

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

January 3, 2020

Mr. Leslie Childress
Mayor, Town of Flora
Post Office Box 218
Flora, MS 39071

Re: Energy Savings Agreement

Dear Mr. Childress:

Attorney General Jim Hood has received your request for an opinion and has assigned it to me for research and response.

Issue Presented

You ask whether a municipality is prohibited from binding a successor board to an energy savings agreement. Specifically, you provide the following:

The Town of Flora, Mississippi has been approached by Future Energy Solutions with a proposal to install new lighting fixtures and light bulbs in the Town of Flora's public buildings with the goal of saving significant energy costs to the Town of Flora. A copy of a proposed Energy Savings Agreement is attached hereto for your review. The Town of Flora is engaging in its due diligence regarding the proposed Energy Savings Agreement which is for the period of 15 years. One of the questions the Town of Flora has is whether the prohibition against binding successor administrations precludes the Town from entering into such an agreement. We would appreciate your Office's opinion in this regard as well as your Office's opinion on any other issues that your review of the Energy Savings Agreement may disclose.

Response

Pursuant to the authority granted to this office in Section 7-5-25 of the Mississippi Code, official opinions of the Attorney General are limited to questions of law for future guidance of those officials entitled to receive them and can neither validate nor invalidate past action. Furthermore, opinions of this office may not be issued which require our office to interpret contracts or to make factual determinations. Therefore, to the extent that your request requires this office to make determinations that exceed the limitations established in Section 7-5-25, we must decline to respond with an official opinion of this office on those particular issues.

Provided that the municipality is operating under the authority granted in Section 31-7-14, it may enter into an energy savings agreement for a contract term which exceeds the term of its current board; thereby binding a successor board to such energy savings agreement.

Applicable Law and Discussion

Generally, a municipality may not enter into a contract that includes a contract term exceeding the term of its current board, which takes away the successor board's rights and powers conferred by law, unless there is express statutory authority to do so. *Biloxi Firefighters Assoc. v. City of Biloxi*, 810 So.2d 589 (Miss.2002); *Edwards Hotel & City R. Co. et. al v. City of Jackson*, 51 So. 802 (Miss.1910). Thus, as a general rule, any long-term contract would be voidable by a successor board, unless the municipal governing authorities relied on specific statutory authority to the contrary.

In regard to energy efficiency contracts, Section 31-7-14 of the Mississippi Code specifically contemplates long-term contracts for energy efficiency services (i.e., energy services contracts, energy performance contracts and shared savings contracts). For example, Section 31-7-14(1)(b)(vi) provides that the maximum lease-purchase term for energy efficient equipment acquired in accordance with Section 31-7-14 "shall not exceed the lesser of twenty (20) years or the average useful life of the energy conservation measures from the date the energy conservation measures have been completed and accepted by the governmental unit." Furthermore, Section 31-7-14(2)(c) provides that the "term of any lease or lease-purchase agreement for energy efficiency services and/or equipment entered into under this section shall not exceed twenty (20) years, commencing on the completion of the installation of equipment or improvements under the contract." Lastly, Section 31-7-14(4)(a) expressly limits the term of any shared-savings contract, energy services contract, or energy performance contract, entered into pursuant to the provisions of Section 31-7-14, to a term of twenty (20) years or less. Thus, based on the above-referenced language, a municipality may enter into an energy savings agreement, in accordance with Section 31-7-14, for a term of

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twenty (20) years or less; thereby binding a successor board to such energy savings agreement.

As to your request that we opine "on any other issues" that may arise upon review of the referenced Energy Savings Agreement, we are unable to do so by way of official opinion. MS AG Op., Collins (February 19, 2010). We direct you to the provisions of Section 31-7-14, which provide the mandates and procedures for acquiring energy efficiency contracts. You should consult with your municipal attorney to obtain legal advice on any issues that may arise from the provisions of the agreement itself.

If our office may be of further assistance, please advise.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:


Leigh Triche Janous
Special Assistant Attorney General

OFFICIAL OPINION