



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 28, 2023

John T. Lamar, Jr., Esq.
Attorney, Tate County Board of Supervisors
910 E.F. Hale Drive
Senatobia, Mississippi 38668

Re: Repairs to Water Lines Under Current County Roads

Dear Mr. Lamar:

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

Background

According to your request, rural water associations were established in Tate County, Mississippi many years ago. These associations are either 501(c)(3) corporations or nonprofits. When the associations were formed, most county roads were gravel, and water lines were placed under the county roads, in county rights-of-way, or alongside county rights-of-way. Eventually, many of these county roads were paved, covering the existing water lines with chip-seal or asphalt. On occasion, water lines under paved county roads or rights-of-way must be replaced or repaired.

Questions Presented

1. May rural water associations access water lines underneath county roads?
2. May Tate County pay to repair a county public road when rural water associations damage the road to access their existing water line underneath?
3. If the answer to question two is no, may Tate County make repairs to the damaged county road and send an invoice to the rural water association for reimbursement to the county for said repairs?
4. May Tate County pay for the relocation of existing water lines that run underneath county public roads and/or rights-of-way?

Brief Response

1. Pursuant to Mississippi Code Annotated Section 11-27-47, a rural water association may access its water line underneath a county road; however, a county board of supervisors may likewise adopt an ordinance regulating such access.
2. No. Pursuant to Section 11-27-47, when a rural water association damages a county road while accessing its water line underneath, the rural water association “shall be responsible in damages for any injury caused by such construction or use thereof.” This includes injury to property.
3. Neither Section 11-27-47 nor any other state law prevents a county from making repairs to a county road damaged by a rural water association accessing its water line and sending an invoice to the rural water association for reimbursement to the county.
4. Section 19-5-30 provides the board of supervisors of any county with the authority and power “to render any assistance deemed necessary in order to defray the cost of the relocation of a water line operated within the county by a local water association when such relocation is required for the development of a public road or other county improvement.” To render such assistance, the board must find it would be in the best interest of the county.

Applicable Law and Discussion

Pursuant to Section 11-27-47:

All companies, associations of persons, municipalities, associations of municipalities, public utility districts authorized by and under the laws of the state of Mississippi, or natural gas districts, incorporated or organized . . . for the purpose of constructing, maintaining and operating lines and appliances, for storing, transmitting and distributing water and for transmitting, treating and disposing of sewage, are hereby empowered to exercise the right of eminent domain in the manner now provided by law, and to build and construct the said pipelines and appliances along or across highways, waters, railroads, canals and public lands, above or below ground, but not in a manner to be dangerous to persons or property, nor to interfere with the common use of such roads, waters, railroads, canals and public lands.

The board of supervisors of any county through which any such line may pass shall have the power to regulate, within its respective limits, the manner in which such lines and appliances shall be constructed and maintained on and above the highways and bridges of the county. All such companies, associations of persons, municipalities, associations of municipalities, public utility districts authorized by and under the laws of the state of Mississippi or natural gas districts shall be responsible in damages for any injury caused by such construction or use thereof.

As previously opined by this office, Section 11-27-47 “gives the county authority to allow municipal use of the county’s road right-of-way for construction and maintenance of municipal water mains without the necessity of an interlocal agreement.” MS AG Op., *Bobo* at *1 (June 19, 1998). The same is true regarding a rural water association’s access to its water lines. This said, Section 11-27-47 also provides that a county board of supervisors may adopt an ordinance regulating such access. Further, Section 11-27-47 prohibits the county from paying to repair a county public road when a rural water association damages the road while accessing its water line underneath. As stated *supra*, Section 11-27-47 mandates “[a]ll such companies, associations of persons, municipalities, associations of municipalities, public utility districts authorized by and under the laws of the state of Mississippi or natural gas districts *shall* be responsible in damages for any injury caused by such construction or use thereof.” (emphasis added). “Any injury,” as used in Section 11-27-47, includes injury to property. *See Miss. Valley Gas Co. v. Boydstun*, 92 So. 2d 334, 337 (Miss. 1957); *Willmut Gas & Oil Co. v. Covington Cnty.*, 71 So. 2d 184, 189 (Miss. 1954); MS AG Op., *Entriken* at *1 (July 31, 1998).

For these reasons, it is the opinion of this office that a rural water association may access its water lines underneath county roads. However, a county may not pay to repair a county public road when a rural water association damages the road while accessing its water line underneath. That said, it is also the opinion of this office that neither Section 11-27-47 nor any other state law prevents a county from making repairs to a county road damaged by a rural water association accessing its water line and sending an invoice to the rural water association for reimbursement to the county for said repairs. *See also* MS AG Op., *Reynolds* at *1 (Aug. 22, 2022) (citing MISS. CONST. art. VI, § 170; Miss. Code Ann. §§ 19-3-41 and 65-7-1) (providing a county “board of supervisors has full jurisdiction over all matters relating to county roads”).

Regarding your final question, Section 19-5-30 explicitly addresses the relocation of water lines operated within the county by a local water association:

The board of supervisors of any county in this state is hereby authorized and empowered, in its discretion, to render any assistance deemed necessary in order to defray the cost of the relocation of a water line operated within the county by a local water association when such relocation is required for the development of a public road or other county improvement. Such assistance may be rendered by the board upon a finding that such would be in the best interest of the county.

As such, it is the opinion of this office that Tate County may pay for the relocation of the existing water lines underneath county public roads and/or rights-of-way as long as the board of supervisors makes the finding, spread upon its minutes, that such relocation assistance would be in the best interest of the county. *See also* MS AG Op., *Montgomery*, at *1 (Apr. 18, 1985) (concluding the same).

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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

OFFICIAL OPINION