



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

January 11, 2021

Dr. Jermall D. Wright, Superintendent  
Mississippi Achievement School District  
1133 Calhoun Avenue  
Yazoo City, Mississippi 39194

Re: Borrowing Authority for the Achievement School District

Dear Superintendent Wright:

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

#### **Background Facts**

According to your request, the Yazoo City Municipal School District and the Humphreys County School District have been absorbed into the Mississippi Achievement School District (the “Achievement District”) pursuant to Section 37-17-17. You are asking for an official opinion “regarding the governance of the [Achievement District] and the appropriate governing authority, if any, for authorizing the issuance by the [Achievement District] of bonds, notes, certificates, leases, or other debt instruments (the “Debt Obligations”) of the [Achievement] District for the financing and the acquisition, construction, or improvement of the facilities of the [Achievement] District and the purchase of equipment for the [Achievement District] (“Authorized Purposes”).”

#### **Questions Presented**

- 1) Can the Achievement District issue Debt Obligations, or otherwise borrow money, pursuant to all requirements of the Debt Obligations Act or other borrowing laws of the State, for the Authorized Purposes, based on the underlying and individual assessed valuation, ad valorem tax levies, and overall financial status of the Yazoo District and the Humphreys District?
- 2) Does the State Board of Education need to make findings of fact and take actions such as adopting resolutions authorizing the issuance of the Debt Obligations, or otherwise borrowing money, or can the Superintendent of the Achievement District make such findings of fact and take such actions, all in compliance with the Debt Obligations Act or other borrowing laws of the State?

### **Brief Response**

In response to your first question, the Achievement District has the same authority as the former school boards and, thus, has authority to issue Debt Obligations or otherwise borrow money in the same manner and to the same extent authorized by the former school boards.

In response to your second question, the State Board of Education is the appropriate body to make any necessary findings of fact and adopt any resolutions necessary to issue Debt Obligations or borrow money.

### **Applicable Law and Discussion**

The Achievement District is “a statewide school district, separate and distinct from all other school districts but not confined to any specified geographic boundaries, and may be comprised of any public schools or school districts in the state which, during two (2) consecutive school years, are designated an ‘F’ school or district by the State Board of Education under the accountability rating system or which have been persistently failing and chronically underperforming.” Miss. Code Ann. § 37-17-17(1). The Achievement District is governed by the State Board of Education. Miss. Code Ann. § 37-17-17(2). The superintendent of the Achievement District is selected by the State Board of Education and “shall exercise powers and duties that would afford significant autonomy but are bound by the governance of the State Board [of education].” Miss. Code Ann. § 37-17-17(4).

As an initial matter, to the extent your request references the Code of Federal Regulations and the Internal Revenue Code of 1986, this office does not interpret or opine upon federal law. Rather, official opinions are limited to prospective issues of state law. Miss. Code Ann. § 7-5-25.

Section 37-17-17 sets forth, in detail, the various ways in which the Achievement District is to obtain funding. Section 37-17-17(8)(b) provides:

(b) Whenever an increase in funding is requested by the school board for the support of schools within a particular school district absorbed into the Mississippi Achievement School District, the State Board of Education and the superintendent for the Mississippi Achievement School District shall hold a public meeting in the local municipality having jurisdiction of the absorbed school district to allow input of local residents on the matter, and subsequent to the conclusion of such meeting, the board of the Mississippi Achievement School District shall submit its request for ad valorem increase in dollars to the local governing authority having jurisdiction over the absorbed school district for approval of the request for increase in ad valorem tax effort. In a district in which a school or schools but not the entire district is absorbed into the Mississippi Achievement School District, the local school district shall pay directly to the Mississippi Achievement School District an amount for each student enrolled in that school equal to the ad valorem tax receipts and in-lieu payments received per pupil for the support of the local school district in which the student resides. The pro rata ad valorem receipts and in-lieu receipts to be transferred to the Mississippi Achievement School District shall include all levies for the support of the local school district under Sections 37-57-1 (local

contribution to the education funding program) and 37-57-105 (school district operational levy) and may not include any taxes levied for the retirement of the local school district's bonded indebtedness or short-term notes or any taxes levied for the support of vocational-technical education programs, unless the school or schools absorbed include a high school at which vocational-technical education programs are offered. In no event may the payment exceed the pro rata amount of the local ad valorem payment to the education funding program under Section 37-57-1 for the school district in which the student resides. Payments made under this section by a school district to the Mississippi Achievement School District must be made before the expiration of three (3) business days after the funds are distributed to the local school district by the tax collector.

(c) If an entire school district is absorbed into the Mississippi Achievement School District, the tax collector shall pay the amounts as described in paragraph (b) of this subsection, with the exception that all funds should transfer, including taxes levied for the retirement of the local school district's bonded indebtedness or short-term notes and any taxes levied for the support of vocational-technical education programs. The Mississippi Achievement School District shall pay funds raised to retire the district's debts to the appropriate creditors on behalf of the former district.

Section 37-17-17(9)(a) relates to funding to which the Achievement District is entitled from the State Board of Education. Section 37-17-17(11) authorizes the Achievement District to receive donations or grants from any public or private source, including any federal funding that may be available to the school district or individual schools within the Achievement District. Finally, Section 37-17-17(12) authorized the Legislature to appropriate certain funds to the State Department of Education for the start-up, operational and any other required costs of the Achievement District during the 2017-2018 school year. Conspicuously, in drafting Section 37-17-17, the Legislature did not explicitly authorize the Achievement District to issue Debt Obligations or otherwise borrow money.

However, the Legislature did provide:

Upon completion of the transfer of a school or district to the Mississippi Achievement School District, the school or district shall be governed by the rules, regulations, policies and procedures established by the State Board of Education specifically for the Mississippi Achievement School District, and the school or district shall no longer be under the purview of the school board of the local school district. *In the event of the transfer of governance and operations of a school district, the State Board of Education shall abolish the district as prescribed in Section 37-17-13.*

Miss. Code Ann. § 37-17-17(5)(d) (emphasis added). In turn, according to Section 37-17-13(1), when a local school district is abolished:

*the State Board of Education shall have all powers which were held by the previously existing school board, and the previously existing superintendent of*

*schools or county superintendent of education, including, but not limited to, those enumerated in Section 37-7-301, and the authority to request tax levies from the appropriate governing authorities for the support of the schools and to receive and expend the tax funds as provided by Section 37-57-1 et seq. and Section 37-57-105 et seq.*

Miss. Code Ann. § 37-17-13(1) (emphasis added).

The Achievement District's authority resembles, in some respects, that of a conservator appointed pursuant to Section 37-17-6(15). *Compare* Miss. Code Ann. § 37-17-17, *with* Miss. Code Ann. § 37-17-17(5)(e), *and* 37-17-6(15)(a). Under the statutory schemes for both the conservator and the Achievement District, the State Board of Education has authority to "abolish" the local district pursuant to Section 37-17-13. Our office has previously opined that pursuant to Section 37-17-13, a conservator has the same authority as the former school board and, therefore, was authorized to issue a promissory note to cover a revenue shortfall. MS AG Op., *Pulley* at \*1 (Nov. 6, 2015). Similarly, it is the opinion of this office that the State Board of Education, as the governing body of the Achievement District, has the same authority as the former school boards and, thus, may issue Debt Obligations or otherwise borrow money in the same manner and to the same extent as the former school boards were authorized to do so.

Turning to your second question, the State Board of Education is the appropriate body to make any necessary findings of fact and adopt any resolutions necessary to issue Debt Obligations or borrow money. Although the superintendent has "significant autonomy" and has other specific grants of authority, Miss. Code Ann. § 37-17-17(5)(e), the Achievement District is governed by the State Board of Education. Miss. Code Ann. § 37-17-17(2). Furthermore, pursuant to Section 37-17-13(1), it is the State Board of Education that broadly enjoys the powers held by the former school boards.

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/ Kyle Williams*

Kyle Williams  
Director, Opinions and Policy Division