



Lynn Fitch
ATTORNEY GENERAL
OPINIONS

June 26, 2020

Manya Creel Bryan, Esq.
Attorney for the City of Poplarville
Post Office Box 622
Picayune, Mississippi 39466

Re: Enrollment of Unpaid Fines

Dear Ms. Bryan:

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

Questions Presented

Pursuant to Miss. Code Ann. 99-37-13, may a municipal judge order the enrollment of unpaid fines and costs in the circuit clerk's judgment roll? If yes, when should enrollment occur?

May the municipal judge order the garnishment of wages or other income for the nonpayment of fines and cost?

If the defendant is declared indigent prior to his/her misdemeanor criminal conviction, does that in any way alter the court's authority to enroll the judgment?

Brief Response

The municipal court has the authority to enroll a judgment on the circuit clerk's judgment roll to establish a lien on a defendant's property. The enrollment may take place at any time after failure of a defendant to pay the fine, costs, or restitution. The municipal judge also has the authority to garnish a defendant's wages. The fact that a defendant is determined to be indigent would not prohibit the enrollment of the judgment. Any determination that the defendant is indigent would only affect the ability of the court to incarcerate the defendant for failure to pay a fine.

Applicable Law and Analysis

Miss. Code Ann. Section 99-37-13 allows courts to collect fines and costs that are not paid timely by any means authorized by law. Specifically, Section 99-37-13 states:

A default in the payment of a fine or costs or failure to make restitution or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine or restitution shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine or restitution has actually been collected.

This office has previously opined that unpaid fines may be enrolled on the circuit court's judgment roll to create a lien on the assets of a defendant. *See* MS AG Op., *Arnold* (November 1, 2009); MS AG Op., *Fortenberry* (July 19, 1995); MS AG Op., *Nash* (September 23, 1992). It remains the opinion of this office that the municipal court has the authority to enroll its judgment on the circuit court's judgment roll book to establish a lien on the assets of a defendant.

The statute does not contemplate the timing for an enrollment, but states only that a court has the authority to collect unpaid fines by any means as authorized by law. It is, therefore, the opinion of this office that the court should not enroll the judgment until there has been a default in the payment of fines, costs, or restitution payments.

This office has consistently opined that judges have the authority to garnish wages for the nonpayment of fines. *See* MS AG Op., *Arnold* (November 1, 2009); MS AG Op., *Dunn* (February 26, 1992); MS AG Op., *Fondren* (March 23, 1989).

The fact that a defendant is determined to be indigent would not prohibit the enrollment of the judgment. Any determination that the defendant is indigent would only affect the ability of the court to incarcerate the defendant for failure to pay a fine.¹

¹ Section 99-19-20.1 prohibits automatically incarcerating a defendant who is determined to be indigent. Section 99-19-20.1 states, in relevant part:

(1) Incarceration shall not automatically follow the nonpayment of a fine, restitution or court costs. Incarceration may be employed only after the court has conducted a hearing and examined the reasons for nonpayment and finds, on the record, that the defendant was not indigent or could have made payment but refused to do so. . . . If the judge determines that a defendant who claims indigence is not indigent and the defendant could have made payment but refused to do so, the case file shall include a written explanation of the basis for the determination of the judge. In justice and municipal court, such finding shall be included in the court's order.

(2) If it appears to the satisfaction of the court that nonpayment is not willful, the court shall enter an order that allows the defendant additional time for payment,

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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/ Kim P. Turner*

Kim P. Turner
Assistant Attorney General

OFFICIAL OPINION

reduces the amount of each installment, revokes the fine, in whole or in part, or allows the defendant to perform community service at the state minimum wage per hour rate. If the court finds nonpayment is willful after consideration of the defendant's situation, means, and conduct with regard to the nonpayment, the court shall determine the period of incarceration, if any, subject to the limitations set by law and subsection (3) of this section.