



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

April 2, 2024

The Honorable Nancy Depreo
Mayor, City of Diamondhead
5000 Diamondhead Circle
Diamondhead, Mississippi 39525

Re: Returning Donations

Dear Mayor Depreo:

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

Issue Presented

May donations made for a specific project—a dog park—be refunded to the donors if the project’s scope of work, site location, and other important appurtenances have changed from the way it was presented at the time the donations were accepted?

Brief Response

Donations made for a restricted purpose may be returned to the donor if the donation cannot or will not be used for that specified purpose.

Applicable Law and Discussion

Pursuant to Mississippi Code Annotated Section 7-5-25, this office may only opine on prospective questions of law. An Attorney General’s opinion can neither validate nor invalidate past action. MS AG Op., *Magee* at *1 (Aug. 29, 2008). Further, we do not make factual determinations by official opinion. Thus, we offer no opinion on the specific purpose for which the donations you reference in your request were made or whether the specified purpose of the project has changed.

This office has previously opined that “a donation made to a municipality for a restricted purpose, and which cannot or will not be used for that specified purpose may be returned to the donor.” MS AG Op., *Lee* at *1 (July 25, 2023) (citing MS AG Ops., *Ginn* (June 17, 2016) and *Clark* (Nov. 8, 2002)). We understand from your request that while the plans for the dog park and its location may change from what was initially contemplated, the overall plan to construct a dog park has not been terminated. Whether the donations cannot or will not be used for the specific purpose for which

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they were donated is a factual determination to be made by the local governing authorities, subject to judicial review, and is outside the scope of an official Attorney General's opinion. We refer you to the Technical Assistance Division of the Office of the State Auditor for guidance on the return of any donated funds.

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

OFFICIAL OPINION