



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 10, 2020

Scott F. Slover, Esquire
Attorney for Adams County Board of Supervisors
314 State Street
Natchez, Mississippi 39120

Re: House Bill 1647 and Constable Compensation in State Fail Cases

Dear Mr. Slover:

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

Questions Presented

1. Does the term “employee” in House Bill 1647 (2020 Regular Session) include elected officials such as chancery clerks, circuit clerks and constables?
2. What is the meaning of “leave with pay” as used within House Bill 1647 (2020 Regular Session)?
3. May a constable’s annual compensation for his services provided in state cases in which the state fails in the prosecution be paid at any time during the year or only after the year is completed?

Brief Response

With respect to your first question, no. House Bill 1647 does not contemplate the inclusion of elected officials, who are not subject to county leave policies or those separate leave policies adopted by such officials for their own respective employees.

With respect to your second question, “leave with pay,” as used within House Bill 1647 (2020 Regular Session), and as applicable to the Adams County Board of Supervisors, refers to “administrative leave,” and means that county employees who are subject to the county’s leave policies may be granted such leave by the board of supervisors, while receiving the compensation to which employees are entitled when they are on regular leave as provided in the respective county’s leave policies, formally adopted by the board of supervisors pursuant to Mississippi Code Annotated Section 19-3-63 and 25-11-103(i).

Turning to your third question, the statutory fee to which constables are entitled for their services provided in state cases in which the state fails in the prosecution cannot be paid until the year is completed.

Applicable Law and Discussion

House Bill 1647 provides, in relevant part, as follows:

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.

With respect to your first question, we have previously opined that, elected officials, presumed to be available for official duties at all times, are not covered by county leave policies or separate leave policies established for their respective employees. MS AG Op., *Ready* at *1 (Feb. 16, 2001); MS AG Op., *Ranck* at *1 (Feb. 8, 1996); *see also* MS AG Op., *Phillips* at *1 (Feb. 10, 2006). It is, therefore, the opinion of this office that elected officials are not included among those employees who may be granted administrative leave by the governing authorities of a county, municipality, or school district pursuant to House Bill 1647.

With respect to your second question, “leave with pay,” as used within House Bill 1647 (2020 Regular Session), and as applicable to the Adams County Board of Supervisors, refers to “administrative leave,” and means that county employees who are subject to the county’s leave policies may be granted such leave by the board of supervisors, while receiving the compensation to which employees are entitled when they are on regular leave as provided in the respective county’s leave policies, formally adopted by the board of supervisors pursuant to Mississippi Code Annotated Sections 19-3-63 and 25-11-103(i).

Turning to your third question, regarding cases in which the state fails in its prosecution, or “state fail” cases, Mississippi Code Annotated Section 25-7-27 provides, in relevant part:

(1) Marshals and constables shall charge the following fees:

...

(f) For serving all warrants and other process and attending all trials in state cases in which the state fails in the prosecution, to be paid out of the county treasury on the allowance of the board of supervisors without itemization, subject, however,

to the condition that the marshal or constable must not have overcharged in the collection of fees for costs, contrary to the provisions of this section, *annually*.

Miss. Code Ann. § 25-7-27 (emphasis added).

This office has previously addressed a constable's job requirements in relation to collecting the fee set forth in Section 25-7-27:

[I]n order to collect the fee the constable must serve or diligently attempt to serve all warrants and other process presented to him for service in state cases in which the state fails in the prosecution. He must attend all trials in state cases in which the state fails in the prosecution, unless lawfully excused or otherwise unavailable for a legitimate reason. Finally, he must not have overcharged in the collection of fees for costs, contrary to the provisions of Section 25-7-27.

MS AG Op., *Enlow* at *1 (Feb. 4, 2005). A constable is ineligible to collect the annual statutory fee in its entirety if he fails to comply with any of the provisions set forth by Section 25-7-27(f). *Id.* Conversely, if the constable performs all duties set forth above, the board of supervisors has no discretion and must pay the full fee. *Id.*

Accordingly, it is the opinion of this office that the fee for "state-fail" cases may only be paid to a constable on an annual basis and only if he/she has fully satisfied the provisions of Section 25-7-27.

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