



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

July 31, 2020

Heather Ladner Smith, Esq.
Attorney, City of Bay St. Louis
Post Office Drawer 4248
Gulfport, Mississippi 39502-4248

Re: Electronic Storage of Minutes

Dear Ms. Smith:

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

Question Presented

Can the City of Bay St. Louis forego the use of physical minute books and store all minutes electronically?

Brief Response

The municipality may discontinue the use of bound minute books and store its minutes electronically provided, however, that the minutes comply with the signing and seal requirements of Miss. Code Ann. Section 21-15-33 and are available for public inspection.

Applicable Law and Discussion

All public bodies, including municipal governing authorities, are required to keep meeting minutes. Miss. Code Ann. Section 25-41-11 requires that:

- (1) Minutes shall be kept of all meetings of a public body, whether in open or executive session, showing the members present and absent; the date, time and place of the meeting; an accurate recording of any final actions taken at such meeting; and a record, by individual member, of any votes taken; and any other information that the public body requests be included or reflected in the minutes. *The minutes shall be recorded within a reasonable time not to exceed*

thirty (30) days after recess or adjournment and shall be open to public inspection during regular business hours.

- (2) Minutes of a meeting conducted by teleconference or video means shall comply with the requirements of Section 25-41-5.
- (3) Minutes of legislative committee meetings shall consist of a written record of attendance and final actions taken at such meetings.

(Emphasis added).

Miss. Code Ann. Section 21-15-33 further provides:

The minutes of every municipality must be adopted and approved by a majority of all the members of the governing body of the municipality at the next regular meeting or within thirty (30) days of the meeting thereof, whichever occurs first. Upon such approval, said minutes shall have the legal effect of being valid from and after the date of the meeting. The governing body may by ordinance designate that the minutes be approved by the mayor.

It shall not be necessary for each ordinance to be signed so long as it appears on the minutes of the municipality, *which minutes shall have been signed by the mayor or a majority of the governing body of the municipality and certified by the municipal clerk.*

(Emphasis added).

The duty to maintain these minutes falls to the municipal clerk by virtue of Miss. Code Ann. Section 21-15-17, which states, in relevant part:

It shall be the duty of the clerk of every municipality within the State of Mississippi to keep a record of permanent construction to be labeled "Municipal Minutes, City (or Town or Village, as the case may be) of _____," in which he shall record the proceedings and all orders and judgments of the governing authority of said municipality, and to keep the same fully indexed alphabetically, so that all entries on said minutes can be easily found. Said clerk shall likewise record in said minute record all ordinances in full, or in lieu thereof, the title of all ordinances. In either case, however, the ordinances in full shall be recorded in the ordinance record provided for in Section 21-13-13, to be kept by said clerk.

* * * * *

All official actions of the governing authorities of a municipality shall be evidenced only by official entries duly recorded on such minute record.

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We have previously opined that the “land rolls required to be maintained by the [chancery] clerk may be maintained in a digital or electronic format as opposed to paper copies.” *See*, MS AG Op., *McKenzie* (October 30, 2015). While this opinion was based, in part, upon Miss. Code Ann. Sections 27-3-61 and 27-3-83, which specifically allow for the electronic reproduction and/or storage of documents filed with and preserved by the Department of Revenue and the Commissioner of Revenue, it also relied upon Miss. Code Ann. Section 27-35-123, which prescribed no requirement that copies, or reproductions of such copies, of the land roll be in any particular form. *See also*, MS AG Op., *Allen* (February 21, 2014)(a printed hard copy of the certified list is sufficient to count as a tax sale as Miss. Code Ann. Section 27-41-79 does not require that the list be in a particular form, i.e., printed hardcopy or electronic).

We have also opined that a chancery clerk may electronically keep and maintain the tax book referenced in Miss. Code Ann. Section 27-43-9. *See*, MS AG Op., *Barber* (December 7, 2018). Similar to the statute in which the land roll was referenced in MS AG Op., *McKenzie*, Section 27-43-9, the statute in which the tax book was referenced in MS AG Op., *Barber*, imposes no requirement as to its form. However, Miss. Code Ann. Sections 9-5-137 and 9-5-163 specifically allow for the chancery clerk to electronically file, maintain and store all records, documents, files and instruments which by law are required to be recorded in his or her office.

Here, Section 21-15-17, as quoted above, does not prescribe a specific form by which municipal clerks are required to maintain municipal minutes. The only reference contained in the statute regarding a form of preservation is in the use of the phrase “permanent construction.” In speaking to the preservation of the meeting minutes of the county election commission, we concluded that, if official meeting minutes are not maintained in a bound form, then “they must be in a form that preserves such records completely and insures that the public has ready access to them.” MS AG Op., *Robinson* (March 14, 2008).

Though no statute thus far mentioned, nor Miss. Code Ann. Section 21-23-11, specifically allow for the municipal clerk to electronically preserve and maintain meeting minutes, Miss. Code Ann. Section 75-12-23(a), states as follows:

If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

- (1) Accurately reflects the information set forth in the record at the time it was first generated in its final form as an electronic record or otherwise; and
- (2) Remains accessible for later reference.

See also, MS AG Op., *Carroll* (September 8, 2000)([t]here is no statute which prohibits a municipal court from placing court records in a separate data base in a county computer in the justice court building. . . . The municipal court clerk must make sure that the court records in a computer data base are secure and that unauthorized persons do not have access to the records.)

Miss. Code Ann. Section 75-12-13 further provides that:

- (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- (b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- (c) If a law requires a record to be in writing, an electronic record satisfies the law.
- (d) If a law requires a signature, an electronic signature satisfies the law.

Pursuant to Sections 21-15-17 and 25-41-11, municipal meeting minutes must be made available to the public, for review and inspection, in the office of the municipal clerk during regular office hours. To ensure the public's free access to municipal meeting minutes which may be electronically stored and maintained, the municipal clerk's office must be equipped with a public-access computer terminal. *See, MS AG Ops., Barber and McKenzie.*

It is the opinion of this office that a municipality may forego the use of physical minute books and store all minutes electronically; provided, however, all requirements of Miss. Code Ann. Sections 21-15-1, *et seq.*, inclusive of the signing and seal requirements of Section 21-15-3, are satisfied and the minutes are publicly available for review and inspection.

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