



Lynn Fitch
ATTORNEY GENERAL
OPINIONS

June 5, 2020

Honorable Andy Gipson
Commissioner of Agriculture and Commerce
Post Office Box 1609
Jackson, Mississippi 39215-1609

Re: Interpretation of Miss. Code Ann. Section 49-17-29(3)(f)

Dear Commissioner Gipson:

The Office of the Attorney General is in receipt of your request for the issuance of an official opinion.

Question Presented

Does Miss. Code Ann. Section 49-17-29(3)(f) currently impose a moratorium upon the issuance of permits for new swine concentrated animal feeding operations or the expansion of existing swine concentrated animal feeding operations?

Brief Response

There is no present moratorium imposed by Section 49-17-29(3)(f) upon the issuance of permits for new swine concentrated feeding operations or the expansion of existing swine animal feeding operations.

Applicable Law and Discussion

During the 1998 Regular Session, the Mississippi Legislature amended Sections 49-17-29(1)(b) and 49-17-29(2)(b) to prohibit the exemption of new or existing applications related to swine concentrated animal feeding operations from county regulations and ordinances in effect as of the effective date of said amendment.¹ Senate Bill 2895 also added Section 49-17-29(3)(f), which

¹ Senate Bill 2895 provided, in relevant part:

imposed a brief moratorium upon the issuance of any permit for a new swine concentrated animal feeding operation or expansion of an existing swine concentrated animal feeding operation before January 1, 2000, unless an application for that operation's new or modified permit was submitted prior to February 28, 1998.

Section 49-17-29. (1)(b) It is unlawful for any person to build, erect, alter, replace, use or operate any equipment which will cause the issuance of air contaminants unless that person holds a permit from the Permit Board (except repairs or maintenance of equipment for which a permit has been previously issued), or unless that person is exempted from holding a permit by a regulation promulgated by the commission. Concentrated animal feeding operations may be a source or a category of sources exempted under this paragraph. However, no new or existing applications relating to swine concentrated animal feeding operations within a county shall be exempted from regulations and ordinances which have been duly passed by the county's board of supervisors and which are in force on the effective date of this act.

* * * * *

(2)(b) It is unlawful for any person to carry on any of the following activities, unless that person holds a current permit for that activity from the Permit Board as may be required for the disposal of all wastes which are or may be discharged into the waters of the state, or unless that person is exempted from holding a permit by a regulation promulgated by the commission: (i) the construction, installation, modification or operation of any disposal system or part thereof or any extension or addition thereto, including, but not limited to, systems serving agricultural operations; (ii) the increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit; (iii) the construction, installation or operation of any industrial, commercial or other establishment, including irrigation projects or any extension or modification thereof or addition thereto, the operation of which would cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized; (iv) the construction or use of any new outlet for the discharge of any wastes into the waters of the state. However, no new or existing applications relating to swine concentrated animal feeding operations within a county shall be exempted from regulations and ordinances which have been duly passed by the county's board of supervisors and which are in force on the effective date of this act.

These amendments remain a part of Section 49-17-29, which provides, in relevant part, as follows:

(1)(b) It is unlawful for any person to build, erect, alter, replace, use or operate any equipment which will cause the issuance of air contaminants unless that person holds a permit from the Permit Board (except repairs or maintenance of equipment for which a permit has been previously issued), or unless that person is exempted from holding a permit by a regulation promulgated by the commission. Concentrated animal feeding operations may be a source or a category of sources exempted under this paragraph. However, no new or existing applications relating to swine concentrated animal feeding operations within a county shall be exempted from regulations and ordinances which have been duly passed by the county's board of supervisors and which are in force on June 1, 1998.

* * * * *

(3)(f) The Permit Board shall not issue any permit for a new swine concentrated animal feeding operation or the expansion of an existing swine concentrated animal feeding operation before January 1, 2000, unless the department received the application for that operation's new or modified permit before February 28, 1998, or except as provided in this paragraph (f). In issuing or modifying any permit for which the department received an application before February 28, 1998, the Permit Board shall apply those siting criteria adopted or used by the commission before February 28, 1998, unless federal law or regulations require more stringent criteria. The moratorium established in this paragraph shall not apply to the issuance of any permit for a new swine concentrated animal feeding operation or the expansion of an existing swine concentrated animal feeding operation that uses an animal waste management system which the applicant demonstrates to the Permit Board is innovative in significantly reducing the effects of the operation on the public health, welfare or the environment and which is approved by the Permit Board. The Permit Board shall not issue or modify more than five (5) permits under this innovative animal waste management system technology exemption to the moratorium.

Language used in a statute will be given its ordinary and usual meaning, if possible. *Entrican v. King*, 289 So. 2d 913, 917 (Miss. 1974); *see also*, MS AG Op., *Walters* (February 14, 1984); Miss. Code Ann. Section 1-3-65 (all words and phrases contained in the statutes are used according to their common and ordinary acceptance and meaning).

The Supreme Court has concluded that “[i]t is a well-recognized principle of law . . . that ambiguity must exist in the language used by the legislature in a statute before resort will be had to any rules of statutory construction or interpretation.” *R. Brent Forman et al. v. James W. Carter et al.*, 269 So. 2d 865 (Miss. 1972); *State v. Heard*, 151 So. 2d. 417, 420 (Miss. 1963); *see also*, MS AG Op., *Mosley* (October 23, 2015); MS AG Op., *Lanoux* (October 23, 2015); MS AG Op., *Bennett* (December 2, 2003); MS AG Op., *Hoffman* (November 1, 1982).

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It is our opinion that the provisions of Section 49-17-29(3)(f) are clear and unambiguous. The plain language of this statute indicated an intent on the part of the Legislature, at the time of the 1998 amendments, to impose a moratorium upon the issuance of permits for new, or an expansion of existing, swine concentrated animal feeding operations until January 1, 2000, unless an application had already been submitted before February 28, 1998. The statute thus prohibited the issuance of permits submitted between the dates of February 28, 1998 and January 1, 2000, subject, however, to the exemption for the issuance of up to five (5) permits for new, or an expansion of existing, swine concentrated animal feeding operations, which used an innovative animal waste management system.

It is, therefore, the opinion of this office that no moratorium presently exists upon the issuance of permits for new swine concentrated animal feeding operations or the expansion of existing swine concentrated animal feeding operations.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Kim Turner*

Kim Turner
Assistant Attorney General

OFFICIAL OPINION