



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

February 29, 2024

Arch Bullard, Esq.  
Attorney, City of Corinth  
Post Office Box 1613  
Corinth, Mississippi 38835

Re: Authority to Reopen a Street

Dear Mr. Bullard:

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

### **Background**

According to your request, the mayor and board of aldermen of the city of Corinth (“City”) voted to close a portion of Pierce Street from Meigg Street to Scott Street, which had been requested by Meigg Street Church of Christ (“Church”), the entity that owns the property abutting the portion of Pierce Street to be closed. Your request states that the City resolution closing the portion of the street provides, “that it is hereby found that that section of Pierce Street between Meigg Street and Scott Street should be closed, contingent upon all abutting property owners waiving due compensation.” We understand that there is no evidence of any action by the City or the Church related to the closing of Pierce Street after that vote. You now state that the Board of Aldermen is interested in reopening the portion of Pierce Street that was purportedly closed.

### **Question Presented**

Can the City simply pass a resolution reopening the portion of Pierce Street that was purportedly closed, or is the City obligated to pursue eminent domain procedures to reopen Pierce Street?

### **Brief Response**

The City must first determine whether the street or any portion thereof was actually closed and vacated. If the street was closed and vacated, and the Church was found to be the owner of the underlying fee, the City would now have to pursue eminent domain procedures to reopen the closed street and would not be able to do so merely by passing a new resolution.

### **Applicable Law and Discussion**

Mississippi Code Annotated Section 21-37-7 authorizes a municipality to close and vacate any street or alley, or any portion thereof:

The governing authorities of municipalities shall have the power to close and vacate any street or alley, or any portion thereof. No street or alley or any portion thereof shall be closed or vacated, however, except upon due compensation being first made to the abutting landowners upon such street or alley for all damages sustained thereby.

In order to close and vacate a street under this statute, the municipality must find that the closing is for the public good. *Mill Creek Properties, Inc. v. City of Columbia*, 944 So. 2d 67, 69 (Miss. Ct. App. 2006). See MS AG Op., *Stockton* at \*1 (Mar. 23, 2007) (“The governing authority may close the street in a manner consistent with the provisions of Section 21-37-7, upon a finding that the street is no longer required for public use or convenience and there is a public necessity for its vacation.”).

Once a decision is made to close a street, whether the street reverts back to the adjoining property owners is a determination of fact to be made by the municipal governing authorities and depends on who owns the underlying fee. In your particular situation, if the City had only taken an easement for the street, then the street reverts back to the owners of the underlying fee. Otherwise, the underlying fee belongs to the City. See MS AG Op., *Purdie* at \*3 (Aug. 31, 2020) (“[W]here a mere easement is taken for a public highway, the soil and freehold remains in the owner of the land, encumbered only with the easement, and that, upon the discontinuance of the highway, the soil and freehold revert to the owner of the land.”) (internal quotations and citation omitted); MS AG Op., *Herring* at \*2 (Sept. 11, 2006) (“[O]nce the appropriate procedures to vacate the street have been followed as set out in Section 21-37-7, the property in question would revert to the owners of the underlying fee. . .”).

If it is determined that the Church is the owner of the underlying fee, and the street has been closed, then the City may not simply pass a resolution to reopen the street. While the Supreme Court has held that a city may reopen a street it has chosen to close, to do so, the city must “reopen the street through the process of eminent domain as opposed to the use of an ordinance rescinding the order closing the street.” *City of Jackson v. McAllister*, 475 So. 2d 432, 434 (Miss. 1985) (citation omitted). See *Berry v. Town of Mendenhall*, 61 So. 163, 164 (Miss. 1913) (“If boards of aldermen were permitted to close and reopen streets at their will and pleasure, the status of affairs would be uncertain, and the ownership of the fee in the soil embraced within the closed streets would remain forever in abeyance, and we think this would be intolerable.”).

In conclusion, the City must determine whether the street or part thereof was actually closed, and if so, further determine who owns the underlying fee. If the Church is found to be the owner of the underlying fee, the City would have to pursue eminent domain procedures to reopen the closed street.

Arch Bullard, Esq.  
February 29, 2024  
Page 3

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/ Gregory Alston*

Gregory Alston  
Special Assistant Attorney General

OFFICIAL OPINION