



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS

June 26, 2020

B. Sean Akins, Esq.  
Attorney for the Tippah County Board of Supervisors  
108 East Jefferson Street  
Ripley, Mississippi 38663

Re: Distribution of Funds Received Pursuant to Miss. Code Ann. Section 49-19-23

Dear Mr. Akins:

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

### **Questions Presented**

Is it within the discretion of the Board of Supervisors to allocate the 50% portion of the total funds received by the County pursuant to Miss. Code Ann. Section 49-19-23 to its public schools based upon the percentage of national forest land located within each respective school district?

Should the North Tippah School Board escrow those funds distributed by the County pursuant to Section 49-19-23 or may those funds be considered as “additional funds” so as to enable spending by the school district during the current tax year?

### **Background Facts**

Tippah County has received funds for years pursuant to Section 49-19-23, which provides for federal funds to be paid to those counties which have national forest lands included within their boundaries. While the law requires the County to expend fifty percent (50%) of such funds received pursuant to the Federal Weeks Act for the benefit of the public schools, Tippah County recently learned it had erroneously withheld the distribution of these funds for several years. The North Tippah School Board has requested the County pay those funds due to the North Tippah School District. However, since national forest land is located within two Tippah County school

districts, the Board would like to divide the 50% portion attributable to the school district between the North Tippah School District and the South Tippah School District based roughly upon the percentage of national forest land located within each district. Based upon the respective percentages of national forest land located within each school district, the North Tippah School District will receive 80% of the 50% portion for schools and the South Tippah School District would receive 20% of the 50% portion for schools.

### **Brief Response**

Section 49-19-23 does not set forth a specific formula by which the County must apportion the funds it has received to the school districts in which national forest lands are located. In the absence of such a statutory requirement, it is within the discretion of the Board of Supervisors to determine the distribution of the funds received pursuant to Section 49-19-23.

Miss. Code Ann. Section 7-5-25 provides the Office of the Attorney General the authority to issue official opinions upon matters of state law as they relate to the requestor's own office or agency. For this reason, we are unable to issue an official opinion in response to your second question which pertains to action on the part of the North Tippah School District.

### **Applicable Law and Analysis**

Section 49-19-23 states as follows:

All moneys paid to the State of Mississippi by the United States, on account of national forest lands in Mississippi, established under the provisions of the Weeks Law, so-called, being an Act of Congress, approved March 1, 1911, and amendments thereto, shall be apportioned by the state treasurer to the several counties in which such national forest lands are or may be, in proportion to the area of such national forest lands in each, as determined by the forest service of the United States Department of Agriculture.

The several sums so apportioned to each county shall be paid over by the state treasurer to the county depository within sixty (60) days after receipt thereof, and fifty percent (50%) of such funds received by the county shall be expended for the benefit of the public schools, and the remaining fifty percent (50%) of such funds shall, in the discretion of the board of supervisors, be expended for the benefit of the public roads or of the public schools of the school districts within which national forest lands may be located.

In any area affected not having a school located therein, all of such funds may be expended on roads.

In counties containing one hundred sixty thousand, two hundred fifty-three (160,253) acres of national forest lands located solely within three (3) supervisors districts, if the board of supervisors elects to apportion fifty percent (50%) of the

funds so received to public roads, the funds shall be expended upon the public roads within the supervisors district or districts within which the national forest lands are located.

In counties containing one hundred sixty thousand, two hundred fifty-three (160,253) acres of national forest lands located solely within three (3) supervisors districts, that portion of the funds allocated to public schools may, within the discretion of the county school board, be expended for the public schools within the county wherein the national forest lands are located.

In any county wherein there is located a national forest traversed by the Chickasawhay River and in which U. S. Highways 84 and 45 intersect, all such funds so received shall be expended in such manner as the board of supervisors shall determine in the public interest for the maintenance of public roads and support of the public schools.

By a 1985 opinion request, Sharkey County, Mississippi, asked whether it should distribute that portion of its proceeds received pursuant to Section 49-19-23 to the county's school districts based upon the number of school children educated or the number of square miles of forest land located within each respective school district. In response, we opined that Section 49-19-23 does not set out a formula by which the County must distribute its proceeds to the school districts received by virtue of forest lands located within the county. MS AG Op., *Weissinger* (October 28, 1985); *see also*, MS AG Op., *Bryant* (August 30, 1985); MS AG Op., *Cartier* (August 30, 1985); MS AG Op., *Mabus* (November 16, 1984); MS AG Op., *Mabry* (December 18, 1984).

In doing so, we cited *State v. Board of Sup'rs of Perry County*, 73 So. 2d 169 (Miss. 1954), a case in which the Supreme Court stated that the legislature "has not seen fit to require that the funds be apportioned to the several road districts or school districts in which the national forest lands are located according to the forest land acreage of each such district, and in the absence of such statutory requirement the court has no authority to compel the board of supervisors to apportion the funds in that manner." While the legislature could have provided for the distribution of the forest funds by a prescribed formula, it did not. Thus, it remains the opinion of this office that the distribution of the proceeds received by the county pursuant to Section 49-19-23 may be made as the Board of Supervisors, in its discretion, deems equitable.

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 P. Turner

Kim P. Turner  
Assistant Attorney General