



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

May 24, 2024

Zachary L. Giddy, Esq.  
Attorney, City of Gluckstadt  
800 Avery Boulevard North, Suite 101  
Ridgeland, Mississippi 39157

Re: Prepayment of Lease

Dear Mr. Giddy:

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

## OFFICIAL OPINION

### Background

According to your opinion request, the city of Gluckstadt (“City”) wants to use grant funding to obtain automatic license plate recognition cameras (“ALPR”). The vendors for these ALPRs lease the cameras and do not allow public entities to purchase them. We understand from a later conversation that this is a federal Homeland Security grant of \$150,000 and that all of the federal funds must be expended in this fiscal year.

### Question Presented

May the City pay for a three-year lease for ALPRs up front if the City receives the leased cameras in return for the payment?

### Brief Response

If the City makes the factual determination that receiving the ALPRs at the time the lease payment is made constitutes good and valuable consideration, the payment would not be unlawful.

### Applicable Law and Discussion

Purchases made pursuant to Mississippi Code Annotated Sections 31-7-1, *et seq.* using federal grant funds must be made in accordance with any applicable federal and state laws and federal and state regulations. Opinions of this office are issued pursuant to Section 7-5-25 on prospective questions of state law only. This office cannot interpret or opine on the validity of contracts or on the validity or applicability of federal law and regulations. Thus, we offer no opinion regarding

Zachary L. Giddy, Esq.

May 24, 2024

Page 2

the legality of using federal funds in a specific manner or the applicability of any federal or state regulations and limit this opinion to the interpretation of state public purchasing laws.

With respect to Mississippi's public purchasing laws, the definition of "purchase" includes leasing. Miss. Code Ann. § 31-7-1(h). We understand that the City intends to proceed under Section 31-7-13(c) because the cost to lease the ALPRs is over \$75,000.

In your request, you cite several previously issued opinions that equate municipal prepayment for goods and services with an unlawful donation. Municipalities are prohibited from making donations unless specifically authorized by statute. Miss. Code Ann. § 21-17-5(2); MISS. CONST. art. IV, § 66. However, analyzing Section 66 of the Mississippi Constitution, the Mississippi Supreme Court emphasized that "[t]he term 'donation or gratuity' implies *absence of consideration*, the transfer of money or other things of value from the owner to another without any consideration." *Tunica Cnty. v. Town of Tunica*, 227 So. 3d 1007, 1018 (Miss. 2017) (quoting *Craig v. Mercy Hosp.—Street Mem'l*, 45 So. 2d 809, 814 (Miss. 1950)) (emphasis added). That is to say, when consideration is present, "Section 66 has no application at all." *Craig*, 45 So. 2d at 814.

This office has opined that if a public entity is receiving something in return for a payment made, that payment would not be considered an impermissible donation. MS AG Op., *Lynchard* at \*3 (Sept. 4, 2015) (internal citations omitted); *see also* MS AG Op., *McKenzie* (Apr. 23, 2010) (opining that the county must receive good and valuable consideration to avoid an impermissible donation). Accordingly, if the City makes the factual determination that receiving the ALPRs at the time the lease payment is made constitutes good and valuable consideration, the payment would not be an impermissible donation in violation of state law.

We suggest that you contact DFA for further guidance on the applicability of any of its regulations. Because your question deals with the expenditure of public funds, you may also wish to contact the Division of Technical Assistance in the Office of the State Auditor.

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