

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

June 7, 2019

Raymond M. Baum, Esq.
Attorney, City of Winona
Post Office Box 586
Winona, Mississippi 38967-0586

Re: Conveying real property authorized by previous Board of Aldermen

Dear Mr. Baum:

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

Issues Presented

I have been asked, as City Attorney for the City of Winona, Mississippi, to seek an opinion from your office regarding the action that may, or should be taken by the sitting Mayor and Board of Aldermen that had been authorized by a previous Mayor and Board of Aldermen. Specifically, the facts, as I am informed, are as follows.

The minutes of the March 6, 1990 meeting of the Mayor and Board of Aldermen of the City of Winona contain the following language:

“On motion of Alderman Joan Emerson, duly seconded by Alderman Ed Hammond and passed unanimously, it was ordered the bid from [the purchaser] of \$3500.00 for the old building on Front Street, formerly occupied by the police department, be accepted and that the Mayor and City Clerk be authorized to execute a Quit Claim deed to the property.”

The City of Winona has no record that the payment referenced in the minutes of the March 6, 1990 meeting was ever tendered or received, and there is no record indicating a Quit Claim deed was ever delivered to the proposed Grantee. Additionally, it appears that [the purchaser] took

possession of the property sometime after the March 6, 1990 meeting and has maintained possession and control of the premises since. Also, it appears that the tax assessor's office never transferred the ad valorem tax records to reflect a change of ownership from the City to [the purchaser]. Therefore, the questions that we would like addressed are these:

1. May the City now execute a Quit Claim deed to the successful bidder as referenced in the minutes?
2. If the answer to the above question is affirmative, should the City calculate the change in value of \$3,500.00 (three thousand, five hundred dollars) to reflect the price inflation from 1990 dollars to 2019 dollars, or make a conveyance for the amount stated in the minutes?
3. Does the City of Winona have the authority to declare the proposed transaction from 1990 null and void due to laches, or any other equitable doctrine or matter or law?

I would appreciate a response as soon as possible so that the Governing Authorities of the City of Winona may resolve this issue promptly.

Response

Pursuant to Section 7-5-25 of the Mississippi Code, Attorney General's Opinions are reserved for designated public officials on questions of law and prospective actions. Therefore, to the extent that your inquiries involve questions of fact or ask us to validate or invalidate a past action, we are unable to respond by way of an Official Opinion. We offer the following comments for future guidance and informational purposes.

According to your request, there is no record of payment being made by the purchaser, a deed being delivered to the purchaser or any taxes being paid. In a somewhat similar situation dealing with the refund of a questionable deposit, this office opined:

Naturally, the municipality must make a factual finding and determination that the customer paid a utility deposit before making a refund in accordance with the provisions of Section 21-27-23. Absent such a determination, a refund would be improper as a donation. You identify various facts which may be relevant to the inquiry including the customer's assertion that he made the deposit and the fact that the town's past and present practices require a deposit before new services are activated. **However, the ultimate question that remains is whether the customer paid the deposit.** This question is a factual determination to be made by the municipality.

MS AG Op., Clark (December 1, 2017) (emphasis added). Here, the ultimate question is whether the conveyance and transaction occurred in 1990 and was not properly documented or such documentation was lost. Whether the City may now execute a quitclaim depends on whether legal or equitable title passed to the purchaser in 1990. Assuming the City can reasonably determine that the transaction occurred, the City received the full benefit of the bargain and the City retains no further interest in the property, the City may execute a quitclaim deed¹ in favor of the purchaser. We, however, see no reason the City would purport to change the consideration to present dollars since the execution of a quitclaim deed at this time would be contingent on a factual finding that the conveyance/transaction was consummated effective as of 1990. Whether the City could declare the agreement null and void due to laches and other equitable doctrines is highly fact-intensive and a mixed question of fact and law. Such a question could only be answered at this time by a court of competent jurisdiction.

We also note that your letter indicates that taxes have not been paid on the property since 1990. Assuming there is a determination that title passed to the purchaser, numerous issues arise as to unpaid taxes and the relative obligations and duties of both the City and purchaser. The answer to each of your questions will require extensive factual inquiry and determination. As such, this office cannot provide a dispositive

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¹The general authority of a municipality to quitclaim deed real property is found in Section 89-1-25 of the Mississippi Code which includes the authority to execute quitclaim where certain statutory conditions are met as follows:

In all cases where a board of trustees of any school district, governing authorities of any municipality or board of supervisors of any county in the State of Mississippi has heretofore attempted to convey or to obtain title to real property or any interest therein and thereafter any question of title arises with reference to the procedure of conveyance, description of the property attempted to be conveyed or obtained or other matters connected therewith, and the governing authority of said school district, municipality or county determines by order entered on its minutes that the said political subdivision is asserting no further claim of title, that at the time of said attempted conveyance or disposition of said property, if property was conveyed or disposed of by the political subdivision, the said political subdivision did then receive the fair and reasonable market value of said property, and that a period of at least five (5) years has elapsed from the date of the said original attempted conveyance or disposition or obtaining of title of said property; the said board of trustees of said school district, governing authorities of said municipality or board of supervisors of said county, as the case may be, is thereupon hereby authorized, in its discretion, to execute quitclaim deeds and disclaimers of title on behalf of said political subdivision, after which any right or claim of said political subdivision in and to said realty shall be cut off and not thereafter brought into issue. Any such quitclaim deed or disclaimer of title heretofore executed by or on behalf of said political subdivision in accordance with the foregoing shall likewise be valid if executed in accordance with the provisions hereof.

(Emphasis added).

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answer to your questions. Given the nature of this matter, the numerous fact issues and the multiple issues dependent on the fact determinations, we suggest that the City/Purchaser bring the matter before a court in the context of an action to quiet title. Absent such an action, it is unlikely that the issues raised in your request letter can be resolved.

If we may be of further service, please let us know.

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By:



Emiko Hemleben

Special Assistant Attorney General

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