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ATTORNEY GENERAL
OPINIONS AND POLICY

August 10, 2020

Holmes S. Adams, Esq.
Madison County School Board Attorney
1018 Highland Colony Parkway, Suite 800
Ridgeland, Mississippi 39157

Re: School District Shortfall Statute

Dear Mr. Adams:

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

Issues Presented

Mississippi Code Annotated Section 37-57-108 (the “School Shortfall Statute”) authorizes a school district to issue a shortfall note “in the amount and in the manner set forth in Section 27-39-333” (the “General Shortfall Statute”). You ask:

Does the phrase, in the manner set forth in Section 27-29-333, mean that in order to avail itself of a shortfall note, a school district is also required to make the representation that the shortfall “will prevent the school district from meeting its financial obligations” which is contained in the General Shortfall Statute. *See* Miss Code Ann. Section 27-29-333(2).

(Emphasis in original).¹

Background Facts

In your request, you provide:

For fiscal year 2019-2020, the amount of revenue the District actually received from taxes levied by the Madison County Board of Supervisors was less than the

¹ We assume your reference to “Section 27-29-333” was a mistake and that you intended to cite to “Section 27-39-333.”

amount provided for in the District's duly adopted budget for the same fiscal year. Pursuant to Miss. Code Ann. Section 37-57-108, the Board intends to issue a shortfall promissory note in the amount of the shortfall (the difference of the amount budgeted and amount received) for fiscal year 2019-2020. That difference is \$1,585,721.39.

Brief Response

No. A school district is not required by Section 37-57-108, in order to issue a shortfall promissory note, to determine that the shortfall will prevent the school district from meeting its financial obligations.

Applicable Law and Discussion

The School Shortfall Statute, which is specific to local school districts, provides:

In the event that the amount of revenue collected or estimated to be collected from local sources, on behalf of a school district during a fiscal year, *is less than the amount provided for in the duly adopted budget of said school district for the fiscal year, then the school district may issue promissory notes in an amount and in the manner set forth in Section 27-39-333*, not to exceed the estimated shortfall of revenue from local sources, but in no event to exceed twenty-five percent (25%) of its budget anticipated to be funded from the sources of the shortfall for the fiscal year. A school district issuing notes under the provisions of this section shall not be required to publish notice of its intention to do so or to secure the consent of the qualified electors or the tax levying authority of such school district.

Miss. Code Ann. § 35-57-108 (emphasis added).

The General Shortfall Statute, which applies to political subdivisions in general, provides in relevant part:

(2) Any political subdivision which, during a fiscal year, estimates that the amount of the ad valorem taxes or other anticipated revenue from local sources to be collected therein *is less than the amount estimated at the time of formulation of its budget for the fiscal year due to circumstances which were unanticipated at the time of formulation of the budget and which will prevent the political subdivision from meeting its financial obligations may, with the approval of the levying authority for such political subdivision, issue promissory notes* in an amount equal to the estimated shortfall of ad valorem taxes and/or revenue from local sources but in no event to exceed twenty-five percent (25%) of its budget anticipated to be funded from the sources of the shortfall for the fiscal year.

(3) The proceeds of such notes shall be used in the budget or budgets in which the shortfall occurred and shall be used solely to offset the shortfall in such budgets for the fiscal year. The rate of interest paid thereon shall not exceed that amount set

forth in Section 75-17-105, Mississippi Code of 1972. The indebtedness shall be repaid in full, including interest thereon, in equal installments, during the three (3) fiscal years next succeeding the fiscal year in which the notes were issued. For the payment of such indebtedness, the levying authority for the political subdivision shall, at its next regular meeting at which ad valorem taxes are lawfully levied, levy an ad valorem tax sufficient to repay the indebtedness in full, including interest. The proceeds of the notes shall be included as proceeds of ad valorem taxes for the purposes of the limitation on increases in revenue for the next succeeding fiscal year under Section 27-39-305, 27-39-320, 27-39-321 or 37-57-107, Mississippi Code of 1972, whichever is applicable depending upon the purpose for which such proceeds are used.

Miss. Code Ann. § 27-39-333 (emphasis added).

In MS AG Op., *Cartier* (Oct. 6, 1994), our office was asked about the timing of a school district's budgetary shortfall given that the school district's and board of supervisor's fiscal year did not coincide. There, we stated that Section 37-57-108 "incorporates" Section 27-39-333, and thus applied the entirety of Section 27-39-333 to promissory notes issued by school districts pursuant to Section 37-57-108. The *Cartier* opinion was subsequently cited in support of the finding that, in order to issue a shortfall promissory note, a school district must demonstrate that the shortfall will prevent the district from meeting its financial obligations for that year. See MS AG Op., *Wallace* at *1 (Dec. 10, 1999); MS AG Op., *Caves* at *3 (Feb. 26, 2014); MS AG Op., *Necaise* at *3 (Apr. 8, 2016); MS AG Op., *Mayfield* at *2 (Apr. 3, 2010). However, the requirements for determining whether a promissory note may be issued under Section 37-57-108 differ from such requirements under Section 27-39-333. A school district need only "ma[ke] a good faith determination that the estimated revenue is less than the amount provided for in the duly adopted budget" before issuing a note "in the manner set forth in Section 27-39-333." See Miss. Code Ann. § 37-57-108.

Section 37-57-108 was enacted to provide a new method, specific to school districts, for issuing notes to meet revenue shortfalls. MS AG Op., *Dyson* at *2 (Aug. 18, 1993); MS AG Op., *Pope* at *3 (Sept. 19, 2014). Unlike promissory notes issued under Section 27-39-333, a school district issuing promissory notes under Section 37-57-108 is not required to "publish notice of its intention to do so or to secure the consent of the qualified electors or the tax levying authority of such school district." Miss. Code Ann. § 37-57-108.

The conditions precedent to issuing a shortfall promissory note are statutorily distinct as well. A political subdivision, other than a school district, may only issue a promissory note pursuant to Section 27-39-333 if it:

estimates that the amount of the ad valorem taxes or other anticipated revenue from local sources to be collected therein is less than the amount estimated at the time of formulation of its budget for the fiscal year due to circumstances which were unanticipated at the time of formulation of the budget and which will prevent the political subdivision from meeting its financial obligations

Miss. Code Ann. § 27-39-333(2). Under the School Shortfall Statute, a school district may issue a promissory note if “the amount of revenue collected or estimated to be collected from local sources, on behalf of a school district during a fiscal year, is less than the amount provided for in the duly adopted budget of said school district for the fiscal year.” Miss. Code Ann. § 37-57-108.

This office is of the opinion that the General Shortfall Statute’s requirement that a shortfall “prevent the political subdivision from meeting its financial obligations” is a condition precedent to issuing the shortfall note in the first place, and does not relate to the “manner” in which such note is issued. *See* Miss. Code Ann. § 27-39-333(2). Accordingly, the School Shortfall Statute’s reference to issuing notes “in the same manner set forth in Section 27-39-333” does not encompass the General Shortfall Statute’s condition precedent related to the issuer lacking the ability to meet its financial obligations.

Additionally, it is a well-settled principle of statutory construction that a specific statute controls over a general statute. *Benoit v. United Companies Mort. of Miss., Inc.*, 504 So. 2d 196, 198 (Miss. 1987) (“[W]here a special and particular statute deals with a special and particular subject its particular terms as to that special subject control over general statutes dealing with the subject generally” (quoting *Lincoln Cnty. v. Entrican*, 230 So. 2d 801, 804 (Miss. 1970))). Accordingly, for shortfall promissory notes issued by a school district, the School Shortfall Statute would control over the General Shortfall Statute, to the extent a conflict exists between the two. Thus, there is no requirement under the School Shortfall Statute that the school board determine that the shortfall will prevent the school district from meeting its financial obligations.

As noted above, in *Cartier*, this office opined that Section “37-57-108 incorporates Miss. Code Ann. Section 27-39-333,” and, for this reason, found that a school district seeking to issue shortfall notes must demonstrate that the shortfall would prevent the district from meeting its financial obligations. MS AG Op., *Cartier* (Oct. 6, 1994) (emphasis added). Our opinion in *Mayfield* adopted this same theory, MS AG Op., *Mayfield* at *2 (Apr. 3, 2010), and subsequent opinions reached this conclusion based on our *Cartier* opinion. *See* MS AG Op., *Necaise* at *3 (Apr. 8, 2016); MS AG Op., *Wallace* at *1 (Dec. 10, 1999). We believe this interpretation is too broad because it contradicts the express statutory language in the School Shortfall Statute, which provides that notes issued by school districts are only affected by the General Shortfall Statute with respect to the “amount” and “manner” in which the note is issued. To the extent this opinion conflicts with our prior opinions—namely, our *Wallace*, *Caves*, *Necaise*, *Cartier*, and *Mayfield* opinions cited herein—the conflicting portions of those prior opinions are hereby modified.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Very truly yours,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Beebe Garrard

Beebe Garrard
Special Assistant Attorney General