



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 3, 2023

Deidre J. Bassi, Esq.
Attorney, City of Laurel
Post Office Drawer 1409
Laurel, Mississippi 39441

Re: Vacating and Closing Municipal Streets

Dear Ms. Bassi:

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

Background

According to your request, the city of Laurel (“City”) has a street that runs between a local industrial plant and the parking lot for employees of the plant. This local business employs over 2,000 people and provides significant economic benefit to Laurel and the surrounding municipalities and counties. Laurel is contemplating vacating the property pursuant to Mississippi Code Annotated Section 21-37-7. You state this would not deprive any person of access to the street and would enhance the safety and security of the local business. The street is currently in poor condition and in need of repaving. We understand from a later conversation with you that Laurel has an easement in the street, and the local business owns the underlying fee.

Question Presented

May the City expend public funds to repave a city street with the intention of vacating the street pursuant to Section 21-37-7 shortly thereafter?

Brief Response

We find no authority for a municipality to expend public funds to improve a municipal street only to vacate the street for the benefit of the local business. To do so could be considered an impermissible use of public funds or a donation prohibited by Section 21-17-5(2)(g) (“Unless such actions are specifically authorized by another statute or law of the State of Mississippi, this section shall not authorize the governing authorities of municipalities to . . . grant any donation . . .”).

Applicable Law and Discussion

Municipalities may close and vacate streets in accordance with Section 21-37-7, which provides:

The governing authorities of municipalities shall have the power to close and vacate any street or alley, or any portion thereof. No street or alley or any portion thereof shall be closed or vacated, however, except upon due compensation being first made to the abutting landowners upon such street or alley for all damages sustained thereby.

In order to close and vacate a street under this statute, the municipality must find that the closing is for the public good. *Mill Creek Properties, Inc. v. City of Columbia*, 944 So. 2d 67, 69 (Miss. Ct. App. 2006). However, the road may not be closed just to benefit a private party. *Id.* at 70. If the local industrial plant is indeed the owner of the underlying fee, because Laurel has only an easement in the property, when it vacates the street the property will revert to the local industrial plant upon whose land the street lies. *See* MS AG Op., *Purdie* at *3 (Aug. 31, 2020) (“[W]here a mere easement is taken for a public highway, the soil and freehold remains in the owner of the land, encumbered only with the easement, and that, upon the discontinuance of the highway, the soil and freehold revert to the owner of the land.”) (internal quotations and citation omitted); MS AG Op., *Herring* at *2 (Sept. 11, 2006) (“[O]nce the appropriate procedures to vacate the street have been followed as set out in Section 21-37-7, the property in question would revert to the owners of the underlying fee . . .”).

The municipal home rule statute grants municipalities “the care, management and control of the municipal affairs” so long as the municipality acts in accordance with the laws of the state. Miss. Code Ann. § 21-17-5(1). However, this statute further provides that “[u]nless such actions are specifically authorized by another statute or law of the State of Mississippi, this section shall not authorize the governing authorities of municipalities to . . . grant any donation . . .” *Id.* at (2)(g). We find no authority for a municipality to expend public funds to improve a municipal street with the intention of vacating the street to revert it back to the private landowner. To do so could be considered an impermissible use of public funds or a donation by the municipality. *Compare* § 21-17-5(2), *with* Miss. Code Ann. § 57-7-1 (allowing for the improvement of surplus government land prior to the lease or sale of the land for industrial or commercial purposes). Because your question involves the expenditure of public funds, you may also wish to contact the Technical Assistance Division at the Office of the State Auditor for additional assistance.

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/ Beebe Garrard*

Beebe Garrard
Special Assistant Attorney General