



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

October 29, 2021

The Honorable Steve Rushing
Lincoln County Sheriff
215 Justice Street
Brookhaven, Mississippi 39601

Re: COVID-19 and First Responder Line of Duty Death Benefits

Dear Sheriff Rushing:

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

Question Presented

Are first responder deaths caused by COVID-19 covered under Mississippi Code Annotated Section 45-2-1, entitling the surviving families to line of duty death benefits?

Brief Response

The term “cause of death” within Section 45-2-1 encompasses deaths sustained from COVID-19. A claim for death benefits from Mississippi’s Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund (the “Death Benefits Fund”) must comport with the provisions of Section 45-2-1. Whether a particular claim under the Death Benefits Fund otherwise qualifies for payment is a matter for the Department of Public Safety to determine.

Applicable Law and Discussion

As a preliminary matter, pursuant to Section 7-5-25, an Attorney General’s opinion can only be applied prospectively and can neither validate nor invalidate past action. MS AG Op., *Magee* at *1 (Aug. 29, 2008). Official opinions may not make factual determinations. MS AG Op., *Barton* at *2 n.2 (May 17, 2021). Furthermore, this office cannot “provide opinions to one entity [or individual] regarding duties of another . . .” MS AG Op., *Criswell* at *1 (Aug. 26, 2016).

Established pursuant to Section 45-2-1, the Death Benefits Fund provides a payment of \$100,000 to the beneficiary of a law enforcement officer or firefighter (including volunteer firefighter) who

sustains a “covered cause of death,” as that term is defined in Section 45-2-1, in relation to the performance of his or her official duties. Specifically, the Code requires the following:

The Department of Public Safety shall make a payment, as provided in this section, in the amount of One Hundred Thousand Dollars (\$100,000.00) when a covered individual, while engaged in the performance of the person's official duties, dies or receives accidental or intentional bodily injury that results in the loss of the covered individual's life and such death is the result of a covered cause of death, provided that the death is not the result of suicide and that the bodily injury is not intentionally self-inflicted.

Miss. Code Ann. § 45-2-1(2)(a). The term “covered individual” is defined as “a law enforcement officer or firefighter, including volunteer firefighters, as defined in this section when employed by an employer as defined in this section; it does not include employees of independent contractors.” The code section goes on to define the terms “firefighter” and “law enforcement officer.” Miss. Code Ann. § 45-2-1(1)(c), (d).

Central to the question raised in your request, “cause of death” is defined as “any cause of death that would be covered under the Public Safety Officers' Benefits Act of 1976 or the Hometown Heroes Survivors Benefits Act of 2003, generally codified at 42 USCS Chapter 46.” Miss. Code Ann. § 45-2-1(1)(e).

This office has long found that, pursuant to Section 7-5-25, it cannot, by official opinion, interpret federal law. *See, e.g.,* MS AG Op., *Snell* at *2 (Mar. 16, 2018). However, when Mississippi law explicitly incorporates portions of federal law, we have analyzed those incorporated portions. MS AG Op., *Majors* at *2 (May 24, 2019) (explaining that Section 97-37-5 incorporates 18 U.S.C.A. Section 925(c) as an exemption but does not incorporate Section 925(a)); MS AG Op., *Strong* at *1–2 (Oct. 18, 1984) (discussing the incorporation of the United States’ List of Endangered Native Fish and Wildlife into Section 49-5-105 and opining, “[b]y the express inclusion of the federal lists into the State statute, all the provisions of federal statute defining the species or subspecies appearing thereon and applicable to the federal lists are thereby incorporated in the State statute.”). The term “cause of death,” within Section 45-2-1, expressly incorporates federal law.

The federal Public Safety Officers’ Benefits Act of 1976 (“PSOBA”) was enacted as part L of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 and originally classified to Chapter 46 of Title 42. In 2017, the PSOBA was editorially reclassified and renumbered and is now codified at 34 U.S.C. § 10101 *et seq.* Section 10281 is entitled “Payment of death benefits,” and states, in pertinent part, that in any case where it is determined “under regulations issued pursuant to this subchapter, that a public safety officer has died as the direct and proximate result of a personal injury sustained in the line of duty,” then payment will be made. 34 U.S.C. § 10281 (emphasis added). This section does not define the term “injury” but, instead, references regulations promulgated by the United States Bureau of Justice Assistance to implement the PSOBA.

28 C.F.R. § 32.3—the relevant federal regulation—defines the term “injury” for purposes of the PSOBA, as:

Hon. Steve Rushing

October 29, 2021

Page 3

[A] traumatic physical wound (or a traumatized physical condition of the body) directly and proximately caused by external force (such as bullets, explosives, sharp instruments, blunt objects, or physical blows), chemicals, electricity, climatic conditions, infectious disease, radiation, virus, or bacteria

The definition of “injury” encompasses a physical condition of the body directly and proximately caused by an “infectious disease” and “virus,” both of which appear to include COVID-19. Accordingly, the term “cause of death” within Section 45-2-1 encompasses deaths sustained from COVID-19.

Notably, a claim for death benefits must comport with the provisions of Section 45-2-1. Whether a particular claim under the Death Benefits Fund otherwise qualifies for payment is a matter for the Department of Public Safety to determine.

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/ *Misty Monroe*

Misty Monroe
Special Assistant Attorney General

OFFICIAL OPINION