

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

December 14, 2018

Peter Abide, Esq.
Attorney, City of Biloxi
Post Office Box 429
Biloxi, Mississippi 39533

Re: Request for opinion - Donations to economic development programs of Gulf Coast Main Street Corporation dba "Biloxi Main Street District"

Dear Mr. Abide:

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 a municipality may make donations to its Main Street program for economic development purposes and whether it may earmark such donations for a specific purpose. Specifically, you provide the following:

This letter is to request your official opinion on the two following questions:

1. May a municipality (the City of Biloxi) contribute, donate or appropriate out of any money in the treasury of the municipality to the municipality's nonprofit corporation, the Gulf Coast Main Street Corporation dba "Biloxi Main Street District", aka "Main Street Project, Incorporated", a Mississippi non-profit corporation organized and existing as a 501 (c) (3) private non-profit corporation, for economic development programs of the Biloxi Main Street District corporation?
2. If the answer to question #1, above is, "yes", may a municipality (the City of Biloxi) contract with its Biloxi Main Street District corporation to earmark the City's grants specifically for use in the Biloxi Main Street District corporation's programs that would encourage economic development and would have a positive impact on the economic development of the City, as determined by the governing authorities of the City?

Facts

The Biloxi Main Street District corporation has been engaged in local economic development in Biloxi for many years, with emphasis on Biloxi's central business district. No federal or state funds would be any part of the City of Biloxi's donations to Biloxi Main Street District corporation for use in its economic development programs.

The City is of the opinion that the following statutes provide full authority for affirmative answers to the City's two questions posed in this request for your opinion:

Section 21-19-44. Supporting certain local economic development organizations.

The municipal governing authorities of any municipality shall have the power and authority, in their discretion, to execute contracts and agreements with, and to appropriate, contribute and donate to, or expend budgeted funds for, local economic development organizations and designated Main Street programs.

OFFICIAL OPINION

Section 21-19-44.1. Donating to Main Street Project, Incorporated.

The governing authorities of any municipality in this state are authorized, in their discretion, to contribute, donate or appropriate annually out of any money in the treasury of the municipality, to the municipality's nonprofit corporation known as Main Street Project, Incorporated, for any economic development program or endeavor of the corporation, for the development of the municipality's central business district or for any lawful purpose of the municipality. Further, the governing authorities are authorized, in their discretion, to execute contracts and agreements and to expend municipal funds in support of any project sponsored by the corporation, the municipality or any other nonprofit corporation engaged in local economic development.

The City's authority to make such donations and contract with Biloxi Main Street District is supported by the following Mississippi Attorney General Opinions:

1. MS AG OPN #2018-00238 Hunt, August 17, 2018:

Municipalities have been granted express statutory authority to make donations for economic development purposes. See Sections 21-19-44 and 21-19-44.1.

2. MS AG OPN #2015-00213 Barton, July 24, 2015:

Sections 21-19-44 and 21-19-44.1, respectively, permit a municipality to make donations to local economic development organizations and designated Main Street programs and to the municipality's Main Street Project, Incorporated, or project sponsored by the corporation, the municipality or any other nonprofit corporation engaged in local economic development. In regard to any limitations on contributions ... Mississippi Code Annotated Sections 21-19-44 and 21-19-44.1 do not impose any monetary limitations on such donations.

3. MS AG OPN #2015-00251 Turnage, August 7, 2015:

Undoubtedly, a municipality is authorized to appropriate funds to local economic development organizations and designated Main Street programs, per Section 21-19-44, and to execute contracts and agreements and expend municipal funds in support of any project sponsored by the Main Street Project, Inc. corporation, the municipality or any other nonprofit corporation engaged in local economic development, pursuant to Section 21-19-44.1. While Sections 21-19-44 and 21-19-44.1 limit their application to "local" organizations and entities engaged in "local" economic development, we do not interpret such language to restrict the appropriation of such funds to only those projects located within the municipality itself. The intention of the Legislature, in our estimation, was to ensure that those funds appropriated in accordance with Sections 21-19-44 and 21-19-44.1 would be used on projects that would, ultimately, have a positive impact on the economic development of the municipality. (emphasis added)

Response

The municipality may contribute, donate or appropriate funds to its Main Street program for economic development purposes in accordance with Mississippi Code Annotated Sections 21-19-44 and 21-19-44.1. In doing so, the municipality may earmark such contributions for a specific purpose provided that it is a lawful one.

Applicable Law and Discussion

As to the authority of a municipality to make contributions/donations to its Main Street programs, we have consistently opined that it is clearly authorized to donate monies to local economic development organizations and designated Main Street programs for economic development purposes pursuant to the authority granted to it in Mississippi Code Annotated Sections 21-19-44 and 21-19-44.1. MS AG Op., Dye (February 13, 2015); MS AG Op., Rohman (June 26, 2009); MS AG Op., Farmer (December 20, 2002). Naturally, the municipality is responsible for determining whether the contributions/donations are being made to a qualified organization/program and whether the donations are being made for a qualified purpose.

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With respect to the authority of a municipality to earmark its contributions, we provided in our opinion to you, dated October 12, 2018, that “a municipality may make qualified donations to its Main Street program pursuant to Sections 21-19-44 and 21-19-44.1 and may specify the purpose of those donations” provided that the purpose is a lawful one. MS AG Op., Abide (October 12, 2018). See also MS AG Op., Brooks (March 5, 2010)(county may earmark contributions made pursuant to Sections 17-3-1 *et seq.*). Thus, a municipality may designate that its contributions, made in accordance with Sections 21-9-144 and 21-19-44.1, are to be used for a specific purpose.

We note that you ask in your second inquiry whether the city may “earmark the City’s grants specifically for use in the Biloxi Main Street District corporation’s programs...” We assume that your use of the term “grants” is referring, in general, to the municipality’s contributions to the Main Street program and not referencing the grant program that was the subject matter of your prior request.¹

If we may be of further assistance, please advise.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

OFFICIAL By:



Leigh Triche Janous
Special Assistant Attorney General

¹We issued a prior opinion to you on October 12, 2018 addressing the authority of the municipality to contract with its Main Street program for the purpose of operating a “downtown facade and redevelopment incentive grant program that will receive municipal funds for the purpose of renovating and improving blighted and/or vacant commercial property that qualify as urban renewal projects in accordance with Mississippi Code of 1972, Sections 43-35-1, *et seq.*” As you are aware, in that opinion, we opined that while a municipality may enter into contracts for the purpose of revitalizing blighted and vacant areas and may make grants to private developers to redevelop privately owned properties in accordance with Section 43-35-15, it “may not rely on the authority granted to it in Sections 21-19-44 and 21-19-44.1 to circumvent the limitations imposed in Section 43-35-15(f).”