

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

October 26, 2018

Brian D. Mayo, Esq.
Attorney, City of Newton
Post Office Box 218
Newton, Mississippi 39345

Re: City of Newton

Dear Mr. Mayo:

Attorney General Jim Hood has received your request for an opinion and has assigned it to me for research and response.

Issues Presented

You inquire as to whether municipal clerks, including deputy clerks, may notarize documents unrelated to city business for private citizens and charge a fee for such service with said fees to be used by the municipality's fire or police departments. Specifically, you provide the following:

The City of Newton employs a city clerk and deputy clerks who are licensed notary publics. The City receives numerous requests from its private citizens to notarize documents unrelated to city business. May the city clerk and deputy clerks (1) notarize documents unrelated to city business for private citizens and (2) charge a fee for said notarization with the funds received from said notary service being utilized for the city's fire or police departments?

Response

The municipality may not provide notary services to the public that are unrelated to municipal business through its clerk and deputy clerks even if the municipality charges a fee for such service. We have consistently opined that "[i]t is fundamental that cities may only engage in activities which constitute proper governmental purposes and may not engage in private enterprise." MS AG Op., Barton (May 25, 2018)(municipality may not provide broadband services to consumers for a fee); MS AG Op., Holmes-Hines

Brian D. Mayo, Esq.
October 26, 2018
Page 2

(June 15, 2012)(municipality may not engage in private business enterprise unless granted authority to do so by the Legislature); MS AG Op., Odom (August 15, 1997)(no authority for municipality to rent equipment to individuals in private sector as profit-making venture); MS AG Op., Doty (January 12, 1994)(municipal fireman may not unlock vehicles for a fee as such is not proper governmental purpose and would constitute a private business venture, relied on *Davenport v. Blackmur*, 186 So.321 (Miss. 1939) in which Court ruled that municipality does not have authority to establish an automobile testing station and engage in business of testing automobiles); MS AG Op., Shepard (December 18, 1991)(manufacture and sale of Christmas ornaments is a business venture and is unauthorized); MS AG Op., Allen (August 15, 1990)(renting of municipal personal property is of a commercial nature and is not a proper governmental activity). See also MS AG Op., Satcher (October 11, 2013)("[i]t is well-settled in Mississippi that, in general, a municipality is not authorized to use public funds, equipment or labor for the purpose of making improvements to private property, even when the municipality is compensated for such use of municipal resources"). Thus, in our opinion, the City may not provide notary services unrelated to city business for a fee.

If we may be of further assistance, please advise.

OFFICIAL OPINION

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:


Leigh Triche Janous
Special Assistant Attorney General