

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

April 26, 2019

Robert W. Lawrence, Esq.
Attorney, City of Crystal Springs
Post Office Box 473
Crystal Springs, MS 39059-0473

Re: Sewer customer request for diagnostic expense reimbursement

Dear Mr. Lawrence:

Attorney General Jim Hood has received your request for a formal opinion of this office and assigned it to me for research and reply.

Facts and Issue Presented

Your request letter states:

As City Attorney for the City of Crystal Springs, Mississippi, I am requesting an opinion on the following facts and questions.

Crystal Springs is a code charter municipality that provides sewer services to its citizens and customers. We have a customer who has had a long-standing, ongoing issue with sewer backups. The City has repeatedly used a sewer jet to clean the line. In addition, the customer has had private plumbers inspect the line and they suspected the issue was in the city line not the customer's service line. No one could definitively determine the source of the problem. The customer recently hired a firm to use a camera system to diagnose the source of the problem. The City and the customer agree that the camera clearly showed the source of the problem to be a partial collapse in the city line. The customer has presented a bill for the videoing of the line and requested the City to reimburse him. The work was not pre-approved by the City.

Question:

Under the facts as stated, I have the following question(s):

1. Under the above facts, may the City reimburse the sewer customer for the diagnostic inspection of the sewer line which revealed that the source of his sewer backups was the city line?

Discussion and Legal Analysis

In order to make a payment to a private individual, a municipality must either be authorized by statute to make a donation or the municipality must have some legal obligation requiring such payment. We are aware of no statute that would authorize a donation under these facts. Furthermore, your letter does not indicate any facts which suggest that the City of Crystal Springs contracted with either the resident or the vendor for the camera services on the subject sewer line. Thus, there does not appear to be a contractual obligation to make such payments.¹ It is possible that the resident may have some claim against the city with regard to the instant facts, but such a determination would require factual determinations that this office cannot make by official opinion.

If a property owner has a claim arising for damages out of tort or other tort-type claim, it is incumbent upon the property owner to make such claim as required by law. This office has previously opined that "in the event that a 'claim' is made with the municipality by the property owner for any alleged damage, a municipality is authorized to settle a claim for damages, pursuant to Mississippi Code Annotated Section 25-1-47(2) . . ." MS AG Op., Logan (Dec. 8, 2013). The statute provides:

(2) Any municipality of this state is hereby authorized and empowered, within the discretion of its governing authorities, to pay and satisfy any negotiated settlement of a claim or any judgment, fine, or penalty which may be made, assessed, or levied by any court against any municipal agent, officer, servant, employee, or appointee as a result of any actions of such municipal agent, officer, servant, employee, or appointee while acting as such.

Miss. Code Ann. Section 25-1-47(2)(2018).

Further, with regard to a municipality's authority to pay, we have stated that although "the filing of a lawsuit is not required to trigger a municipality's authority to settle a claim, the claim must be bona-fide and just." MS AG Op., Logan (Dec. 8, 2013)(*citing* MS AG Op., Hammack (February 28, 1997). We have further opined that "the municipality must make a factual finding that it is legally obligated for such claim and that the claim is not exempt from liability pursuant to Mississippi Code Annotated Section 11-46-9." *Id.* See *also*, MS AG Op., Smith (November 16, 2012); MS AG Op., McLaurin (July 16, 2004). Whether the City of Crystal Springs would be liable to a resident under the stated facts

¹Whether such a contractual obligation exists is a factual determination on which we cannot opine.


Robert W. Lawrence, Esq.
April 26, 2019
Page 3

involves a mixed question of law and fact that this office may not resolve by an official opinion.

If this office can be of further assistance, feel free to contact us.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By: 
Ricky G. Luke
Special Assistant Attorney General

OFFICIAL OPINION