



Lynn Fitch
ATTORNEY GENERAL
OPINIONS

June 5, 2020

Hugh D. Keating, Esq.
Attorney for Mississippi Gulf Coast
Regional Convention and Visitors Bureau
2909 13th Street, 6th Floor
Gulfport, Mississippi 39501

Re: Authority of CVB to borrow money

Dear Mr. Keating:

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

Questions Presented

Does Mississippi Gulf Coast Regional Convention and Visitors Bureau (“the CVB”) have the authority pursuant to its enabling legislation to apply for loan assistance and borrow funds under the Paycheck Protection Program Guarantee included in the CARES Act, if the CVB is determined to be eligible to participate in such program?

Does the forgiveness of a loan under the Paycheck Protection Program Guarantee included in the CARES Act convert the loan to a grant?

Regardless of whether the CVB is eligible to participate in the Paycheck Protection Program Guarantee program, does the CVB’s enabling legislation necessarily imply that it has the power and authority to borrow funds for uses consistent with the purpose and mission of the CVB?

Background Facts

The CVB is a political subdivision of the State of Mississippi consisting of commissioners appointed from Hancock, Harrison, and Jackson Counties. Chapter 926, House Bill 1716, Local and Private Laws of 2013 is the enabling legislation for the CVB.

Brief Response

The Attorney General is unable to respond by official opinion to your questions based upon an interpretation of the Paycheck Protection Program Guarantee included within the federal CARES Act or the eligibility of the CVB to participate therein. Official written opinions issued pursuant to Miss. Code Ann. Section 7-5-25 are limited to interpretations of Mississippi state law.

The enabling legislation for the CVB does not provide it with either the express or the implied authority to borrow money.

Applicable Law and Discussion

Agencies and other entities created by the Legislature have only those powers expressly provided by the Legislature and such other powers that are necessarily implied. MS AG Op., *Montgomery* (August 29, 1990) *citing* *Golding v. Salter*, 107 So. 2d 348 (Miss. 1958). Chapter 926, House Bill 1716, Local and Private Laws of 2013 grants no specific authority to the CVB to borrow money for uses consistent with its purpose and mission or otherwise.

Your request, however, acknowledges the absence of express authority and asks if the CVB has implied authority to borrow money pursuant to Section 5 of its enabling legislation, which states, in relevant part, as follows:

* * * * *

(iv) To have and exercise all powers necessary or convenient to effect any and all of the purposes for which the commission is organized, and further, to appoint and employ individuals and agencies acting in its behalf for any and all of the aforementioned powers and responsibilities;

(v) To have and exercise all powers necessary and convenient to conduct the business of promoting and managing conventions and to carry out the purposes of the convention staff of the Mississippi Coast Coliseum Commission by agreement between the commission and the bureau.

* * * * *

A similar question was asked by the Honorable Wingfield Glover, Jr. regarding the authority of the Meridian/Lauderdale County Partnership ("the Partnership), formed by Senate Bill 3177, Local and Private Laws of Mississippi 1991. While acknowledging the absence of specific power to borrow money, Mr. Glover believed the enabling legislation granted the Partnership the implied authority pursuant to Senate Bill 3177, Section 4, which provided, in pertinent part:

(1) The partnership is hereby granted the following powers, together with all powers incidental thereto or necessary for the performance of those hereinafter stated, in order to effectuate the purposes of this act:

* * * * *

(d) To request the governing authorities and/or the board of supervisors of the county to borrow money and issue negotiable promissory notes evidencing the same under the provisions of Sections 5 through 11 of this act, and, in addition thereto or in lieu of the pledges authorized in Section 11 of this act, to secure such notes by the execution of deeds of trusts and mortgages upon any real estate belonging to The Partnership.

* * * * *

Based upon the enabling legislation, this office opined that, the Partnership, in and of itself, did not have the power to borrow money, neither expressly nor “incidentally.” MS AG Op., *Glover* (December 20, 1995).

The Mississippi Supreme Court in *Mississippi Milk Commission v. Winn-Dixie*, 235 So. 2d 684, 688 (Miss. 1970), made the following statement:

No proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds. *American Brass Co. v. Wisconsin State Board of Health*, 245 Wis. 440, 15 N. W. 2d 27 (1944). Being a creature of the legislature, the Mississippi Commission is an agency with powers limited to those described in the statutes concerning it and when the statute is clear and unambiguous, the Court must apply the statute as written without the addition or deletion of any provision. The rule, therefore, is that an administrative agency is authorized to act only when and in the manner so provided by the legislature through the appropriate statutes. *Crosby v. Barr*, 198 So. 2d 571 (Miss. 1967); *L. & A. Constr. Co. v. McCharen*, 198 So.2d 240, *cert. den.* 389 U. S. 945, 88 S. Ct. 310, 19 L. Ed. 2d 301 (Miss. 1967); *South Mississippi Airways v. Chicago & Southern Airlines*, 200 Miss. 329, 26 So. 2d 455 (1946); *Edgerton v. Int'l Co.*, 89 So. 2d 488 (Fla. 1956).

It is the opinion of this office that the CVB has neither the express nor the implied authority to borrow money.

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/ Beebe Garrard

Beebe Garrard
Special Assistant Attorney General