



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

July 31, 2020

Hon. Willie L. Bailey
Bailey & Griffin, P. A.
1001 Main Street
Greenville, Mississippi 38702-0189

Re: Reconsideration of May 13, 2020 Opinion to Supervisor Delrick Henderson
Providing Counsel to Winning Candidate in an Election Contest

Dear Representative Bailey:

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

Question Presented

May the Humphreys County Board of Supervisors hire an attorney to be paid from county funds to represent the current County Tax Assessor/Collector in an appeal of an election contest?

Background Facts

In response to a written opinion request, this office issued an official opinion to Humphreys County Supervisor Delrick Henderson dated May 13, 2020. The question presented by the initial request asked whether the Humphreys County Board of Supervisors could hire an attorney, to be paid from county funds, to represent the current Tax Assessor/Collector in an appeal of an election contest challenging her recent election.

The facts as set forth in the initial request and recited by the May 13, 2020 opinion to Mr. Henderson indicated that that current Tax Assessor/Collector had requested the Humphreys County Board of Supervisors to pay for independent counsel retained by her to represent her in the appeal of an election contest which challenged her election in Nov. 2019.

In your request for reconsideration of the May 13, 2020 opinion issued to Mr. Henderson, you have provided the following additional facts:

1. At the time of the initial request for an opinion, a specially appointed Circuit Court Judge had already declared the Nov. 2019 election of the Humphreys County Tax Assessor/Collector as null and void. In response, the Humphreys County Board of Supervisors appointed the declared winner of the Nov. 2019 election as an Interim Tax Assessor/Collector until the special election is held on Aug. 3, 2020.
2. The Tax Assessor/Collector retained her own independent counsel to represent her in the election contest at the lower court level and on appeal. The Humphreys County Board of Supervisors did not hire counsel for the Tax Assessor/Collector.
3. The Humphreys County Board of Supervisors has no interest in the election contest of the Tax Assessor/Collector, as a special election has already been ordered by the Circuit Court to be held on August 3, 2020.

Brief Response

By virtue of the authority granted to the Office of the Attorney General, this office cannot opine upon the terms and provisions of a court order.

Furthermore, this office relies upon the facts as set forth by the specific written request seeking an official opinion and cannot assume facts or make any factual determinations upon which to base an official opinion or provide guidance to the requesting party.

Considering the additional facts as provided by this request, we provide the same opinion as that in MS AG Op., *Henderson* (May 13, 2020), which is predicated upon several previously issued opinions of this office. *See*, MS AG Ops., *Snell* (January 28, 2016); *Phillips* (January 30, 2008); *Ferguson* (February 5, 1996); *Ellis* (July 14, 1993).

The Humphreys County Board of Supervisors *may* hire and pay for with county funds independent counsel retained to represent the current tax assessor/collector *if* the board determines it has an interest in the litigation and spreads that factual determination upon its minutes. MS AG Op., *Henderson* (May 13, 2020)(emphasis added).

Applicable Law and Discussion

As stated in the *Henderson* opinion, the Humphreys County Board of Supervisors has the discretion to pay the legal fees and expenses of legal counsel representing the tax assessor/collector in defense against an election contest pursuant to Miss. Code Ann. Section 19-3-47(1)(b). Conversely, however, the Humphreys County Board of Supervisors has the discretion to not pay the legal fees and expenses of legal counsel representing the tax assessor/collector in defense against an election contest pursuant to Section 19-3-47(1)(b).

The county is authorized to pay the legal fees and expenses of independent counsel representing the tax assessor/collector in defense against an election contest if the board of supervisors makes a determination, consistent with the facts, that the county has an interest in the litigation. *See*, MS

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AG Op., *Snell* (January 28, 2016); MS AG Op., *Ferguson* (February 5, 1996); MS AG Op., *Ellis* (July 14, 1993)(the county has an interest in avoiding a special election).

We, therefore, confirm our opinion as set forth in MS AG Op., *Henderson* (May 13, 2020), but emphasize that it is within the discretion of the Humphreys County Board of Supervisors to pay the legal fees and expenses of counsel representing the current tax assessor/collector in defense against the appeal of the challenge against her Nov. 2019 election. However, if the Board has made the factual determination, spread across the minutes, that the county has no interest in the tax assessor/collector's election contest or in the avoidance of a special election, as you state within your request, then the Board of Supervisors may not pay those legal costs as the county's stated interest in the litigation is a prerequisite to the payment of such legal costs pursuant to Section 19-3-47(1)(b).

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