



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

January 31, 2025

H. Donald Brock, Jr., Esq.
Attorney, City of Greenwood
Post Office Box 941
Greenwood, Mississippi 38935

Re: Installation of Private Banners on Municipal Utility and Light Poles

Dear Mr. Brock:

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

Background

You have represented the circumstances as follows: A private individual has requested that Greenwood (the “City”) permit and facilitate, at no cost to the individual, the installation of temporary banners on municipal utility and light poles. In honor of Black History Month, the individual is currently selling, at a cost of \$45.00 per banner, approximately 200 banners to businesses and other private individuals in the community. Purchasers may put on the banner an individual’s name, image, and a caption identifying that person’s contributions to the community. The City has no control over the content of the banners or the funds derived from the sales. The individual has requested that the banners be installed using municipal employees and equipment, which is estimated to cost the City approximately \$2,000.00.

Questions Presented

1. Does the City have the authority to donate the use of space for the banners on municipal utility and light poles, and the use of municipal labor and equipment for installation of the banners, to a private, for-profit individual, at no cost to that individual?
2. Would your opinion change if the banners were donated to the City?

Brief Response

1. There is no authority for the City to donate the use of municipal utility and light poles or the use of municipal equipment and labor to a private, for-profit individual at no cost to the individual. Pursuant to the City’s authority over its property, finances, streets, sidewalks,

and parks, the City has discretion regarding projects and events that promote the City. However, the City must determine that the project fulfills a proper municipal purpose and is not for the benefit of a private individual(s).

2. See the response to your first question. While the ownership of the banners may be a factor in determining whether the project benefits a private individual(s) or benefits the City, it is not determinative of the issue. Ultimately, the City may only expend municipal funds for a proper municipal function in accordance with state law.

Applicable Law and Discussion

Pursuant to Mississippi Code Annotated Section 7-5-25, official opinions of the Attorney General are limited to prospective questions of state law only and can neither validate nor invalidate past action. *See* MS AG Op., *Turnage* at * 1 (Oct. 11, 2021). Therefore, to the extent the City may have allowed individuals to place banners on municipal utility and light poles, we provide guidance for prospective application only.

As to your first question, there is no authority permitting the City to donate the use of municipal resources to a private, for-profit individual. *McAdams v. Perkins*, 204 So. 3d 1257, 1265 (Miss. 2016) (explaining that “a municipal board cannot lawfully give away public money.”) (internal quotations and citation omitted); *see* MS AG Op., *Hunt* at *1 (Feb. 5, 1999) (opining that municipal property and equipment may only be used for a proper municipal purpose).

However, Section 17-3-1 provides that the governing authorities of a municipality “may in their discretion, set aside, appropriate and expend moneys, not to exceed one mill of their respective valuation and assessment *for the purpose of advertising and bringing into favorable notice the opportunities, possibilities, and resources of such municipality.* . . .” Miss. Code Ann. § 17-3-1 (emphasis added). This is considered an expenditure, not a donation. MS AG OP., *Barton* at *2 (May 11, 2018).

Our office has previously and consistently opined that under Section 17-3-1, municipal governing authorities have the discretionary authority to spend funds for the purposes of advertising and “advancing the moral, financial and other interests of the city.” MS AG Op., *Hammack* at *1 (Apr. 18, 1997). However, “it is the duty of the governing authorities of the municipality to make a factual determination, consistent with fact and subject to judicial review, as to whether a specific project falls within the parameters of Section 17-3-1.” MS AG Op., *Barton* at *1 (Oct. 12, 2007) (internal citations omitted). Should the City make the requisite factual determinations, Section 17-3-1 may provide an alternative framework to implement the project within the bounds of state law. Should the City decide to consider an expenditure pursuant to Section 17-3-1, we suggest that you contact the Division of Technical Assistance in the Office of the State Auditor for further guidance in making the requisite factual determinations.

In response to your second question, the ownership of the banners is ultimately non-determinative. Regardless of whether the individual or the City owns the banners, the project must be for the benefit of the municipality and not for the private individual(s).

H. Donald Brock, Jr.
January 31, 2025
Page 3

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/ Caleb A. Pracht*

Caleb A. Pracht
Special Assistant Attorney General

OFFICIAL OPINION