



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

November 10, 2020

The Honorable Ben Gaston  
District 3 Supervisor, Sunflower County  
100 Dogwood Circle  
Indianola, Mississippi 38751

Re: Rental Space for District Attorney

Dear Mr. Gaston:

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

### **Question Presented**

Is the Sunflower County Board of Supervisors (the “Board”) authorized to rent space to the district attorney or provide funds to the district attorney for him to rent office space near, but not in, the courthouse?

### **Brief Response**

Yes. A board of supervisors may provide funding to the district attorney’s office for the purpose of renting office space, provided the board determines, consistent with the facts, that such funding is necessary for the proper prosecution of criminal matters in the county.

### **Applicable Law and Discussion**

The Mississippi Code explicitly envisions district attorneys receiving funds from a county board of supervisors:

The several district attorneys shall submit reports of revenues and expenditures and shall submit budget requests as required for State General Fund agencies. For purposes of budget control, the several offices of district attorney shall be considered General Fund agencies and the budget and accounts of the several offices, including salaries, travel expenses, office expenses and any other expenditures or revenues, shall be consolidated for all districts as far as such consolidation is practical.

*All revenue or funds allocated or expended by a district attorney, whether such funds are appropriated from state funds, or whether such funds are received from county funds, grants or otherwise, shall be reported to the Legislative Budget Office.*

Miss. Code Ann. § 25-31-11(7) (emphasis added). Our office has previously found that the language of Section 25-31-11 “implies that the board of supervisors are authorized to expend county funds to support the district attorney's office.” MS AG Op., *Wayne County Board of Supervisors* at \*1 (Oct. 13, 2006).

Moreover, the Mississippi Constitution directs that “[t]he expenses of criminal prosecutions shall be borne by the county in which such prosecution shall be begun . . . .” MISS. CONST. art. 14 § 261. We have previously opined that Section 261 of the Mississippi Constitution provides sufficient authority for a county board of supervisors to supplement the state allowance for operating expenses to the district attorney's office, provided said board makes the determination, consistent with the facts, that the supplement is necessary for the proper prosecution of criminal matters in the county. MS AG Op., *Wayne County Board of Supervisors* at \* 1 (Oct. 13, 2006); MS AG Op., *Moore* at \*2 (Oct. 12, 1984); MS AG Op., *Austin* at \*1–2 (May 24, 1984).<sup>1</sup>

We are aware of a nearly forty-year-old opinion finding that a county cannot pay for office space to be used by the district attorney and his staff. See MS AG Op., *Kilpatrick* at \*1 (Nov. 29, 1979). However, that opinion did not consider Section 25-31-11 or Section 261 of the Mississippi Constitution and preceded our *Wayne County Board of Supervisors*, *Moore*, and *Austin* opinions, discussed above, all of which cite these authorities in support of the proposition that a county may provide financial assistance to a district attorney under certain circumstances. Accordingly, to the extent our *Kilpatrick* opinion has not already been modified by our *Wayne County Board of Supervisors*, *Moore*, and *Austin* opinions, it shall be modified to conform to this opinion.

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

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<sup>1</sup> When determining the amount that the Board should contribute to the district attorney, the Board should take “into consideration the actual amount of funds required by the District Attorney's office” to operate, to prevent “arbitrarily set[ting] the amount of . . . funds” to be given. MS AG Op., *Fortenberry* at \*1 (Oct. 7, 1992).