

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

January 8, 2020

Heath S. Douglas, Esquire  
Attorney for the Board of Mississippi Levee Commissioners  
Post Office Box 918  
Greenville, Mississippi 38702-0918

Re: Authority of Levee Board to Construct a Berm for Federal Program

Dear Mr. Douglas:

OFFICIAL OPINION

Attorney General Jim Hood is in receipt of your opinion request and has assigned it to me for research and reply.

**Facts**

In your letter, you explain that the Board of Mississippi Levee Commissioners (hereinafter "Levee Board") is constitutionally tasked with the responsibility to operate and maintain a system of levees on the Mississippi River and other inland streams throughout the Mississippi Delta. The Levee Board works in conjunction with the United States Army Corps of Engineers (hereinafter "the Corps") in completing projects to improve/repair the levee system in furtherance of the federal Mississippi River and Tributaries Project. You further explain that in carrying out its federally-mandated duties, the Corps has determined that it needs to build a landside berm in an area on the protected side of the Mainline Mississippi River Levee known as Buck Chute in western Warren County. Landside berms are effective in protecting the integrity of the levee, particularly in sensitive areas such as Buck Chute. Lastly, your letter provides that the Levee Board owns the property required for the Corps to complete the berm project, but in surveying the property, it has been determined that a cemetery at the toe of the levee will be affected by the construction. The Corps has agreed to preserve the integrity of the graves, remove the headstones, and replace the headstones in the proper position after completion of the project.

### Question Presented

Does the Levee Board, as fee owner of land, have the authority to, through its partner the Corps of Engineers, have the right to construct a berm along the Mainline Mississippi River Levee, in furtherance of the Mississippi River and Tributaries Project?

### Legal Research and Response

In response, we must first clarify that our office is empowered by Section 7-5-25 of the Mississippi Code Annotated to render official opinions on matters of state law only, and not on matters of federal law. Because the United States Army Corps of Engineers is a federal entity, the relevant federal laws and regulations must be consulted regarding its ability to do the project proposed, and this office cannot render an official opinion as to the authority of the Corps to construct a berm or the terms of the federal Mississippi River and Tributaries Project. Thus, our opinion is limited to the authority of the Levee Board to construct, or partner with the Corps to construct, a berm along the Mainline Mississippi River Levee.

Article 11, Section 227 of the Mississippi Constitution of 1890 reads as follows:

**OFFICIAL OPINION**  
A levee system shall be maintained in the state as provided in this article.

Article 11, Section 232 of the Mississippi Constitution of 1890 reads as follows:

The commissioners of said levee districts shall have supervision of the erection, repair, and maintenance of the levees in their respective districts, and shall have power to cede all their rights of way and levees and the maintenance, management and control thereof to the government of the United States.

Additionally, the Mississippi Supreme Court in ***State v. Board of Levee Commissioners for the Yazoo-Mississippi Delta***, 932 So. 2d 12 (Miss. 2006), citing ***Ham v. Board of Levee Com'rs for Yazoo-Mississippi Delta***, 83 Miss. 534, 35 So. 943 (1904), stated:

It was the intention to vest the boards of levee commissioners with **plenary authority** to deal with the 'erection, maintenance and repair' of the levee system at their discretion, for the purpose of protecting the property of their respective districts from loss and destruction.

(Emphasis added).

Black's Law Dictionary (5<sup>th</sup> ed. 1983) defines plenary as "full, entire, complete, absolute, perfect, unqualified." Thus, it is clear that the Levee Board is granted the authority to



ensure that a levee system is maintained. Additionally, the Levee Board is granted the authority to turn over its authority to maintain the levees in its district to the United States Army Corps of Engineers, as it is a part of the federal government. Thus, it is the opinion of this office that the Levee Board has the authority to partner with the Corps to construct a berm along the Mainline Mississippi River Levee in order to protect the property of its district from loss and destruction.

However, absent an emergency<sup>1</sup>, please note that Sections 39-7-1 *et seq.* of the Mississippi Code Annotated prohibit anyone from altering any historic site, object, building, artifact, implement, any archaeological site or landmark of any kind located on land belonging to a city, county or other political subdivision, without a permit from the Board of Trustees of the Mississippi Department of Archives and History. Thus, before the letting of bids for the construction of a berm that will affect a cemetery located on public property, the Board of Levee Commissioners must notify the Department of Archives and History. Miss. Code Ann. Section 39-7-22(1). If the Department determines that the cemetery is a landmark or is historically significant and will be adversely affected by the public construction or improvement, the proposed public construction or improvement may not be commenced until the Department has issued a permit. Miss. Code Ann. Section 39-7-22(2).

Please also note that Section 97-29-19 of the Mississippi Code Annotated provides that every person who:

## OFFICIAL OPINION

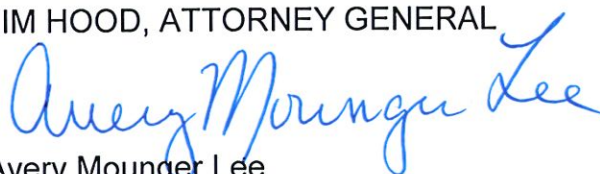
" . . . shall wantonly dig into or open the grave or other place of interment where the remains of any dead human body is interred, or wantonly disturb the remains of any dead human body therein interred, shall upon conviction be imprisoned in the penitentiary not exceeding five years or in the county jail not more than one year, or be fined not more than five hundred dollars or both."

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

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:

  
Avery Mounger Lee  
Special Assistant Attorney General

---

<sup>1</sup> See Miss. Code Ann. Sections 33-15-1 *et seq.*