

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

November 27, 2018

Angela Turner Ford, Esq.  
Attorney, Clay County Board of Supervisors  
Post Office Drawer 1500  
West Point, Mississippi 39773-1500

Re: Use of County Owned Community Center

Dear Mrs. Ford:

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

### Background and Issues Presented

A full copy of your request is attached, but, in relevant part, it states:

Clay County owns a building, which was designed and built for the main purpose of providing space for meetings, community related events and other activities. There is a park adjacent to the building, which is also owned by the County. The building, park and area residents are in a community located approximately eighteen miles from the city limits. The Board has previously adopted a policy for use of county owned buildings, which prohibits use of buildings by any group or organization free of charge. The policy was in effect before the subject community center was built.

I am submitting the following questions for consideration:

1. Although the Board has adopted a use policy which predates the subject community center, is the Board permitted to implement a separate policy for this specific building?
2. Is the Board permitted to adopt a policy that is different for use of county owned buildings by civic groups, community service groups, churches and non-profit organizations versus use by individuals for weddings, birthday

parties, family reunions, etc.? More specifically, can the Board implement a policy that waives rent for civic groups, community service groups, churches and non-profit organizations, but not for individuals/family functions?

3. Under what circumstances can a local community club and/or individuals reserve use of the community center for specific dates each year?

4. Is the County required to charge rent for use of the space, if a community group or other entity uses the facility for community related purposes, such as periodic meetings to discuss upcoming projects, community revivals, a community thanksgiving dinner and a community Christmas party?

### Response

The answer to your first question is yes. The Board has the authority to adopt a separate policy for a community center versus another County owned property. This office previously opined that governing authorities of counties may adopt policies tailored to meet the specific needs of the buildings as long as the policy passes constitutional muster and is established and implemented uniformly to all organizations or individuals who wish to access the facility. See MS AG Op., Barefield (June 13, 2003). In the Barefield opinion, we further cautioned that "when drafting building-specific policies, a governing authority should not use these issues as a guise to favor or deny access to any organization or individual."

The answer to your second question is no. Any policy must be implemented uniformly to all organizations or individuals who wish to access the facility. See MS AG Op., Woodard (June 20, 2008); MS AG Op., Gamble (February 6, 2004); MS AG Op., Barefield (June 13, 2003); MS AG Op., Clyde (October 24, 1988). With regard to the waiver of rent, please see our response to question four (4).

Your third question asks this office to list hypothetical situations in which the County could rent the center to certain groups for specific dates each year. It would be impossible for this office to attempt to list every circumstance available under which the community center could be reserved or rented for specific dates. The determination of when it is appropriate to allow the use of the community center is a factual one that can only be made by the Board of Supervisors.

In response to your fourth question, the County is not required to charge rent, but it cannot make an impermissible donation. We have previously opined that "a public entity may permit the use of its facilities to a private entity for consideration, monetary or otherwise." MS AG Op., St. Pe' (September 17, 2010). In that opinion, we concluded that the act of "serving free meals to the town's senior citizens", if properly documented and supported by the facts, could constitute sufficient consideration or a public service. MS AG Op., Grace (June 26, 2015).

Angela Turner Ford, Esq.  
November 27, 2018  
Page 3

In order to allow any group to use the community center without paying rent, the Board must, consistent with the facts, document its findings on the minutes that a community event constitutes sufficient public service to constitute consideration to the County. Whether any particular event reaches such a level is a matter of fact that must be determined, in the first instance, by the Board.

If we can be of further assistance, do not hesitate to call us.

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By:   
Emiko Hemleben  
Special Assistant Attorney General

OFFICIAL OPINION