



Lynn Fitch
ATTORNEY GENERAL

OPINIONS DIVISION

January 29, 2020

Mr. Eddie J. Fair
Hinds County Tax Collector
Post Office Box 1727
Jackson, Mississippi 39215-1727

Re: Clarification of Section 25-3-3 of the Mississippi Code Annotated

Dear Mr. Fair:

Attorney General Lynn Fitch is in receipt of your opinion request and has forwarded it to me for research and reply. In your letter, you are asking for further clarification regarding our opinion to you dated December 2, 2019, and the application of Section 25-3-3(5) of the Mississippi Code Annotated. You explain that at the last Hinds County Board of Supervisors meeting, the board voted to deduct three thousand five hundred dollars (\$3,500.00) from your salary because it believes you are entitled to only three thousand five hundred dollars (\$3,500.00) pursuant to Section 25-3-3(5), rather than the seven thousand dollars (\$7,000.00) you had been receiving up until that point.

Our office cannot comment on the vote of the Board of Supervisors as that is past action. Pursuant to Section 7-5-25, opinions of the Attorney General are issued on questions of law for the future guidance of those officials entitled to receive them. An Attorney General's opinion can neither validate nor invalidate past action of an officer or agency.

However, we will address your request for further clarification of our previous opinion to you and on the application of Section 25-3-3(5). Paragraph 5 of Section 25-3-3 provides:

In addition to all other compensation paid to assessors and tax collectors in counties having two (2) judicial districts, the board of supervisors shall pay such assessors and tax collectors an additional Three Thousand Five Hundred Dollars (\$3,500.00) per year. In addition to all other compensation paid to assessors or tax collectors, in counties maintaining two (2) full-time offices, the board of supervisors shall pay the assessor or tax collector an additional Three Thousand Five Hundred Dollars (\$3,500.00) per year.

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We have consistently opined, the first sentence of Section 25-3-3(5) makes it mandatory for a tax assessor in counties having two judicial districts to be paid an additional \$3,500.00. MS AG Op., Reynolds (May 3, 2002). As the Hinds County Tax Collector, elected to a county with two judicial districts, you are entitled to \$3,500.00 in addition to all other compensation paid to tax collectors.

Our office also has opined, a tax collector who maintains two separately-staffed, full-time offices is entitled to additional compensation of \$3,500.00 as provided in the last sentence of paragraph 5. This payment is also mandatory. See MS AG Op., Gilbert (September 10, 2008). As Tax Collector of Hinds County, you maintain two full-time, separately-staffed offices in separate locations, in each judicial district of Hinds County and are entitled to the \$3,500.00 referenced in the last sentence of paragraph 5. Therefore, pursuant to Section 25-3-3(5), you are entitled to additional compensation of \$7,000.00 total, in addition to all other compensation paid to tax collectors.

You further ask, if you are entitled to an additional \$7,000.00 pursuant to Section 25-3-3(5), rather than \$3,500.00, can you receive a retroactive payment for the additional \$3,500.00 for the month(s) you failed to receive part of your statutorily required compensation. While Section 96 of the Mississippi Constitution of 1890 strictly forbids payment of retroactive salary increases to any public employee, back pay clearly owed to a public employee but not paid because of an administrative error is permissible. See MS AG Op., Ball (August 14, 2000), MS AG Op., Genin (February 7, 1990), and MS AG Op., Cofer (September 28, 1982).

In Section 25-3-3(5), the Legislature provides the "board of supervisors shall pay" the tax collector the additional amounts. (Emphasis added). The language of the statute is mandatory, not permissive. Therefore, as tax collector in a county with two judicial districts, and one who maintains two separately-staffed, full-time offices in each judicial district, you are required to be paid an additional \$7,000.00 by the Board of Supervisors. The Hinds County Board of Supervisors may, upon a determination of a mistake or error, pay you additional compensation owed pursuant to statute retroactively.

If this office may be of any further assistance to you, please let us know.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By:



Avery Mounger Lee
Special Assistant Attorney General