



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 28, 2023

R. Adam Kirk, Esq.
Attorney, City of Winona
1320A Sunset Drive
Grenada, Mississippi 38901

Re: Authority of Municipality to Donate Space for Certified Farmers' Market

Dear Mr. Kirk:

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

Question Presented

May the city of Winona donate the use of a vacant, city-owned parking lot to a certified farmers' market, or is a rental agreement for a fee required?

Brief Response

Pursuant to Mississippi Code Annotated Section 21-19-69, a municipality may donate funds out of the municipal treasury to a certified farmers' market that is operating within the municipality. We find no prohibition against a municipality donating the use of a vacant city parking lot to a certified farmers' market in lieu of a rental fee so long as the requirements of the statute are met, and the value of the donation does not exceed the amount established in the statute.

Applicable Law and Discussion

As an initial matter, this office can neither validate nor invalidate past action. To the extent that your question involves any previous action taken by the city of Winona, we are unable to respond with an official opinion.

Mississippi Code Annotated Section 21-19-69 provides:

The governing authorities of any municipality of this state, in their discretion, may donate annually out of any money in the municipal treasury, such sums as deemed advisable to support any farmers' market that is certified by the Mississippi

Department of Agriculture and Commerce and operating within the municipality, not to exceed the amount that would be generated from the levy of a one-fourth (¼) mill ad valorem tax upon all taxable property in the municipality.

Our office has consistently opined that when a statute authorizes a municipality to donate funds, it is implied that the municipality has the authority to make in-kind donations as an alternative. MS AG Op., *Manley* at *2 (May 1, 2015) (opining that donations made in accordance with Section 21-19-65 may be made in the form of cash or in-kind services) (internal citation omitted). *See also* MS AG Op., *Baum* at *1 (Feb. 17, 2006); MS AG Op., *Hewes* at *2 (Jan. 28, 2005).

Accordingly, if the municipality makes the factual determinations, pursuant to Section 21-19-69, that the farmers' market meets the certification requirements and that the value of the donation does not exceed the set limit, then the municipality may donate the use of a vacant, city-owned parking lot to the farmers' market in lieu of a rental fee. Because your request deals with the expenditure of public funds, we also refer you to the Office of the State Auditor.

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/ *Misty Monroe*

Misty Monroe
Assistant Attorney General