



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

December 22, 2023

The Honorable Andy Gipson
Commissioner
Mississippi Department of Agriculture and Commerce
Post Office Box 1609
Jackson, Mississippi 39215-1609

Re: Authority to Escalate Funds Received Pursuant to Mississippi Code
Annotated Section 69-1-48

Dear Commissioner Gipson:

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

Background

The Department of Agriculture and Commerce expects to receive private funds for one or more of the purposes outlined in Mississippi Code Annotated Section 69-1-48 and is prepared to request escalation by the Department of Finance and Administration in a manner consistent with rules governing escalation of federal funds as specifically provided in the statute.

Questions Presented

1. Is the Department of Agriculture and Commerce (the “Department”) authorized to accept, budget, receive, and expend funds for improvements to Department property and for marketing and promotion programs?
2. Is the Department authorized to accept, budget, receive, and expend funds for Mississippi Agriculture and Forestry Museum (“Museum”) improvements and for marketing promotion programs for the Museum?
3. Is the Department authorized to escalate such funds with the Department of Finance and Administration in a manner consistent with the escalation of federal funds?

Brief Response

1. The Department is authorized to accept, budget, receive, and expend funds from any source for improvements to Department property and for marketing and promotion programs. Miss. Code Ann. § 69-1-48(2).
2. Funds received on behalf of the Museum may be spent for improvements to the Museum and for marketing and promotion programs for the Museum in a manner consistent with the Museum's historical purpose. Miss. Code Ann. § 69-1-48(5)(c).
3. The Department is authorized to escalate funds received from advertising or lease of naming rights with the Department of Finance and Administration in a manner consistent with the escalation of federal funds. Miss. Code Ann. § 69-1-48(3)(c).

Applicable Law and Discussion

Mississippi Code Annotated Section 69-1-48 provides:

(1) For purposes of this section, the following words shall have the meanings ascribed herein:

(a) "Department" means the Mississippi Department of Agriculture and Commerce.

(b) "Museum" means the Mississippi Agriculture and Forestry Museum.

(2) The department may accept, budget, receive and expend funds from any source for improvements to department property and for marketing and promotion programs.

(3)(a) The department may allow a federal, state, or local governmental entity or a public, private, commercial or charitable entity to use, publish or advertise the entity's name on department property and in its publications. Furthermore, the commissioner may lease to any public, private, commercial or charitable entity for a term not to exceed twenty (20) years naming rights for museum buildings or property, including, but not limited to, new construction, improvements to existing buildings, grounds and/or objects located on museum property in return for consideration benefitting the department. The lessee shall pay the cost of erecting, maintaining and removing signage related to the property.

(b) Any funds received from the advertising or lease of naming rights shall be retained by the department and expended for improvements to its property, and marketing and promotion programs.

- (c) The department may accept, budget, receive and expend these funds in accordance with rules and regulations of the Department of Finance and Administration in the manner consistent with the escalation of federal funds.
- (4)(a) There is established in the State Treasury a special fund for the department for the monies collected under this section.
- (b) Unexpended monies remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited into the fund.
- (5)(a) The department shall make reasonable attempts to notify the donor of any donated property or artifacts determined to be obsolete to allow such donor to retake possession of such item. If efforts to notify the donor prove unsuccessful, then the department may dispose of, auction or sell any property or artifact in the possession of the museum if the department determines that it is obsolete, no longer of value or use to the museum or unclaimed by the donor.
- (b) All funds received under this section on behalf of the museum, shall be transferred into the nonbudgeted enterprise fund related to the museum. The enterprise funds shall be maintained in accordance with generally accepted accounting principles and regulations prescribed by the Department of Finance and Administration.
- (c) The department may expend these funds for improvements to the museum and for marketing and promotion programs for the museum in a manner consistent with the museum's historical purpose.

In response to your first question, the Department is authorized to accept, budget, receive and expend funds from any source for improvements to its property and for marketing and promotion programs. Miss. Code Ann. § 69-1-48(2). Additionally, funds received for advertising or leasing of naming rights under subsection (3) shall be retained by the Department to be used for improvements to Department property and marketing and promotion programs. Miss. Code Ann. § 69-1-48(3)(b).

In response to your second question, funds received on behalf of the Museum may be spent for improvements to the Museum and for marketing and promotion programs for the Museum in a manner consistent with the Museum's historical purpose. Miss. Code Ann. § 69-1-48(5)(c). Additionally, if the Museum is Department property, funds received from any source, pursuant to subsection (2), or from advertising or lease of naming rights, pursuant to subsections (3)(a) and (b), may be used for improvements to the Museum and marketing and promotion programs.

In response to your third question, pursuant to subsection (3)(c), the Department is authorized to escalate advertisement, publication, and naming rights funds with the Department of Finance and Administration in a manner consistent with the escalation of federal funds. Notably, the escalation authority in subsection (3)(c) applies only to the funds received for advertisement, publication, and

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naming rights as authorized in subsection (3) and not funds from other sources or for other purposes as addressed in the statute.

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/ Abigail C. Overby*

Abigail C. Overby
Special Assistant Attorney General

OFFICIAL OPINION