

STATE OF MISSISSIPPI



**JIM HOOD**  
**ATTORNEY GENERAL**

**OPINIONS**  
**DIVISION**

August 17, 2018

Katie Bryant Snell, Esquire  
Madison County Board of Supervisors  
Post Office Box 608  
Canton, Mississippi 39046

Re: Authority of County to Accept a Donation

Dear Mrs. Snell:

Attorney General Jim Hood is in receipt of your opinion request and has assigned it to me for research and reply.

### **Facts**

In your letter, you state that due to rapid growth in Madison County there is a heavy demand on the infrastructure, requiring a constant effort by the Board of Supervisors to repair damaged streets and to address the increased traffic flows. You explain that some developers would like to see turn lanes added to address safety for residents or roundabouts to improve traffic flow. Although these are important additions to the infrastructure, the projects may be delayed months or even years due to other existing projects and/or lack of funding for newer infrastructure needs. You further explain that some developers offered to provide funding to the county or to hire contractors, under the supervision and direction of the County Engineer, to make the proposed improvements.

### **Questions Presented**

1. If the Board of Supervisors approves a road improvement project and the County Engineer oversees the project to ensure compliance with county road standards, may Madison County accept the donation of services and materials constituting the construction of the said project?
2. If the Board of Supervisors approve a road improvement project, may Madison County accept a monetary donation of the cost of construction of said project?

3. If the answer to Question 2 is yes, can the Madison County Board of Supervisors hold the money in a public trust fund designated for that specific improvement project?

### **Response**

1. A county may accept the donation of services and materials for public construction projects performed on public land.
2. A county may accept a monetary donation of the cost of a construction project on public land.
3. Once money is accepted by the county for a specific purpose, it becomes public funds and may only be expended in accordance with state law. However, donations may be made and accepted for specific purposes authorized by law.

### **Legal Research and Analysis**

You first inquire as to whether a county may accept the donation of services and materials constituting the construction of a road improvement project on a county road. Miss. Code Ann. Section 19-3-40 authorizes a county to accept a donation. In MS AG Op., Meadows (December 20, 1995), our office opined that a county may accept the donation of services and materials for public construction projects performed on public land. This office also opined in MS AG Op., Bond (February 23, 2007) that a county, under certain conditions, may accept the donation of construction work by a private developer in clearing the right of way on a public road. We are of the opinion that the Madison County Board of Supervisors may accept a donation of road improvements, including services and materials. The Board of Supervisors should make the appropriate findings of fact, recorded in the minutes, citing the need for the work and characterizing the work as constituting a donation. MS AG Op., White (May 27, 2011). The county should also assess any potential liability concerns with the county's insurance carrier regarding implications under the Tort Claims Act should any claims arise from the donated work by the developer or its contractors. MS AG Op., White (May 27, 2011).

Your second question asks whether the county may accept a monetary donation for the cost of the road project, and, if so, may the money be held in a separate public trust fund for that specific project. In MS AG Op., Lamar (March 3, 2000), our office opined that a county may accept private funds for the construction, maintenance, or reconstruction of a county road. Therefore, it is the opinion of this office that the Madison County Board of Supervisors, if it finds that to do so would benefit the public, may accept private funds for all costs associated with the design and construction of the road project.

In response to your third question, funds donated to and accepted by the county, by way of a separate bank account or otherwise, become public funds and are treated in the same manner as other county funds. MS AG Op., Herring (February 12, 2010). However, donations may be made and accepted for specific county purposes authorized by law. MS

Katie Bryant Snell, Esquire  
August 17, 2018  
Page 3

AG Op., Matthews (November 3, 2006). For example, we have previously opined that a municipality may accept a donation of an automobile for use for law enforcement purposes within the police department, but may not accept a donation with a restriction that the automobile be used by a specific individual. MS AG Op., Lawrence (Dec. 1, 2000). Under the circumstances that you describe, Madison County is authorized to accept donations which may contain a restriction that such donations be used for a specific road project. In this regard, the donated funds would be treated in the same manner as other public funds of the County, except that the funds may only be used for purposes consistent with the purposes for which the funds were donated and accepted. The funds are subject to the authority of the Board of Supervisors to appropriate for expenditure.

If this office may be of any further assistance to you, please let us know.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Avery Mounger Lee  
Special Assistant Attorney General

OFFICIAL OPINION