

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

July 26, 2019

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

Re: Maintenance/Repair of private road to private cemetery

Dear Mr. White:

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

Background

Your letter states, in part:

A local resident owns land that has a private cemetery situated on the northern edge of his property. The southern border of this property is Mississippi Highway 486. The approximate distance between the private cemetery and Highway 486 is more than 1,500 feet. The landowner wants the county to improve, repair and maintain the private road between the highway and this private cemetery. He further claims there is a confederate soldier buried in the cemetery.

Questions Presented

- a.) Can Neshoba County improve and maintain a private road between Highway 486 and this private cemetery, whether or not it contains the grave of a confederate soldier or sailor that died in confederate service?
- b.) How does Neshoba County determine if there is in fact a confederate soldier or sailor that died in confederate service interred in this private cemetery?

- c.) Is an Official Certificate from the Board of Trustees of the State Department of Archives as to the existence of a confederate soldier or sailor that died in confederate service interred in this private cemetery required for Neshoba County to maintain the road to this private cemetery?
- d.) If there is in fact a grave of a confederate soldier or sailor who died in confederate service interred in this private cemetery, can Neshoba County repair and maintain the private road even though the cemetery is private and not public?
- e.) If Neshoba County is authorized to maintain and repair this road and then so chooses to maintain and repair this road, is the owner of the private road then allowed to decide who enters upon the road and is he allowed to place a gate on the private road?

Preface to Response

We preface our response by stating that it is our understanding that the private cemetery in question is not a nonprofit organization that is tax exempt under Section 501(c) of the United States Internal Revenue Code.

Response

We have previously opined that the authority for a county to repair and maintain driveways to a private cemetery is for private nonprofit cemeteries that satisfy the requirements of Section 19-3-42(5) of the Mississippi Code. MS AG Op., Barefield (July 19, 2002); MS AG Op., Brooks (November 9, 1994). Therefore, in response to your first question, Neshoba County would only be authorized to repair and maintain a private road between Highway 486 and the private cemetery in question if it determines factually that it is a "private nonprofit" cemetery. This is regardless of whether it contains the grave of a confederate soldier or sailor that died in confederate service. Even if it makes such a determination, it can only maintain the private road one hundred fifty (150) feet from the center of the highway.

We note that Section 19-5-93(a) authorizes county boards of supervisors, in their discretion, to donate money "for the location, marking, care and maintenance of the grave or graves and graveyard of Confederate soldiers or sailors who died in the Confederate service... ."

We also note that Section 39-5-19 authorizes boards of supervisors to repair, rehabilitate, or maintain, as a historical monument, any abandoned cemetery upon obtaining an official certificate from the State Department of Archives and History that such abandoned cemetery is of historical significance. This would not apply to the

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maintenance of a private road leading to the cemetery.

Your remaining questions are not questions of law that can be addressed in an official opinion or are rendered moot by our response to your first question.

Applicable Law

Section 19-3-42(5) provides:

In addition to any other authority granted in this section, the board of supervisors of any county is hereby authorized, in its discretion, to repair and maintain driveways and parking lots of: (a) any nonprofit organization in the county which is tax exempt under Section 501(c) of the United States Internal Revenue Code and which has as one (1) of its primary purposes for organization to aid and assist in the rehabilitation of persons suffering from drug abuse or drug addiction; and (b) any private, nonprofit cemeteries in the county. The board of supervisors of any county shall not be authorized under the provisions of this subsection to repair or maintain driveways or parking lots located more than one hundred fifty (150) feet from the center of any highway, road or street under the jurisdiction of the county.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Phil Carter
Special Assistant Attorney General