



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

July 1, 2026

Reginald Boykin
Chairman, Tunica County Utility District
986 Magnolia Street
Tunica, Mississippi 38676

Re: Perpetual Easement on Tunica County Utility District Elevated Water Tank

Dear Mr. Boykin:

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

Background

According to your request, the Tunica County Utility District (“District”) owns and operates various elevated water tanks as part of the overall infrastructure of the District. Some years ago, the District entered a lease with a cellular communications company for space on one of the elevated water tanks. The cellular company uses space on the elevated water tank for an antenna and various other space for related equipment.

Recently, the District was approached by a third party who offered to purchase a perpetual easement for the placement of antennas and associated communications infrastructure at one of the District’s elevated water tanks. This would include an assignment of the existing lease. The District would be paid a lump sum fee at the closing, forego (via the assignment/easement) the monthly lease payments in the future, and be entitled to a percentage of future/additional antennas placed on the tank based on certain criteria.

Questions Presented

1. If the District has an appraisal and/or advertises the sale of an existing communications lease, would the District have the authority to enter into a transaction whereby a lump sum would be paid in exchange for an assignment of the existing lease?
2. Does the District have the authority to grant a perpetual easement for the location of telecommunications infrastructure (similar to how it might grant an easement for an electric utility)?

3. If the transaction is advertised and bids received, would the limitation of the Board to contract beyond the term of office of the Board of Commissioners still present an issue?
4. Would the District being created under the local and private legislation give the District broader authority to enter into the easement?

Brief Response

1. This office has previously opined that a contract with a third party to solicit and manage agreements involving the placement of antennas or other communications infrastructure on a government-owned water tower is a management-service contract exempt from public purchasing statutes. MS AG Op., *Logan* at *2 (Aug. 23, 2013). While “the [district] may contract with a third party to solicit and manage/oversee such contracts, the final contracts must be between the [district] and the users.” MS AG Op., *Flanagan* at *2 (Apr. 14, 2000).
2. Chapter 958, Local and Private Laws of 1996, as amended, Section 12(c) authorizes the District, acting through its Board of Commissioners, “[t]o make and enter into contracts, conveyances, deeds of trust, bonds, leases or contracts for financial advisory services.” While this language indicates that the District has the general authority to grant an easement, it does not provide specific authority for an extended-term or *perpetual* easement. Further, regarding the proposed easement specifically, please see responses to questions 1 and 3.
3. “Under the common law in Mississippi, governing bodies, whether they be elected or appointed, may not bind their successors in office by contract, unless expressly authorized by law,” and an agreement that violates this rule is voidable. *Ne. Mental Health–Mental Retardation Comm’n v. Cleveland*, 187 So.3d 601, 604 (Miss. 2016).
4. Please see response to question 2. Beyond this, nothing within the local and private legislation creating and empowering the District gives the District broader authority to enter the proposed easement.

Applicable Law and Discussion

You first ask if the District has an appraisal and/or advertises the sale of an existing communications lease, would the District then have the authority to enter a transaction whereby a lump sum would be paid in exchange for an assignment of the existing lease. You further explain that you have reviewed the *Logan* opinion, which you understand to have turned on the transaction moving forward without appraising and advertising. Regarding appraisals and advertising, this office has previously opined that “[t]he Tunica County Utility District . . . falls within the definition of a governing authority as described in Section 31-7-1 and is, therefore, subject to the public purchasing laws.” MS AG Op., *Dulaney* at *1 (May 20, 2016). But we have likewise opined that a contract with a third party to solicit and manage agreements involving placement of antennas or other communications infrastructure on a government-owned water tower is a management-service contract exempt from public purchasing statutes. MS AG Op., *Logan* at *2.

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The outcome in *Logan* was due to the requirement that “final contracts must be between the city and the users,” which prevented the municipality from assigning an existing communications lease to a third party. MS AG Op., *Logan* at *2 (quoting MS AG Op., *Flanagan* at *2). The same is true here. While “the [District] may contract with a third party to solicit and manage/oversee such contracts, the final contracts must be between the [District] and the users.” MS AG Op., *Flanagan* at *2.

Your second question asks whether the District has the authority to grant a perpetual easement for the location of telecommunications infrastructure. Relatedly, your third question asks whether the Board may contract beyond the term of office of the Board of Commissioners. Chapter 958, Local and Private Laws of 1996, as amended, Section 12(c) authorizes the District, acting through its Board of Commissioners, “[t]o make and enter into contracts, conveyances, deeds of trust, bonds, leases or contracts for financial advisory services.” While this language indicates that the District has the general authority to grant an easement, it does not provide specific authority for an extended-term or *perpetual* easement. In contrast, other provisions within the District’s local and private legislation, such as Section 12(p), grant the Board of Commissioners specific authority to enter certain extended-term contracts. *See id.* (“The [B]oard of [C]ommissioners may contract for the operation and maintenance of any property or facilities of the [D]istrict for a term of up to twenty (20) years.”). Further, “[u]nder the common law in Mississippi, 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*, 187 So.3d at 604. “[A]ny agreement that violates this rule is voidable by successor boards.” *Id.* at 607.

Regarding your last question, please see above discussion regarding Section 12(c). Beyond this, nothing within the local and private legislation creating and empowering the District gives the District broader authority to enter the proposed easement.

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