



September 30, 2021

The Honorable Manuel Killebrew  
President, Quitman County Board of Supervisors  
220 Chestnut Street, Suite 2  
Marks, Mississippi 38646

Re: Group Health Insurance for Part-Time and Non-Salary Employees

Dear Mr. Killebrew:

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

#### **Questions Presented**

1. May Quitman County (the "County") provide healthcare benefits to employees who work part-time or do not receive a salary?
2. May the County provide healthcare benefits to certain employees and not to others?

#### **Brief Response**

1. A county may provide healthcare benefits to full time employees who are paid directly by the county.
2. A county may elect to provide group health insurance only for specified groups of employees.

#### **Applicable Law and Discussion**

As an initial matter, we understand that the County currently has a health insurance coverage plan in place. Pursuant to Section 7-5-25 of the Mississippi Code, this office can only issue official opinions on matters involving prospective questions of state law. An official opinion cannot validate or invalidate past actions. Accordingly, this opinion relates only to prospective actions taken by the board of supervisors. Furthermore, this office cannot, by official opinion, analyze the impact of any federal law on your facts, including the Affordable Care Act, the Health Insurance Portability and Accountability Act, or any other federal law.

Section 25-15-101 provides, in part:

The governing board of any county . . . and the governing board or head of any institution, department or agency of any county or municipality may negotiate for and secure for all or specified groups of employees and their dependents of such county or municipality, or institution, department or agency of such county or municipality, or municipal separate school district, other school district or community/junior college district, a policy or policies of group insurance covering the life, except as hereinafter provided, salary protection, health, accident and hospitalization . . . .

Miss. Code Ann. § 25-15-101. Section 25-15-103(4)(b) provides:

A county may provide group life insurance coverage for all or specified groups of its public employees and group hospitalization benefits for such public employees and their dependents, and the county may pay the total of the cost of all benefits under this section. A county may make such provision, as specified under this paragraph, retroactively for any existing group coverage plan previously adopted by the county.

Section 25-15-101 does not define the term “employee.” However, the Mississippi Supreme Court has applied the definition of “employee” found in Section 25-15-3(a) when analyzing insurance benefits for county employees:

Section 25–15–101 is codified in Art. 3, Ch. 15 of our Code under the title “Group Insurance For Employees of Local Government and Their Institutions and Agencies.” Article 1 provided such insurance for state employees and in that connection we note that the term “employee” has been defined as

any ‘employee’ making contributions to the State of Mississippi retirement plan shall be considered a full time employee.

Miss. Code Ann. § 25–15–3(a) (Supp.1985). This definition, if it applied in the case at bar, would answer the question in favor of affirmance. All deputy clerks participate in and make contributions to the state retirement plan. Strictly speaking, however, the definition applies only to Article 1 and the matter of health and life insurance for *state* employees. No such definition appears in Article 3 regarding such insurance for *county and local* employees. Still the Section 25–15–3(a) definition exerts an electromagnetic force which may be resisted only by an apparent rationale why the definition of “employee” should be different in the case of county and local employees. When we consider that the authority vested in the supervisors by Section 25–15–101 is discretionary, not mandatory, no such rationale appears.

*Warren Cnty. v. Culkin*, 497 So. 2d 433, 437 (Miss. 1986) (emphasis in original); MS AG Op., *Doty* at \*1 (Aug. 17, 1994) (“The term ‘employee’ is not defined in this article of the statute. But

the Supreme Court has stated that the definitions in § 25-15-3(a) can be used for construction of the term since there is no reason why the definition should be different in the case of local employees, *see Warren County v. Culkin*, 497 So. 2d 433 (Miss. 1986). Under this definition an employee is a person who works full time for the city and receives compensation in a direct payment from the city.”); MS AG Op., *McAlpin* at \*1 (May 2, 2008) (citing *Culkin* and *Doty* and stating that “[w]e have previously opined that an employee, as contemplated in Section 25-15-101, is ‘a person who works full time for the city and receives compensation in a direct payment from the city.’”); MS AG Op., *Mayfield* at \*1 (Sept. 13, 2002) (“It is the opinion of this office that for the purposes of Sections 25-15-3 of the Mississippi Code . . . an employee is considered full time so long as he is receiving compensation from his employer, a portion of which is being distributed into the State retirement plan . . . If the employee is not receiving compensation . . . and is not making contributions to the State of Mississippi retirement plan, then the [county school] district would have no authority to continue to pay the health insurance premiums for the employee.”); MS AG Op., *Bryant* at \*2 (Apr. 1, 1992) (“Section 25-15-101 of the Mississippi Code gives counties and cities authority to provide for their employees disability and other insurance . . . The definition of employee for purposes of this statute is ‘a persons who works full time for the State of Mississippi and receives his compensation in a direct payment from a department, agency, or institution of the state covenant’ or works full time for a political subdivision of the state and receives his compensation in a direct payment from such a political subdivision.”).<sup>1</sup>

In relevant part, Section 25-15-3(a) defines “employee” as:

a person who works full time for the State of Mississippi and receives his compensation in a direct payment from a department, agency or institution of the state government . . . For the purposes of this article, any ‘employee’ making contributions to the State of Mississippi retirement plan shall be considered a full-time employee.<sup>2</sup>

Accordingly, a county may provide healthcare benefits to full time employees who are paid directly by the county.

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<sup>1</sup> In MS AG Op., *Stringer* at \*3 (Apr. 2, 2004), this office broadly opined that “Sections 25-15-101 through 25-15-105 are not governed by the definition of ‘employee’ as found in Section 25-15-3(a),” citing the Mississippi Supreme Court’s opinion in *Culkin*. In MS AG Op., *Nowak* (Sept. 26, 2011), we found that a county was “within its discretion in offering [health insurance] only to those employees defined by the county as full-time employees.” We stated further: “As we noted in MS AG Op., *Stringer* (April 02, 2004), local governing authorities in offering insurance to its employees under 25-15-101 et seq., are not restricted by the definition of ‘employee’ found in Section 25-15-3 concerning insurance for state employees.” *Nowak* at \*2. However, the *Culkin* court’s plain language is contrary to our assertion in *Stringer* and *Nowak*—the court specifically applied Section 25-15-3(a)’s definition of “employee” to find that certain employees of the circuit and chancery clerks could be afforded health coverage under Section 25-15-101. To the extent our *Nowak* and *Stringer* opinions are inconsistent with the Mississippi Supreme Court’s opinion in *Culkin*, we hereby modify those opinions.

<sup>2</sup> Notably, regulations promulgated by the Public Employees’ Retirement System of Mississippi’s (“PERS”) Board of Trustees address eligibility to participate in PERS, including the number of hours that must be worked to be eligible.

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In response to your second question, Sections 25-15-101 and 25-15-103 both authorize counties to secure and provide, respectively, insurance for “all or specified groups” of employees. This clearly authorizes a county to provide coverage to certain groups of employees and not to others. *See Culkin*, 497 So. 2d at 438 n.1 (discussing legislative amendment to Section 25-15-101 and concluding that “there should be no further doubt that the insurance coverage may, at the supervisors' discretion, be obtained at county expense for less than all county employees”).

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

OFFICIAL OPINION