



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

December 8, 2020

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

Re: Payments for food items sold by county owned civic center by credit card

Dear Mr. Allen:

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

Issue Presented

You state that the Lincoln Civic Center is owned by the Lincoln County Board of Supervisors and ask if, pursuant to Section 17-25-1 of the Mississippi Code, the County, through the Civic Center, has the authority to sell merchandise for immediate consumption (food), accept payment by credit card, and assess fees charged by the credit card companies to the customers, or whether it is exempt from having to do so.

Brief Response

The County, through the wholly owned Lincoln Civic Center, may sell food items and accept payment by credit card and, in doing so, must assess credit card processing fees to the customers in compliance with Section 17-25-1 and the policies established by the State Auditor. The sale of food for immediate consumption does not constitute the sale of retail merchandise that would allow the County to bear the full costs of such processing fees.

Applicable Law & Discussion

Mississippi Code Annotated Section 17-25-1 provides:

The board of supervisors of any county and the governing authorities of any municipality may allow the payment of various taxes, fees and other accounts receivable to the county or municipality, and the payment for retail merchandise sold by the county or municipality, by credit cards, charge cards, debit cards and other forms of electronic payment, in accordance with policies established by the State Auditor. Except as otherwise provided in this section, any fees or charges

associated with the use of such electronic payments shall be assessed to the user of the electronic payment as an additional charge for processing the electronic payment, so that the user will pay the full cost of using the electronic payment. However, a county or municipality shall not charge the user any additional amount above the processing fee on each transaction. For purposes of this section, the term “accounts receivable” includes, but is not limited to, judgments, fines, costs and penalties imposed upon conviction for criminal and traffic offenses. A county or municipality may bear the full cost of processing such electronic payments for retail merchandise sold by the county or municipality.

We have previously analyzed Section 17-25-1 and opined that:

According to Black's Law Dictionary, Fifth Edition, the term “retail” is defined as “a sale for final consumption in contrast to a sale for further sale or processing (i.e. wholesale). A sale to the ultimate consumer.” “Merchandise” is defined as:

All goods which merchants usually buy and sell, whether at wholesale or retail; wares and commodities such as are ordinarily the objects of trade and commerce. But the term is generally not understood as including real estate, and is rarely applied to provisions such as are purchased day by day for immediate consumption (e.g. food).

MS AG Op., *Useton* at *3 (Nov. 7, 2016). Accordingly, this office is of the opinion that the sale of food for immediate consumption, as outlined in your request, does not constitute “retail merchandise,” as that term is used in Section 17-25-1.

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