



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

September 17, 2024

The Honorable Jimmy Clyde Hicks
Alderman, City of Booneville
3702 East Chambers Drive
Booneville, Mississippi 38829

Re: Repair of Drainage Ditch

Dear Alderman Hicks:

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

Background

According to your request, there is an area in your ward where water runoff into a drainage ditch has led to substantial flooding and erosion. The flooding and erosion have encroached upon private residents' property to the point that it has eaten away at their yards, and several outbuildings on the property are now in jeopardy of being destroyed.

Questions Presented

1. If the city of Booneville ("City") obtains the property owners' permission to enter their property, may the City repair the drainage ditch to relieve the flooding and erosion?
2. May the City do so by providing labor, materials, and supplies, or if necessary, hiring an outside company to repair the same?

Brief Response

1. Upon making the appropriate factual determinations, the City has the power under Mississippi Code Annotated Section 21-19-13(2) to repair a drainage ditch on private property to prevent erosion.
2. The City has the power to pay necessary expenses in providing labor, materials, and supplies for repairs made pursuant to Section 21-19-13(2).

Applicable Law and Discussion

In regard to erosion caused by drainage ditches, creeks, or channels, Section 21-19-13(2) provides:

(2) The governing authorities of any municipality shall also have the power and authority to incur costs and pay necessary expenses in providing labor, materials and supplies to clean or clear drainage ditches, creeks or channels, whether on public or private property, and to incur costs and pay necessary expenses in providing labor, materials and supplies *in order to prevent erosion where such erosion has been caused or will be caused by such drainage ditches, creeks or channels*. This paragraph shall not impose any obligation or duty upon the municipality and shall not create any additional rights for the benefit of any owner of public or private property.

(emphasis added). *See also MS AG Op., Holmes-Hines at *1 (Aug. 22, 2003) (“A city may perform work on private property adjacent to the city right-of-way with the permission of the landowner to correct unsafe conditions, i.e., erosion or sinkholes, or flooding, which were directly caused by the way in which the municipality drained the city streets.”).*

Opinions of this office are issued on prospective questions of state law pursuant to Section 7-5-25. We do not make factual determinations. Whether the issue referenced in your request involves a drainage ditch, creek, or channel as specified in Section 21-19-13(2), and whether the damage sought to be repaired is erosion as specified in that same Section are both factual determinations to be made by the City, subject to judicial review, and are outside the scope of this opinion. However, upon making the required factual determinations, it is the opinion of this office that the City may make repairs to a drainage ditch on private property to prevent erosion.

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