



Lynn Fitch
ATTORNEY GENERAL
OPINIONS

June 26, 2020

Honorable Abe M. Hudson, Jr.
Mississippi Representative, House District 29
Post Office Box 564
Shelby, Mississippi 38744

Re: Separation of Powers

Dear Representative Hudson:

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

Question Presented

Is it a violation of the separation of powers doctrine for an individual to simultaneously hold the positions of County Administrator and State Representative?

Brief Response

Serving as county administrator and a member of the Mississippi House of Representatives would not result in a violation of the separation of powers doctrine. However, the matter may involve the State's Ethics in Government Law. Matters involving ethics in government are delegated to the Mississippi Ethics Commission.

Applicable Law and Discussion

The separation of powers doctrine places limitations on an individual's ability to serve simultaneously in different branches of government. *See* Article 1, Sections 1 and 2, Miss. Const. (1980).

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To determine if two positions would violate this doctrine, a determination must be made in which branch of government each job falls and if the position exercises core powers. A person who exercises “core powers” in one branch of government cannot simultaneously hold a position in another branch of government if that position also exercises “core powers.” “Core power” has been defined by the Court to include those circumstances “where the acts are ‘ongoing and are in the upper level of governmental affairs’ and have a substantial policy-making character.” *Dye v. State*, 507 So.2d 332 (Miss. 1987) (quoting *Alexander v. State by and through Allain*, 441 So.2d 1329, 1337 (Miss. 1983)).

This office has consistently opined that a member of the Mississippi House of Representatives exercises core powers in the legislative branch. *See*, MS AG Op., *Johnson* (March 6, 2015); MS AG Op., *Kemp* (August 6, 2004). While the county administrator is a member of the executive branch, the Mississippi Court of Appeals has held that the county administrator does not exercise core powers. *Zimmerman v. Three Rivers Planning & Dev. Dist.*, 747 So.2d 853, 860 (Miss. Ct. App. 1999); *see also*, MS AG Op., *Liner* (January 31, 2020). Therefore, serving as a member of the Mississippi House of Representatives and the county administrator would not result in a violation of the separation of powers doctrine.

To ensure the absence of a conflict of interest and/or other ethical considerations implicated by serving in these two positions simultaneously, you may seek to contact the Mississippi Ethics Commission.

If we may be of any further assistance to you in the future, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Kim P. Turner

Kim P. Turner
Assistant Attorney General