

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

September 14, 2018

John D. Sutton, Esquire
Lawrence County Board of Supervisors
Post Office Box 1157
Monticello, Mississippi 39654

Re: Authority of County to Purchase and Install Fire Hydrants

Dear Mr. Sutton:

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

Facts

In your letter, you explain that the County desires to expend funds to purchase and install fire hydrants in the county that are outside of the incorporated areas of the county and are being served by a rural water association.

Questions Presented

1. May the County expend funds to purchase and install fire hydrants in these areas?
2. If so, may the County allocate funds to the County Fire Districts or the County Volunteer Fire Departments for such Districts and/or Departments to purchase the fire hydrants and make arrangements with the water association to have the hydrants installed, as long as the hydrant remained the property of the County?
3. Can the County obtain a CAP loan for the funding of this project?

Response

1. Yes. The Board of Supervisors may appropriate funds pursuant to Section 89-1-39 to

a volunteer fire department and fire protection district for the purchase of fire hydrants.

2. Yes. Once the appropriation is made by the Board of Supervisors, the volunteer fire department and fire protection district may arrange with privately owned water associations for the installation of the fire hydrants.

3. Yes. If the Board of Supervisors makes a finding of fact, spread upon the minutes, that the purchase and installation of fire hydrants constitute "capital improvements" as defined in Section 57-1-301(2), then it may borrow funds from the Local Governments Capital Improvements Revolving Loan Fund for such purpose.

Legal Research and Analysis

In response, Miss. Code Ann. Section 83-1-39(3)(b) provides that insurance rebate monies shall be expended by the board of supervisors for fire protection purposes of each county, including the "purchase of equipment, . . . and capital construction anywhere in the county...." In MS AG Op., Lee (June 15, 1995), we opined that under Section 83-1-39(3), insurance rebate funds could be used by the county board of supervisors for "capital construction" for fire protection purposes, which would include fire hydrants, so long as they could find that placing the hydrants on private property would benefit the fire department in carrying out its duties. Thus, it is the opinion of this office that if the Board of Supervisors finds on its minutes, consistent with fact, that the purchase of fire hydrants for these areas will specifically benefit the fire departments in carrying out their duties, such expenditure and installation, subject to obtaining a proper easement for hydrants located on private property, is permissible. Of course, any fire hydrants purchased pursuant to Section 89-1-39 would remain the property of the county.

In response to your second question, in MS AG Op., Goldman (August 27, 1987), our office opined that while a county cannot run a water line and place a fire hydrant on private property when the hydrant would benefit only one landowner, the county could do so if it was "part of the overall purpose and plan of providing present and future utility service to the general public." Additionally, in MS AG Op., Chaffin (September 12, 1988), our office opined that a board of supervisors may appropriate funds pursuant to Section 89-1-39 to a volunteer fire department or fire protection district for the purchase of fire hydrants. We further opined that a volunteer fire department and fire protection district may then arrange with privately owned water associations for the installation of the fire hydrants. Consequently, we now opine that the Board of Supervisors may appropriate funds pursuant to Section 89-1-39 to volunteer fire departments and a fire protection district for the purchase of fire hydrants, and then the volunteer fire department and fire protection district may arrange with privately owned water associations for the installation of the fire hydrants.

In response to your third question, Miss. Code Ann. Section 57-1-301 establishes a Local Governments Capital Improvements Revolving Loan Program to be administered by the Mississippi Development Authority (hereinafter "MDA") for the purpose of assisting counties and municipalities in making capital improvements. Section 57-1-301(2)(c) states that for the purpose of Sections 57-1-301 through 57-1-335, "capital improvements" include

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improvements in fire protection. Thus, it is the opinion of this office that if the Board of Supervisors makes a finding of fact, spread upon the minutes, that the purchase and installation of fire hydrants constitute "capital improvements" as defined in Section 57-1-301(2), then it may borrow funds from the Local Governments Capital Improvements Revolving Loan Fund for such purpose. Please note that the expenditure of the loan money must be in full compliance with these statutes and any applicable rules and regulations adopted by MDA pursuant to Section 57-1-305(f).

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