



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

August 30, 2024

Tommie S. Cardin, Esq.
Attorney, Three Rivers Solid Waste Management Authority
Post Office Box 6010
Ridgeland, Mississippi 39158-6010

Re: Authority's Ability to Contract with Developer for a Term Not to Exceed
30 Years

Dear Mr. Cardin:

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

Background

According to your request, Three Rivers Solid Waste Management Authority (the "Authority") is a political subdivision organized and existing under the Mississippi Regional Solid Waste Management Authority Act (the "Act"), Mississippi Code Annotated Sections 17-17-301, *et seq.*, and is governed by a fourteen-member board of commissioners representing its member counties and municipalities. Board members serve four-year staggered terms.

Question Presented

May the Authority enter a contract with a qualified developer for its landfill gas utilization project when such contract is binding between the Authority's board of commissioners and a developer for a term not to exceed 30 years?

Brief Response

If the Authority's board of commissioners makes the factual determination that the proposed landfill gas utilization project meets the statutory definition of "project," Section 17-17-317(h) gives the Authority the express authority to enter a contract binding the Authority's board of commissioners and a developer for a term not to exceed 30 years.

Applicable Law and Discussion

As noted in your request, the Mississippi Supreme Court has been clear that “governing bodies, whether they be elected or appointed, may not bind their successors in office by contract, *unless expressly authorized by law*, because to do so would take away the discretionary rights and powers conferred by law upon successor governing bodies.” *Ne. Mental Health-Mental Retardation Comm’n v. Cleveland*, 187 So. 3d 601, 604 (Miss. 2016) (emphasis added). Any contract entered without such express authority is “voidable at the discretion of the successor governing body.” *Id.* Section 17-17-317(h) expressly gives the Authority the following powers:

[t]o make contracts and leases *with any person* or public agency and to execute all instruments necessary or convenient for construction, operation, and maintenance of projects and leases of projects; and including the closure, post-closure maintenance and any required corrective action involving a project provided that all private persons, firms, and corporations, this state, and all units of local government, departments, instrumentalities, or agencies of the state or of local government are authorized to enter into contracts, leases or agreements with the authority, upon such terms and for such purposes as they deem advisable; *and, without limiting the generality of the above, authority is specifically granted to municipalities and counties and to the authority to enter into contracts, lease agreements, or other undertaking relative to the furnishing of project activities and facilities or either of them by the authority to such municipalities and counties and by such municipalities and counties to the authority for a term not exceeding thirty (30) years[.]*

(emphasis added).

The Act defines “person” as “any individual, trust, firm, joint-stock company, public or private corporation (including a government corporation), partnership, association, state, or any agency or institution thereof, municipality, commission, political subdivision of a state or any interstate body.” Miss. Code Ann. § 17-17-3(y); *see also* Miss. Code Ann. § 17-17-305(o). “Project” is defined as:

- (i) The collection, transportation, management and disposal of municipal solid waste, including closure and post-closure and any property, real or personal, used as or in connection with a facility for the composting, extraction, collection, storage, treatment, processing, utilization, or final disposal of resources contained in solid waste, including the conversion of municipal solid waste or resources contained therein into compost, oil, charcoal, gas, steam, or any other product or energy source and the collection, storage, treatment, utilization, processing, or final disposal of solid waste in connection with the foregoing; and
- (ii) Any property, real or personal, used as or in connection with a facility for the composting, extraction, collection, storage, treatment, processing and the conversion of such resources into any compost or useful form of energy.

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Miss. Code Ann. § 17-17-305(q).

Narrowing this down to address your specific question, Section 17-17-317(h) gives the Authority the power to “make contracts . . . with any person . . . for construction, operation, and maintenance of projects and leases of projects; . . . and, without limiting the generality of the above, authority is specifically granted . . . to the authority to enter into contracts . . . for a term not exceeding thirty (30) years[.]” (emphasis added). Accordingly, if the Authority’s board of commissioners makes the factual determination that the proposed landfill gas utilization project meets the statutory definition of “project,” Section 17-17-317(h) gives the Authority the express authority to enter a contract binding the Authority’s board of commissioners and a developer for a term not to exceed 30 years.¹ Any such factual determination should be spread upon the Authority’s minutes. *See Dhealthcare Consultants, Inc. v. Jefferson Cnty. Hosp.*, 232 So. 3d 192, 194 (Miss. Ct. App. 2017) (“The law in Mississippi is well established that public boards speak only through their minutes and their actions are evidenced solely by entries on the minutes.”).

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

¹ See Miss. Code Ann. § 17-17-313(1) (“All powers of the [A]uthority shall be vested in the board of commissioners.”)