

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

April 1, 2019

Wade White, Esquire
Attorney, Neshoba County Board of Supervisors
501 Main Street
Philadelphia, Mississippi 39350

Re: Authority to Repair on Property Owned by School District and Leased to a
Private Individual or Business

Dear Mr. White: **OFFICIAL OPINION**

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

Facts

In your letter, you provide that there are two parcels of land owned by the Neshoba County School District ("School District"). Neither parcel is 16th Section land. One parcel is leased by the County and utilized as a volunteer fire department. The other parcel includes a building that is leased to a private individual who operates a private business. A request has been made for Neshoba County to grade and gravel the road and lot on the parcel leased to the private individual. The County has graded and graveled the road on the first parcel for the county volunteer fire department and maintained the parking lot as well.

Question Presented

Under what authority would Neshoba County have to provide maintenance in the form of grading and graveling a road and lot on a parcel leased to the private individual, whether the request was from the private individual or the public school leasing the premises?

Response

Pursuant to Article 4, Section 66 of the Mississippi Constitution of 1890, the Neshoba County Board of Supervisors may not grade or gravel a road and lot that are on school property, even if requested by the School District, where the work requested is for the benefit of the private lessee and not for the benefit of the public as it would constitute a donation. Where, as here, the property is leased to a private individual for operation of a private business, there appears to be no public purpose involved. We note that it is conceivable that a school district could have a valid legal and/or contractual obligation to maintain the road and/or lot. Where a school district has such an obligation and depending on the facts of a specific case, it is possible that Section 65-7-74 and/or Section 19-3-42 of the Mississippi Code Annotated could provide authority for a county to maintain the road and lot at the request of a school district.

Legal Research and Analysis

Section 19-3-42(4) of the Mississippi Code Annotated provides:

In addition to the authority granted in subsection (1) of this section, from and after October 1, 1989, the board of supervisors of any county is further authorized, in its discretion, to maintain public school grounds of the county and to grade, gravel, shell or overlay, and/or to maintain gravel, shell, asphalt or concrete roads, driveways or parking lots of public schools of the county if, before engaging in such work, the board of supervisors shall spread upon its official minutes the written request of the school board for such work, the written approval of the board of supervisors for such work and the specific location of the school grounds or road, driveway or parking lot, to be worked.

Section 65-7-74 of the Mississippi Code Annotated specifically authorizes a county board of supervisors to construct roads into and on school district property and provides:

The board of supervisors of any county is hereby authorized, in its discretion, to construct, maintain and/or repair roads, driveways and parking areas into and on all property owned by any public school district within such county, and the expenditure of funds for such construction, repairs and maintenance is hereby authorized from any available funds.

However, Article 4, Section 66 of the Mississippi Constitution of 1890 provides:

No law granting a donation or gratuity in favor of any person or object shall be enacted except by the concurrence of two-thirds of the members elect of each branch of the Legislature, nor by any vote for a sectarian purpose or use.

Wade White, Esquire
April 1, 2019
Page 3

Even though Section 66 only mentions the Legislature, the Mississippi Supreme Court has applied this section to political subdivisions, i.e., counties and municipalities. **Golding v. Salter**, 234 Miss. 567, 107 So.2d 348 (1958)(See also Section 19-3-40(3)(d) which prohibits counties from using any public funds, equipment, supplies or materials for any private purpose).

Section 19-3-42(4) and Section 65-7-74 both authorize a county to use county funds and equipment to grade and gravel a road or parking areas/lots owned by a public school district within the county. In your factual scenario, the road and lot in question are owned by the county school district, but are being leased to a private individual who is operating a business on the property. While a county may pave roads where paving is required for public convenience, a county would not be authorized to "hard surface a portion of a public road" to the benefit of a private individual or developer. MS AG Op., Gex (August 25, 2000). Under the facts presented in your request letter, it appears that if the county were to grade and gravel the road and lot on public property, regardless of who requested the work, such work would solely benefit the individual lessee with a possessory interest in the land on which a business is being operated. The authority cited above prohibits a county from making a donation or from using public funds, equipment, supplies or materials for any private purpose. Consequently, the Neshoba County Board of Supervisors may not grade and gravel a road and lot on school-owned property for the sole purpose of benefitting a private individual leasing the property for the operation of a business. We note that if a school district had a valid legal and/or contractual obligation¹ to maintain the road and/or lot, it is possible that Section 65-7-74 and/or Section 19-3-42 of the Mississippi Code Annotated could provide authority for a county to maintain the road and lot at the request of a school district.

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

¹ Of course a school board could not simply contract to use public resources for a private purpose. In that event, generally, the contract would not be a valid legal obligation.