



Lynn Fitch
ATTORNEY GENERAL
OPINIONS

May 13, 2020

Hon. Delrick Henderson
Humphreys County Supervisor
Post Office Box 547
Belzoni, Mississippi 39038

Re: Providing Counsel to Winning Candidate in an Election Contest

Dear Supervisor Henderson:

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

Question Presented

May the Humphreys Board of Supervisors hire an attorney to be paid from county funds to represent the current County Tax Assessor/Collector in an appeal of an election contest?

Background Facts

The County Tax Assessor/Collector, recently elected in November 2019, has requested the Humphreys County Board of Supervisors to retain private counsel on her behalf, to be paid by county funds, to represent her in an on-going election contest initiated by the previous county tax assessor/collector and now pending on appeal before the Mississippi Supreme Court.

Brief Response

The Humphreys County Board of Supervisors may hire and pay for with county funds a private attorney to represent the current tax assessor/collector if the board determines it has an interest in the litigation and spreads that factual determination upon its minutes.

Applicable Law and Discussion

Miss. Code Ann. Section 19-3-47(1)(b) authorizes county boards of supervisors, in their discretion, “to employ counsel in all civil cases in which the county is interested . . .” Where the board of supervisors makes a determination, consistent with the facts, that the county has an interest in certain litigation, the county would be authorized to retain and pay for legal counsel to defend that litigation. *See*, MS AG Op., *Snell* (January 28, 2016); MS AG Op., *Ferguson* (February 5, 1996).

This principle is equally applicable to defending persons in election contests. We have previously opined that a county board of supervisors may approve the payment of legal fees for the purpose of protecting the county's interest in seeing the validity of elections are upheld in order to avoid the expense involved in conducting new elections. MS AG Op., *Phillips* (January 30, 2008)(citing MS AG Op., *Ellis* (July 14, 1993)(the county has an interest in avoiding a special election).

It is, therefore, the opinion of this office that, pursuant to Section 19-3-47(1)(b), the Humphreys County Board of Supervisors may hire legal counsel to defend its current Tax Assessor/Collector, at the cost and expense of the county, if the board makes a factual determination, spread upon its minutes, that it has an interest in avoiding the disruption and economic cost of changing office holders and holding a new election for the office.

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/ Avery Mounger Lee

Avery Mounger Lee
Special Assistant Attorney General