



September 29, 2020

Robert O. Allen, Esq.
Board Attorney, Lincoln County Board of Supervisors
Post Office Box 751
Brookhaven, Mississippi 39602

Re: Authority to grant county employees administrative leave with pay

Dear Mr. Allen:

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

Background Facts

Executive Order 1460, issued by Governor Reeves, authorizes county boards of supervisors, municipal governing authorities, and local school districts to grant administrative leave with pay for certain specified reasons. You state that the Lincoln County Board of Supervisors (the "Board") adopted a resolution stating that it will not grant such leave.

Notwithstanding that resolution, the Lincoln County Tax Assessor/Collector (the "Tax Assessor/Collector") sent some of his employees home on administrative leave, and the Board has refused to pay those employees for days they were not at work.

In a telephone call following the submission of your request, you stated that the Tax Assessor/Collector has not adopted a separate system of personnel administration applicable to his employees. Rather, his employees are governed by the policies enacted by the Board.

Question Presented

Who has authority to grant administrative leave with pay pursuant to Executive Order 1460, so the Board will know whether to pay the employees in question.

Brief Response

Executive Order 1460 authorizes only a county board of supervisors, the governing authority of any municipality and the local school board of any public school district to grant their employees

administrative leave with pay under certain circumstances. Additionally, Mississippi Code Annotated Section 19-3-63(2) authorizes county elected officials, other than a county supervisor, to adopt their own leave policies applicable to their employees and file such written policies with the board of supervisors. However, because the Tax Assessor/Collector had not filed a separate leave policy with the Board, his employees may only enjoy leave as lawfully granted by the Board.

Applicable Law and Discussion

Pursuant to Section 7-5-25 of the Mississippi Code, the Attorney General may not issue official opinions on the past actions of public officials. Therefore, we must respectfully decline to address the action taken by the Tax Assessor/Collector.

We may, however, address the prospective issue of whether the Board should pay the employees in question. Executive Order 1460, issued by the Governor on March 19, 2020, provides, in pertinent part:

7. That due to the State of Emergency and pursuant to Mississippi House Bill No. 1647, 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 their employees administrative leave with pay for any one or more of the following reasons as determined by the governing authority of such county, municipality or school:
 - a. The period(s) of time that the employee's employer has closed in response to COVID-19,
 - b. The period(s) of time that the employee's supervisor has determined the employee's duties are deemed non-essential during any period of time during the State of Emergency,
 - c. The period(s) of time that the employee or a member of their immediate household is placed in quarantine or isolation as a result of being diagnosed with COVID-19,
 - d. Other reasons as determined by the governing authority in consultation with a health care professional that are necessary to prevent the risk of possible transmission of COVID-19 within the employee's workplace.

Exec. Order No. 1460 (Miss. 2020). By Executive Order 1495, issued on June 10, 2020, the Governor rescinded the above-quoted provisions of Executive Order 1460.

Cited in Executive Order 1460, House Bill 1647 was signed into law by the Governor on March 19, 2020, and authorizes a county board of supervisors, the governing authority of any municipality and the local school board of any public school district to grant their employees administrative leave with pay. That legislation provides:

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).

As a plain reading of both authorities demonstrates, Executive Order 1460 and House Bill 1647 authorize only three groups of individuals to grant administrative leave with pay: (1) a county board of supervisors; (2) the governing authorities of a municipality; and (3) the local school board of any school district. *Id.*; Exec. Order No. 1460 (Miss. 2020).

However, Mississippi Code Annotated Section 19-3-63 authorizes both a county board of supervisors *and county elected officials*, other than a member of the board of supervisors, to enact leave policies for their respective employees:

(1) The board of supervisors of each county by resolution adopted and placed on its minutes may establish a policy of sick leave and vacation time for employees of the county not inconsistent with the state laws regarding office hours and holidays.

(2) *Notwithstanding the provisions of subsection (1) of this section, each elected official of the county, other than a member of the board of supervisors, who is authorized by law to employ, may, by written policy filed with the clerk of the board of supervisors, establish a policy of sick leave and vacation time for his employees which may be inconsistent with the policy established by the board of supervisors but which shall not be inconsistent with the state laws regarding office hours and holidays. If such elected official fails to adopt and file such a policy with the clerk of the board of supervisors, the policy adopted by the board of supervisors for sick leave and vacation time for county employees shall apply to employees of such elected official.*

(3) The board of supervisors of any county *and each elected official of the county who is authorized by law to employ* shall enact leave policies to ensure that a public safety employee is paid or granted compensatory time for the same number of holidays for which any other county employee is paid.

Miss. Code Ann. § 19-3-63 (emphasis added); *see also* Miss. Code Ann. § 25-11-103(1)(i) (citing governing authority of a political subdivision's power to adopt leave policies). Accordingly, if the Tax Assessor/Collector had formulated a "written policy filed with the clerk of the board of supervisors, [which] establish[ed] a policy of sick leave and vacation time for his employees," the Tax Assessor/Collector's employees would be entitled to administrative leave with pay in

accordance with such policy. *See* MS AG Op., *Prescott* at *1 (Jan. 10, 1997). In the absence of such a separate policy by the Tax Assessor/Collector, his employees may enjoy leave only as properly authorized by the Board, either set forth in a policy adopted pursuant to Sections 19-3-63 or 25-11-103(1)(i), or granted pursuant to Executive Order 1460 or House Bill 1647.

Because the Tax Assessor/Collector had not filed a separate leave policy with the Board, only the Board is authorized to grant leave to the Tax Assessor/Collector's employees.

Prior opinions issued by this office suggesting county elected officials, other than county supervisors, lack authority to enact leave policies applicable to their employees are hereby withdrawn or modified to conform to this opinion. *See e.g.*, MS AG Op., *Beasley*, at *1 (May 17, 1989); MS AG Op., *Haywood* at *4 (May 1, 2012); MS AG Op., *Cruz* at *2 (Sept. 21, 1989).

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/ *Phil Carter*

Phil Carter
Special Assistant Attorney General

OFFICIAL OPINION