



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 29, 2021

The Honorable Doug Evans
District Attorney
Fifth Circuit Court District
Post Office Box 1262
Grenada, Mississippi 38902-1262

Re: Investigation of Misdemeanor Affidavits

Dear Mr. Evans:

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

Background Facts

You state that you have been requested by an attorney for a county board of supervisors—notably, not the county prosecutor—to investigate and make findings on the merits of misdemeanor affidavits filed in justice court. According to your request, these affidavits allege misdemeanor charges and would not be presented to a Grand Jury. However, your request does not state which criminal offenses are alleged in the affidavits.

Questions Presented

1. Is it within the scope of authority of a district attorney to investigate misdemeanor affidavits filed in justice courts and make findings on the merits?
2. Would such investigations result in loss of liability exemptions stated in Mississippi Code Annotated Section 11-46-9?

Brief Response

1. No. The ability to make findings on the merits of a misdemeanor affidavit filed in justice court rests within the sole province of the duly elected justice court judge.
2. Whether the Mississippi Tort Claims Act applies to a particular claim requires a factual determination, and this office cannot address questions of fact by official opinion.

Applicable Law

Section 25-31-11 sets forth the duties and responsibilities of district attorneys. Your first question asks whether the district attorney can, when requested, “investigate and then make a finding on the merits of” misdemeanor affidavits. The ability to make findings on the merits of a misdemeanor affidavit filed in justice court rests within the sole province of the duly elected justice court judge.

With respect to your second question, whether the Mississippi Tort Claims Act applies to a particular claim requires a factual determination. MS AG Op., *Sutton* at *3 (Apr. 22, 2016) (“Whether a claim is subject to defenses, including the applicability of the Tort Claims Act, is a determination that must be made by the local government based on the facts of the claim.”). This office cannot address questions of fact by way of an official opinion. Miss. Code Ann. § 7-5-25.

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