3, it may then be sold or disposed of in accordance with Sections 63-23-5, 63-23-7, and 63-23-9.

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/ Maggie Kate Bobo*

Maggie Kate Bobo
Special Assistant Attorney General