



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

October 7, 2020

Jamie F. Lee, Esq.
Board Attorney, Cleveland School District
Post Office Box 1209
Cleveland, Mississippi 38732

Re: School Closures

Dear Ms. Lee:

The Office of the Attorney General has received your request for an official opinion.

Questions Presented

1. If the Cleveland School Board (the “Board”) makes the requisite factual finding, does it have authority to close its schools due to the COVID-19 pandemic and during such closure, provide no instruction to students?
2. If the answer to Question Number 1 is “yes,” does the Board have authority to pay its employees during the closure, regardless of the hours actually worked?

Brief Response

In response to your first question, yes. Pursuant to Mississippi Code Annotated Section 37-13-65, upon application from the school board, the superintendent may close any school within his or her district due to an “epidemic prevailing in the school district” or “because of the death, resignation, sickness or dismissal of a teacher or teachers.” However, the school board must keep its schools in session for the mandatory number of days required by Section 37-13-63, unless this requirement is modified by the Governor and/or the State Board of Education.

In response to your second question, compensating an employee for hours not actually worked would be an unlawful donation violating Section 96 of the Mississippi Constitution. However, depending upon the facts, the Board may have authority to place its employees on administrative leave with pay.

Applicable Law and Discussion

Pursuant to Section 7-5-25 of the Mississippi Code, this office can only issue official opinions on

matters involving prospective actions. An official opinion will not validate or invalidate a past action. Accordingly, this opinion relates only to prospective actions taken by the Board.

With respect to your first question, Mississippi Code Annotated Section 37-13-65 governs closing schools, under certain circumstances, and provides:

Upon application from the school board, the superintendent of schools may close any school because of an epidemic prevailing in the school district or because of the death, resignation, sickness or dismissal of a teacher or teachers or because of any other emergency necessitating the closing of the school. However, all such schools so closed shall operate for the required full time after being reopened during the scholastic year, unless the school board of the local school district submits a plan to alter the school term that is approved by the State Board of Education under the authority of Section 37-13-63(2).

Miss. Code Ann. § 37-13-65. Accordingly, Mississippi law explicitly authorizes school closure based on an “epidemic prevailing in the school district” or “because of the death, resignation, sickness or dismissal of a teacher or teachers.” *Id.*

However, as set forth in Section 37-13-65, schools must be in session for the requisite number of days proscribed by law. Pursuant to Section 37-13-63, school must be in session for a minimum of one hundred eighty days in each scholastic year. Nevertheless, the State Board of Education has authority to allow a school district to operate for less than one hundred eighty days in certain circumstances. *Id.* Typically, local school districts set the opening and closing day of the school term pursuant to Section 37-13-61. However, on August 4, 2020, Governor Tate Reeves issued Executive Order 1517, which delayed the start of school for grades seven through twelve for several counties, including all public schools located in Bolivar County. On August 6, 2020, the State Board of Education subsequently granted a waiver allowing certain school districts, including those in Bolivar County, to reduce the instructional calendar by up to ten days.

Thus, it is the opinion of this office that if a local school district makes the requisite factual findings, it has the authority pursuant to Section 37-13-65 to close one or more of its schools due to an “epidemic prevailing in the school district” or “because of the death, resignation, sickness or dismissal of a teacher or teachers.” However, the school district must comply with the requirements in Section 37-13-63 regarding the number of days a school must be in session during a scholastic year, which may be modified by the Governor and/or the State Board of Education.

Turning to your second question, with respect to employee compensation, you must consider Section 96 of the Mississippi Constitution, which provides:

The Legislature shall never grant extra compensation, fee, or allowance, to any public officer, agent, servant, or contractor, after service rendered or contract made, nor authorize payment, or part payment, of any claim under any contract not authorized by law; but appropriations may be made for expenditures in repelling invasion, preventing or suppressing insurrections.

MISS. CONST. art. IV, § 96. Compensating an employee for time he or she did not work would be an unlawful donation in violation of Article 4, Section 96 of the Mississippi Constitution.

However, depending upon the facts, the Board may have authority to place its employees on administrative leave with pay. House Bill 1647, signed into law by the Governor on March 19, 2020, authorizes local school districts to grant administrative leave with pay in the event of certain disasters or emergencies:

From and after March 14, 2020, the board of supervisors of any county, the governing authority of any municipality and the local school board of any public school district may grant administrative leave with pay during the affected period within the affected county, municipality or school district to the employees of such governmental entities on a local or statewide basis in the event of extreme weather conditions or in the event of a man-made, technological or natural disaster or emergency, if such event has resulted in an emergency declaration by the Governor. Any employee on a previously approved leave during the affected period shall be eligible for such administrative leave granted by the governing authority, and shall not be charged for his or her previously approved leave during the affected period.

H.B. 1647, Reg. Sess. (Miss. 2020).

Accordingly, a school district may not pay its employees for time not worked, as such would be an unlawful donation in violation of Section 96 of the Mississippi Constitution. However, a school district could possibly place its employees on administrative leave with pay pursuant to H.B. 1647.

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/ Beebe Garrard*

Beebe Garrard
Special Assistant Attorney General