



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 29, 2023

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

Re: Municipal Donation to Local Nonprofit Organization

Dear Mr. Kirk:

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

Background

According to your request, the city of Winona (“City”) desires to make a donation to a local nonprofit organization that focuses on cancer awareness, diagnosis, and treatment.

Question Presented

Is a cash donation by the City to a local nonprofit foundation allowable under state law?

Brief Response

Under the authority of Mississippi Code Annotated Section 21-17-1(8), the City’s governing authority has the discretion to “expend municipal funds *to match* any state, federal or private funding for any program administered by . . . any nonprofit organization that is exempt under 26 USCS Section 501(c)(3) from paying federal income tax.” (emphasis added). If the governing authority of the City determines that the foundation qualifies as a “nonprofit organization that is exempt under 26 USCS Section 501(c)(3) from paying federal income tax,” then the City may spend funds to match other funding for the purpose of supporting a program administered by the nonprofit in question.

Applicable Law and Discussion

Section 21-17-5, the “home rule” statute, gives the governing authorities of municipalities “the care, management and control of the municipal affairs and its property and finances.” However,

certain actions, such as granting donations, are not explicitly allowed under the home rule statute unless otherwise authorized by another state law or statute. *Id.* at (2). Section 21-17-1(8) provides:

In addition to the authority to expend matching funds under Section 21-19-65, the governing authority of any municipality, in its discretion, *may expend municipal funds to match* any state, federal or private funding for any program administered by the State of Mississippi, the United States government or any nonprofit organization that is exempt under 26 USCS Section 501(c)(3) from paying federal income tax.

(emphasis added). Section 21-19-65, which is referenced in Section 21-17-1(8), authorizes a municipality's ability to match funding solely to support certain "social and community service programs." Section 21-17-1(8), however, goes further and authorizes municipal governing authorities to match funding for programs run by "any nonprofit organization that is exempt under 26 USCS Section 501(c)(3) from paying federal income tax." The authorization in Section 21-17-1(8) overrides the general prohibition against municipal donations and permits the governing authorities of a municipality to spend funds *to match funding* for programs administered by 501(c)(3) nonprofit organizations.

If the City's governing authority determines that the foundation in question is a 501(c)(3) nonprofit exempt from paying federal income tax, then under the authority provided in Section 21-17-1(8), the City may spend funds to specifically match any other funds for the purpose of supporting programs run by the nonprofit. 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