



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

May 20, 2024

Rocky W. Eaton, Esq.
Attorney, City of Petal
Post Office Box 564
Petal, Mississippi 39465

Re: City's Ability to Return Donated Land

Dear Mr. Eaton:

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

Background

According to your request, a citizen of Petal ("City") contacted City officials to donate six parcels of land to the City. The board of aldermen authorized the acceptance of said property, and a local real estate attorney effectuated the transfer of these parcels to the City. The deeds transferring the ownership of property did not contain a reverter clause. The donating citizen later requested the board of aldermen return three of the six donated parcels due to their donation being a mistake.

Question Presented

May the City return (at no cost) three of six parcels of land donated to it after finding that the prior donation was a mistake and that the three parcels are surplus property?

Brief Response

"A municipality may re-convey real property to an original donor without cost only if the instrument by which the property was originally conveyed to the municipality contained a proper reverter clause." MS AG Op., *Lawrence* at *1 (June 9, 2006) (citing MS AG Op., *Sorrell* at *1 (Aug. 20, 2004)). However, the parties may be able to reform the underlying instrument if a mistake is found in the drafting of such. *Johnson v. Consolidated Am. Life Ins. Co.*, 244 So. 2d 400, 402 (Miss. 1971); see *Dilling v. Dilling*, 734 So. 2d 327, 335 (Miss. Ct. App. 1999) (explaining that "[a] scrivener's error may be sufficient to warrant the reformation of an instrument.").

Applicable Law and Discussion

To begin, this opinion concerns matters of state law only and does not address any contractual considerations.

You ask whether the City may return three parcels of land donated to it after finding: (1) the prior donation was a mistake, and (2) the three parcels are surplus property. You note that you are aware of our prior opinions *Lawrence* and *Emerson*.

In *Lawrence*, this office opined that “[a] municipality may re-convey real property to an original donor without cost only if the instrument by which the property was originally conveyed to the municipality contained a proper reverter clause.” MS AG Op., *Lawrence* at *1 (citing MS AG Op., *Sorrell* at *1). We reached the same conclusion in *Emerson*, explaining that “once donated property is accepted by a municipality, it becomes municipal property and must be expended or disposed of in the same manner as other municipal property.” MS AG Op., *Emerson* at *1 (Oct. 21, 2016). That is to say, “the municipality must comply with the provisions of Mississippi Code Annotated Section 21-17-1 or some other statutory provision when disposing of the subject real property.” *Id.* at *2.

Your request states that this matter is distinguishable from *Lawrence* and *Emerson* because, here, the City found that the donation was a mistake. While state law does not indicate that a municipality’s finding that a donation was a mistake would allow the municipality to return the donated parcels at no cost to the original donor, the parties may be able to reform the underlying instrument. As stated by the Mississippi Supreme Court, “[t]he mistake that will justify a reformation must be in the drafting of the instrument, not in the making of the contract.” *Johnson*, 244 So. 2d at 402. This requirement was reiterated by the Mississippi Court of Appeals in *Dilling*, where it went on to note that “[a] scrivener’s error may be sufficient to warrant the reformation of an instrument.” *Id.* at 335. This said, whether a mistake is of the type contemplated in these opinions is a question of fact upon which this office may not opine. *See* Miss. Code Ann. § 7-5-25.

Finally, you provide that the City also found that the subject parcels were surplus property. Pursuant to Section 21-17-1(3)(a)(i), a municipality’s:

governing authority may donate [surplus] lands to a bona fide not-for-profit civic or eleemosynary corporation organized and existing under the laws of the State of Mississippi and granted tax-exempt status by the Internal Revenue Service and may donate such lands and necessary funds related thereto to the public school district in which the land is situated for the purposes set forth herein.

(emphasis added); *see also* MS AG Op., *Eubanks* at *1 (Apr. 15, 2005) (noting same in relation to disposal of real property donated to a municipality). Whether the subject donor would be a proper recipient of surplus property pursuant to Section 21-17-1(3) is also a factual determination upon which this office may not opine. *See* Miss. Code Ann. § 7-5-25.

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Otherwise, “[a] municipality may re-convey real property to an original donor without cost only if the instrument by which the property was originally conveyed to the municipality contained a proper reverter clause.” MS AG Op., *Lawrence* at *1 (citing MS AG Op., *Sorrell* at *1).

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/ *Maggie Kate Bobo*

Maggie Kate Bobo
Special Assistant Attorney General

OFFICIAL OPINION