

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

July 26, 2019

Mr. William Hall
Mayor, Town of Crosby
Post Office Box 338
Crosby, Mississippi 39633-0338

Re: Procedure for the sale of municipal real property

Dear Mr. Hall:

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

Background and Issues Presented

Your request states:

The Town of Crosby would like to request an opinion from your office regarding the procedures to follow to sell immovable property that belongs to the town.

In a follow-up telephone conversation, you informed our office that the property you are referencing was previously used as a park that contains a gazebo and several monuments that do not fall under the purview of the Mississippi Department of Archives and History ("MDAH").

Response

This office has issued several opinions dealing with the multiple methods of disposal available to a municipality regarding municipal real property. The determination as to which method is appropriate is one to be made by the governing authority itself. Generally speaking, in order for a municipality to dispose of property, the governing authority must make a factual finding on the minutes that the property is surplus.

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The primary authority for disposal of surplus property by a municipality is found at Section 21-17-1 of the Mississippi Code. Additionally, Section 17-25-25 of the Mississippi Code gives municipalities general authority to dispose of real property. This office has issued several opinions regarding disposal of surplus municipal property. For your convenience, I am attaching two (2) prior opinions for guidance. MS AG Op., Latham (May 26, 2017) and MS AG Op., Null (November 9, 2018). Furthermore, there are several statutes that give municipalities specific authority to sell real property. For example, Section 57-7-1 of the Mississippi Code allows municipalities to sell property to be used for industrial and commercial purposes. See MS AG Op., Manley (September 10, 2014).

In our telephone conversation, you mentioned that none of the monuments in the park were "historical monuments." We note, however, that Section 55-15-1 of the Mississippi Code regulates items other than monuments. It prohibits relocation, removal, or alteration of specified historical statues, monuments, memorials, or nameplates.¹ Furthermore, this section prohibits any person from preventing a public body responsible for maintaining any items covered by this section from protecting, preserving, caring for, repairing, or restoring the items. We refer you to the Mississippi Department of Archives and History for questions regarding any restrictions imposed in Section 55-15-1.

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¹ Section 55-15-81 states:

(1) None of the following items, structures or areas may be relocated, removed, disturbed, altered, renamed or rededicated: Any Revolutionary War, War of 1812, Mexican-American War, War Between the States, Spanish-American War, World War I, World War II, Korean War, Vietnam War, Persian Gulf War, War in Iraq or Native American War's statues, monuments, memorials or nameplates (plaques), which have been erected on public property of the state or any of its political subdivisions, such as local, municipal or county owned public areas, and any statues, monuments, memorials, nameplates (plaques), schools, streets, bridges, buildings, parks preserves, reserves or other public items, structure or areas of the state or any of its political subdivisions, such as, local, municipal or county owned public areas, which have been dedicated in memory of, or named for, any historical military figure, historical military event, military organization or military unit.

(2) No person may prevent the public body responsible for maintaining any of the items, structures or areas described above from taking proper measures and exercising proper means for the protection, preservation, care, repair or restoration of those items, structures or areas. The governing body may move the memorial to a more suitable location if it is determined that the location is more appropriate to displaying the monument.

(3) This section shall not apply to items, structures or areas located on property owned or acquired by the Mississippi Transportation Commission which may interfere with the construction, maintenance or operation of public transportation facilities.

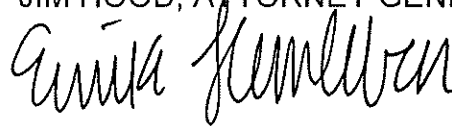
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If we may be of further assistance, please advise.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Emiko Hemleben
Special Assistant Attorney General

Attachments

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