



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

December 14, 2020

B. Blake Teller, Esq.
Attorney, Warren County Board of Supervisors
1201 Cherry Street
Vicksburg, Mississippi 39183-2919

Re: Withdrawal of resignation of public office

Dear Mr. Teller:

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

Questions Presented

In your request, you provide:

In the event an elected County public official submits a written request to the Board of Supervisors asking the Board to accept his or her resignation, effective the same date as the letter, which effective date is before the next date on which the board meets; then submits a written withdrawal of the request to accept resignation a few days later but prior to the next meeting date of the Board during which the Board would presumably have taken up the proposed written resignation, (1) What is the status of the elected county public official?; (2) Is the office of such duly elected official deemed vacant, or can such duly elected official withdraw the request for acceptance of resignation even though the effective date of resignation was proposed to be the same date as the letter- being at a time before the board could possibly meet to take up the matter for consideration; (3) If the board desires, may the board opt to accept the withdrawal of resignation; and (4) Does it matter whether the written request of an elected county public official seeking acceptance of resignation is submitted to the Board of Supervisors and not the Governor?

Applicable Law and Discussion

Opinions of this office are limited to prospective legal questions. Miss. Code Ann. § 7-5-25. We do not make factual determinations, nor do we validate or invalidate past action. *Id.* With respect to your first and second questions, to the extent they ask us to determine whether the referenced

county public official resigned from office or whether the office is vacant, we must decline to do so. We offer the following comments for future guidance. Our office has previously held that a resignation becomes effective upon the date specified in the resignation and that one may withdraw his resignation up until the stated effective date. MS AG Op., *Jones* at *1 (Nov. 7, 2003). This remains the opinion of this office.

With respect to your third question, we have previously opined that a municipal officer's resignation does not need to be accepted by members of the governing authorities to become effective. *Id.* We have applied this principle to a resignation submitted to a county board of supervisors. MS AG Op., *Hudson* at *1 (Jan. 21, 2005) (relating to resignation of a public board appointee). Under the facts presented in your request, this office is of the opinion that the validity of the county official's withdrawal of his or her resignation is unaffected by the board of supervisors' acceptance of such withdrawal.

Turning to your final question, we are aware of no requirement that a resignation of a county office be submitted to the Governor. Pursuant to Section 23-15-839, the Governor commissions the person who fills a vacancy in any county or county district office. However, this has no bearing on whether the resignation of the original county public official is effective. If an elected county officer did in fact resign his or her position, it should be filled in accordance with Section 23-15-839, which sets forth the procedures for filling vacancies in county or county district offices.¹ MS AG Op., *Gaylor*, at *1 (Jan. 11, 2013).

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

¹ We know of nothing that would prohibit the appointing authorities from appointing the resigned official to fill the existing vacancy. MS AG Op., *Hudson* at *1 (Jan. 21, 2005).