



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

July 31, 2020

The Honorable Trent L. Howell  
Yalobusha County Justice Court Judge  
Post Office Box 947  
Water Valley, Mississippi 38965

Re: Enforcement of Section 97-15-30 of the Mississippi Code Annotated

Dear Judge Howell:

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

### **Questions Presented.**

What is the process to commence a misdemeanor action in Justice Court?

Would a county patrolman, employed by the board of supervisors, be eligible to bring a cause of action based upon a violation of Miss. Code Ann. Section 97-15-30?

Is the fifty-dollar (\$50.00) assessment, provided by Miss. Code Ann. Section 97-15-29(7), applicable to convictions pursuant to Section 97-15-30.

### **Brief Response**

Commencement of a case in Justice Court is governed by Miss. Code Ann. Section 99-33-2.

County patrolmen, employed by the board of supervisors, do have the power to enforce violations of Section 97-15-30.

The fifty-dollar (\$50.00) assessment provided by Section 97-15-29(7) would not be applicable to a conviction pursuant to Section 97-15-30.

### Legal Analysis

Commencement of a case in justice court is governed by Section 99-3-2 and Rule 3.01 of the Uniform Rules of Procedure of Justice Court. Section 99-3-2 states, in pertinent part:

- (1) Anyone bringing a criminal matter in the justice court shall lodge the affidavit with the judge or clerk of the justice court. . . .

Rule 3.01 states that the Mississippi Rules of Criminal Procedure govern criminal procedure in justice courts. Rule 2.1(a) of the Rules of Criminal Procedure states:

**2.1(a) Commencement.** All criminal proceedings shall be commenced either by charging affidavit, indictment, or bill of information.

Law enforcement officers, however, have the authority to make an arrest without a warrant for misdemeanors that occur in their presence pursuant to Miss. Code Ann. Section 99-3-7(1), which states that, “an officer or private person may arrest any person without warrant, for an indictable offense committed, or a breach of the peace threatened or attempted in his presence. . . .”

An offense is committed “in the presence” of an officer “when he acquires knowledge thereof through one of his senses.” *Corry v. State*, 710 So. 2d 853, 856 (Miss. 1998)(citing, *Moss v. State*, 411 So.2d 90, 95 (Miss.1982); *Reed v. State*, 199 So.2d 803 (Miss.1967)).

In response to your second question, this office has previously opined:

. . . [A] county patrolman has the power to patrol the roads of the county and to enforce the road and motor vehicle laws. MS AG Op., Barry (May 31, 1996), and cases cited therein. However, they do not have general criminal law enforcement authority. Therefore, it is our opinion that the board of supervisors may employ county patrolmen and include in their duties the power to enforce violations for littering and dumping on the county roads and right-of-ways in violation of Sections 97-15-29, 97-15-30 and 97-15-31. They may also enforce weight limit statutes and ordinances. Such county patrolmen are employees of the board of supervisors and need not be deputized by the sheriff.

MS AG Op., *Palmer*, April 28, 2000. (Emphasis added).

In response to your third question, Section 97-15-30(3)(a) states:

- (3)(a) Any person who violates this section in an amount not exceeding fifteen (15) pounds in weight or twenty-seven (27) cubic feet in volume and not for commercial purposes is guilty of littering and subject to a fine as provided in Section 97-15-29, which provides fines and penalties for littering with a substance likely to ignite grass. . . .

(Emphasis added).

The Honorable Trent L. Howell

July 31, 2020

Page 3

Section 97-15-29(3) imposes a fine of not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250.00) upon a conviction. Section 97-15-29(7) though, imposes an additional fine in the amount of fifty dollars (\$50.00) “on each violation of this section.” Based upon a literal interpretation of this statute, it is the opinion of this office that, the additional fine imposed by Section 97-25-29(7) may only be imposed upon a conviction under Section 97-15-29 and is not applicable to a conviction under Section 97-15-30.

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