

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

January 8, 2020

Phillip L. Tutor, Esquire
Attorney, Pontotoc County Board of Supervisors
304 Turtle Creek Drive
Pontotoc, Mississippi 38863

Re: Local Government Debt Collection Setoff Act

Dear Mr. Tutor:

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

OFFICIAL OPINION

Issues Presented

In your request, you ask three questions regarding the Local Government Debt Collection Setoff Act, House Bill No. 991 (Laws of 2019, Regular Session), which was codified at Sections 27-7-801 *et seq.* of the Mississippi Code:

- 1) In Section 3(f), "Member Organization" is defined as ... The Mississippi Association of Supervisors for counties. May the County appoint or employ an entity, not a county employee, as its point of contact with the Mississippi Association of Supervisors, i.e., the local Planning & Development District?
- 2) In Section 6(2), may the County appoint or employ an entity, not a county employee, as its agent to provide written notice to a debtor that the ... County... intends to submit the debt owed by the debtor for collection by setoff, i.e., the local Planning & Development District?
- 3) In Section 6(3), may the County designate an entity to hold the hearing,

i.e., the local Planning & Development District? Secondly, must the hearing be physically held in the County of the debtor's residence, or may it be held in the County of the hearing entity (or person), i.e., the local Planning & Development District?

Responses

Response 1) No. The Local Government Debt Collection Setoff Act ("the Act") does not authorize the County to delegate its statutory duties assigned under the Act except to the member organization and as specifically described in the Act and further discussed in response to Question 3.¹

Response 2) The Act does not authorize the County to appoint an agent to provide written notice to the debtor.

Response 3) The Act specifically authorizes the governing body of the local government to designate a hearing officer to conduct the hearing.

Applicable Law and Discussion

As you note in your request, "'member organization' means the Mississippi Association of Supervisors for counties...or entities established through or contracted by these member organizations for the purpose of facilitating debt collection" under the Act. Miss. Code Ann. Section 27-7-805(f). "'Local government' means a county or municipality." Miss. Code Ann. Section 27-7-805(e). Section 27-7-807(2) specifically states that:

A local government may submit a debt owed to it for collection under this article. A local government that decides to submit a debt owed to it for collection under this article shall establish the debt by following the procedures set forth in Section 27-7-811 and shall submit the debt through a member organization.

Thus, while the County has the discretion on whether to submit a debt under the Act, if it chooses to do so, it must do so in accordance with Section 27-7-811, which provides:

(1) A local government may not submit a debt for collection under this article until it has given the notice required by this section and the claim has been

¹Our office is statutorily limited by Section 7-5-25 to providing official opinions to public entities regarding prospective questions of law pertaining to their respective offices. By definition, a "member organization" includes "entities established through or contracted by these member organizations (Mississippi Association of Supervisors or Mississippi Municipal League) for the purpose of facilitating debt collection under this article." Thus, a member organization may contract with third parties, which includes planning and development districts, for debt collection.

finally determined as provided in this section.

(2) A local government, or its member organization on its behalf, shall send written notice to a debtor that the local government intends to submit the debt owed by the debtor for collection by setoff. The notice shall explain the basis for the local government's claim to the debt, that the local government intends to apply the debtor's refund against the debt, and that a total collection assistance fee of twenty-five percent (25%) shall be added to the debt if it is submitted for setoff. The notice shall also inform the debtor that the debtor has the right to contest the matter by filing a request for a hearing with the local government, shall state the time limits and procedures for requesting a hearing and shall state that the failure to request a hearing within the required time will result in setoff of the debt.

(3) A debtor who decides to contest a proposed setoff shall file a written request for a hearing with the local government within thirty (30) days after the date the local government mails a notice of the proposed action to the debtor. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed as required in the notice provided by the local government. The governing body of the local government or a person designated by the governing body shall hold the hearing. In a hearing under this section, any civil or criminal issue that has been litigated in a court proceeding cannot be reconsidered.

(4) A decision made after a hearing under this article shall determine whether a debt is owed to the local government and the amount of the debt.

(5) Appeals from hearings held under this article shall be made to the circuit court of the county in which the debtor resides and shall be reviewed on the administrative record made at the hearing before the local government. The standard of review of such decisions shall be that established by Mississippi law pertaining to the review of all other administrative decisions made by political subdivisions.

Subsection (2) specifically states that the local government, or its member organization, is required to send notice to the debtor. It is the opinion of this office that the County cannot appoint a planning and development district to be a point of contact with the Mississippi Association of Supervisors. Nor can the County appoint a planning and development district as its agent to provide written notice to a debtor that the county intends to submit the debt owed by the debtor for collection by setoff.

With respect to your third question, Section 27-7-811(3) states:

A debtor who decides to contest a proposed setoff shall file a written request

for a hearing with the local government within thirty (30) days after the date the local government mails a notice of the proposed action to the debtor. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed as required in the notice provided by the local government. The governing body of the local government or a person designated by the governing body shall hold the hearing. In a hearing under this section, any civil or criminal issue that has been litigated in a court proceeding cannot be reconsidered.

(Emphasis added). Thus, it is the opinion of this office that the county board of supervisors has the authority to designate someone to conduct the hearing and make a recommendation to the board for a final determination.

You also ask whether the hearing must be held in the county of the debtor's residence or whether it can be held in the county where the hearing entity is located. The Mississippi Supreme Court has held that due process in an administrative hearing must include notice and an opportunity to be heard. *McGowan v. Mississippi State Oil and Gas Bd.*, 604 So.2d 312. Whether an individual's due process rights would be violated by holding an administrative hearing on a county matter outside the individual's county of residence is for a court of competent jurisdiction to determine.

If we may be of further service, please let us know.

OFFICIAL OPINION

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By:



Beebe Garrard
Special Assistant Attorney General