



November 3, 2023

William C. Purdie, Esq.
Attorney, City of Clinton
Post Office Box 156
Clinton, Mississippi 39060

Re: Reimbursement of Electricity Bills

Dear Mr. Purdie:

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

Background

According to your request, when a new neighborhood is approved by the city of Clinton ("City"), the developer constructs all necessary infrastructure and ultimately dedicates that infrastructure to the City. At that time, the developer is responsible for transferring any electrical accounts related to the infrastructure to the City. In this particular instance, a developer dedicated the infrastructure for a neighborhood to the City, and it was accepted by the City. However, the electrical account associated with a sewage pump station that was a part of the accepted infrastructure was never transferred to the City, and the account was apparently assumed by the neighborhood homeowners' association ("HOA") during the transfer from developer to the HOA. The HOA now seeks reimbursement of the bills back to the date of acceptance of the pump station by the City.

Question Presented

Does the city of Clinton have the authority to reimburse a homeowners' association for electricity bills related to a sewage pump station that is owned by the City?

Brief Response

A municipality may settle a claim in accordance with Mississippi Code Annotated Section 25-1-47 if it makes the factual determination that it is legally obligated for the claim.

Applicable Law and Discussion

Section 25-1-47(2) provides:

Any municipality of this state is hereby authorized and empowered, within the discretion of its governing authorities, to pay and satisfy any negotiated settlement of a claim or any judgment, fine, or penalty which may be made, assessed, or levied by any court against any municipal agent, officer, servant, employee, or appointee as a result of any actions of such municipal agent, officer, servant, employee, or appointee while acting as such.

“[T]he filing of a lawsuit is not required to trigger a municipality's authority to settle a claim, but the claim must be bona fide and just. Additionally, the municipality must make a factual finding that it is legally obligated for the claim and such claim is not exempt from liability. . . .” MS AG Op., *Dailey* at *1 (Feb. 24, 2022) (internal citations omitted).

This office has previously opined that there is no statutory prohibition against a municipality refunding a customer for erroneously paid charges made to the municipality. MS AG Op., *Taylor* at *1 (Apr. 29, 2011). In *Thomas*, a prior opinion by our office, an auction company hired by a municipality paid the municipality for loss of equipment that was stolen after the auction and before the equipment could be picked up by the purchasers. MS AG Op., *Thomas* at *1 (Nov. 13, 2015). The stolen equipment was later recovered, and the auction company requested a refund of the money paid to the municipality since the municipality had recovered the equipment and would sell it again. *Id.* at *1. Our office opined that “[p]rovided that a bona fide and just claim has been made, the municipality may satisfy any negotiated settlement of a claim for damages, pursuant to Mississippi Code Annotated Section 25-1-47(2).” *Id.* Similarly, it is the opinion of this office that if the City determines that a bona fide claim exists for the electrical bills for the referenced pump station, it may pay the claim in accordance with Section 25-1-47(2).

Because your question deals with the expenditure of public funds, you may wish to also contact the Technical Assistance Division of the Office of the State Auditor for further guidance.

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