



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

July 31, 2020

Loyd B. “Rob” Roberson, II, Esq.  
Attorney, Oktibbeha County Board of Supervisors  
Post Office Box 80265  
Starkville, Mississippi 39759

Re: County Responsibilities for River and Creek Repairs

Dear Mr. Roberson:

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

### **Question Presented**

Does the Oktibbeha County Board of Supervisors have the right to clean out and fix levies on a creek that runs through private property?

### **Background Facts**

A creek, located on private property, runs through the City of Starkville into Oktibbeha County. The creek is having major flooding issues; thus, the County Board of Supervisors is researching ways by which to fix the flooding in order to prevent damage to property and to both city and county roads.

### **Brief Response**

Upon a determination that the health, comfort and convenience of the inhabitants of Oktibbeha County will be promoted, the Board of Supervisors may provide the labor, materials and supplies to clean or clear the creek on private property so as to prevent additional flooding. However, the Board of Supervisors must satisfy the prerequisites of Miss. Code Ann. Section 19-5-92.1(2).

### **Applicable Law and Discussion**

Miss. Code Ann. Section 19-5-92.1(1) provides, in relevant part, that counties may incur costs and pay necessary expenses for labor, materials and supplies to clean or clear drainage ditches, creeks or channels or conduits, both natural and man-made, whenever the Board determines that such action will promote the health, comfort and convenience of the inhabitants of the county.

If the work performed pursuant to Section 19-5-92.1(1) takes place on private property, the Board of Supervisors must further satisfy the provisions of Miss. Code Ann. Section 19-5-92.1(2), which states as follows:

(a) Make a finding, as evidenced by entry upon its minutes, that such work and/or expenses are necessary in order to promote the public health, safety and welfare of the citizens of the county;

(b) Give notice, in writing, to all owners of property that will be affected by the work for such period of time as is reasonable to allow such owners to express any objections;

(c) Not receive written objection to the work by any owners of property that will be affected by the work within the period of time allowed to express objections; and

(d) Unless otherwise agreed, in writing, by the county and the landowner, construct or install a culvert or bridge, at the county's expense, at an appropriate location or locations to provide the landowner ingress and egress to all of the property to which the landowner had access immediately before performance of the work by the county.

The language of this statute provides the county the authority to take such action as may be necessary to prevent the creek from flooding in order to prevent damage to county property and roads, upon a finding of fact, spread upon its minutes, that the work performed will promote the health, comfort and convenience of the inhabitants of the county. Since the corrective action must take place upon private property, the Board is further required to satisfy the additional requirement of Section 19-5-92.1(2). *See*, MS AG Op., *Neyman* (June 13, 2012).

It is, therefore, the opinion of this office that, after making the appropriate findings on its minutes, Oktibbeha County may, in its discretion, take the necessary corrective action to fix the creek so as to prevent future flooding pursuant to its authority under Sections 19-5-92.1. However, the County must satisfy those prerequisites set forth by Section 19-5-92.1(2).

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

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Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Phil Carter*

Phil Carter  
Special Assistant Attorney General

OFFICIAL OPINION