



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 19, 2024

Jeffrey S. Bruni, Esq.
City Attorney
P. O. Box 1780
Gulfport, Mississippi 39502-1780

Re: Municipal Expenditure of Litigation Settlement Funds

Dear Mr. Bruni:

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

Background

According to your request, you are seeking clarity on the authority the City of Gulfport (“City”) to utilize monies that it receives as a result of a court settlement, in this case an approved settlement of litigation against various manufacturers of opioid medications (“the opioid litigation”). You specifically state that you are not asking our office to interpret or give any opinion regarding the requirements associated with the Court’s settlement terms or conditions.

Questions Presented

1. Must the settlement funds in the opioid litigation received by a municipality be expended in accordance with state law even if the Court permits or allows certain uses of the monies by municipalities?
2. May a municipality donate municipal funds (in this case, funds received as a result of the opioid litigation settlement) to a non-profit (generally, one that focuses on certain social services) to fund activities that are authorized under the settlement requirements?
3. If a municipality may make such a donation, must the City’s donation to the non-profit be donated as matching funds or may such a donation be given outright to fund such activities? Notably, we are aware of Mississippi Code Annotated Sections 21-19-65 and 21-17-1(8).

Brief Response

This office does not opine on or interpret judicial orders or settlement agreements. However, for informational purposes, we provide the following background on the opioid litigation. As a general matter, while the opioid settlements entered into by the State include requirements for use of certain funds on opioid abatement purposes, we refer you to the participation agreements and MOUs into which the City and all Mississippi local government units entered prior to approval of the settlement agreements. Those terms state that funds distributed directly to local government units, “may be spent for opioid abatement or any purpose deemed appropriate by said County or Municipality.” The abatement requirements apply to the State, not the individual locality. Thus, the fact that the funds in question are received as a result of these settlements does not make them different from funds received by the City from any other settlement. The same rules for use of appropriation of public money apply.

1. Settlement funds paid to a municipality are public funds and must be spent in accordance with state law.
2. Regardless of restrictions placed on the funds in any settlement agreement, municipalities are prohibited from granting any donation unless specifically authorized by statute.
3. Any donation made pursuant to Sections 21-19-65 and 21-17-1(8) must comply with the requirement for matching funds.

Applicable Law and Discussion

The Mississippi Supreme Court has held that “[m]oney paid to the State of Mississippi in settlement of a lawsuit is public money.” *Pickering v. Hood*, 95 So. 3d 611, 619 (Miss. 2012). This office has consistently opined that once a governmental entity, in this case a municipality, accepts money, it becomes public funds and may only be expended in accordance with state law. MS AG Op., *Bailey* at *1 (Oct. 12, 2007). Accordingly, in response to your first question, expenditures of any settlement funds by the City must be in accordance with state law and any applicable public purchasing laws and are subject to any applicable regulations by the Office of the State Auditor. *See* Miss. Code Ann. § 7-7-211.

With respect to your second question, municipalities are prohibited from granting any donation unless specifically authorized by statute. Miss. Code Ann. § 21-17-5(2); *see* MS AG Op., *LeSure* at *1 (Dec. 10, 2010) (opining that “[a] municipality may not donate municipal funds or municipal real or personal property to a private nonprofit corporation without specific statutory authority to do so.”). Thus, a municipality may only donate funds received as a result of the opioid litigation settlement to a non-profit organization if there is specific statutory authority to do so.

As you note in your request, Section 21-19-65 specifically grants municipalities:

the power to expend monies from the municipal general fund to match any other funds for the purpose of supporting social and community service programs including, but not limited to, juvenile residential treatment centers; juvenile and

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half-way houses; prenatal care facilities; child day care facilities; mentally ill and alcoholics half-way houses; child and adult emergency shelters; elderly home health aides programs.

Further, Section 21-17-1(8) grants municipalities the discretion to “expend municipal funds to match any state, federal or private funding for any program administered by the State of Mississippi, the United States government or any nonprofit organization that is exempt under 26 USCS Section 501(c)(3) from paying federal income tax.” In response to your third question, any donation made pursuant to either of these two statutes must comply with the requirement for matching funds. In summary, regardless of restrictions placed on the funds in any settlement agreement, those funds received by a municipality as a result of the settlement of litigation are public funds and must be expended in accordance with Mississippi state law. We suggest that you contact the Division of Technical Assistance in the Office of the State Auditor if you have any questions regarding specific expenditures of these settlement 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