



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

December 8, 2020

Superintendent S. Johnson Smith
North Tippah School District
Post Office Box 65
Tiplersville, Mississippi 38674

Re: Funds Received Pursuant to Miss. Code Ann. Section 49-19-23

Dear Superintendent Smith:

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

Background Facts

In your request, you provide:

I am writing in my capacity as the Superintendent of the North Tippah School District. Last year, the North Tippah School District learned of an error in distributing funds received from the United States under the provisions of an Act of Congress known as the Weeks Law. These are funds paid by the Federal Government to replace ad valorem taxes from national forest lands. For several years, the Tippah County Board of Supervisors mistakenly failed to distribute these funds. You recently confirmed that the Tippah County Board of Supervisors was within its discretion to allocate these funds (Opinion #2020-00083 to Akins). The Board of Supervisors is now prepared to pay the North Tippah School District approximately \$122,000.00 representing the past years unpaid allocation from 2010 to the present.

The North Tippah School District Board of Trustees asked me to request an opinion as to how those funds should be budgeted. In its opinion request, the Board of Supervisors suggested that these funds be escrowed and applied towards the ad valorem tax levy next year. The Board of Supervisors relied on Opinion #2004-0311 to Lowery. However, the Board of Trustees believes that since these funds are not part of the local ad valorem tax request then the district is not required to escrow these funds against its local ad valorem request.

Please advise as to whether the North Tippah School Board should escrow the funds or if those funds should be considered additional funds that the district may spend during the current budget year.

Issues Presented

According to your request, the Tippah County Board of Supervisors is prepared to pay the North Tippah School District (the "District") for past years of unpaid allocations under the federal Weeks Law. You ask whether the District must escrow the funds and apply them towards the ad valorem tax levy next year or whether the funds may be considered additional funds that the District may spend during the current budget year.

Brief Response

Section 37-57-107's requirement that excess ad valorem receipts must be escrowed for the succeeding fiscal year does not apply to federal funds received by the school district pursuant to the Weeks Act.

Applicable Law and Discussion

Section 500 of Title 16 of the United States Code provides that twenty five percent of all moneys received from each national forest shall be paid to the state in which the national forest is located. The states then use these funds for the schools and public roads of the county or counties in which the national forests are located. 16 U.S.C. § 500. Mississippi Code Annotated Section 49-19-23 provides for these federal funds paid to the State of Mississippi under the federal Weeks Act to be apportioned to the certain counties containing national forest lands. Our office recently opined:

Section 49-19-23 does not set forth a specific formula by which the County must apportion the funds it has received to the school districts in which national forest lands are located. In the absence of such a statutory requirement, it is within the discretion of the Board of Supervisors to determine the distribution of the funds received pursuant to Section 49-19-23.

MS AG Op., *Akins* at *2 (June 26, 2020).

With respect to excess ad valorem receipts, Section 37-57-107 provides, in part:

[T]he aggregate receipts from taxes levied for school district purposes pursuant to Sections 37-57-105 and 37-57-1 shall not exceed the aggregate receipts from those sources during any one (1) of the immediately preceding three (3) fiscal years, as determined by the school board, plus an increase not to exceed seven percent (7%).

...

(3) Except as otherwise provided for excess revenues generated pursuant to an election, if revenues collected as the result of the taxes levied for the fiscal year pursuant to this section and Section 37-57-1 exceed the increase limitation, then it shall be the mandatory duty of the school board of the school district to deposit such excess receipts over and above the increase limitation into a special account and credit it to the fund for which the levy was made. It will be the further duty of such board to hold said funds and invest the same as authorized by law. Such excess funds shall be calculated in the budgets for the school districts for the purpose for

which such levies were made, for the succeeding fiscal year. Taxes imposed for the succeeding year shall be reduced by the amount of excess funds available. Under no circumstances shall such excess funds be expended during the fiscal year in which such excess funds are collected.

In your request, you ask whether, based on MS AG Op., *Lowery* (August 13, 2004), the District must escrow these funds and count them toward ad valorem tax collections for the next year. The *Lowery* opinion dealt with a situation in which delinquent ad valorem taxes were received by the school district three years after they were originally owed.

“Most state courts which have considered Section 500 have held that payments under it are not in lieu of state taxes.”¹ Rather, such payments have “a friendly purpose to create trusts for the benefit of counties in which national forests are located in recognition of the national interest in education and road building.”² Accordingly, federal funds received by the school district pursuant to the Weeks Act should not be treated as local ad valorem taxes or in-lieu payments. Thus, the requirement under Section 37-57-107 that excess ad valorem receipts must be escrowed for the succeeding fiscal year does not apply to federal funds received by the school district pursuant to the Weeks Act. If you have any further questions regarding the proper accounting and expenditure requirements for the funds you are receiving pursuant to the Weeks Act, we suggest that you contact the Office of the State Auditor.

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 *Int'l Paper Co. v. Siskiyou Cty.*, 515 F.2d 285, 289 n.4 (9th Cir. 1974); *see also Tree Farmers, Inc. v. Goeckner*, 385 P.2d 649, 651 (Idaho 1963) (finding payment under 16 U.S.C. Section 500 is in the nature of an assistance grant, not in lieu taxes); *Anderson Union High Sch. Dist. v. Schreder*, 56 Cal.App.3d 453, 458 (Ct. App. 1976) (“In terms of statutory purpose, it might be assumed that the subvention is designed to compensate school districts for tax losses caused by the federal forest reserves. The assumption is erroneous. The federal law is not designed to provide money in lieu of local taxes.”).

² *Trinity Indep. Sch. Dist. v. Walker Cty.*, 287 S.W.2d 717, 722 (Tex. Civ. App. 1956).