



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

October 7, 2021

Mr. Robert Hensarling
President, McComb/Pike County Airport Board
1018 Pinehurst West
McComb, Mississippi 39648

Re: Simultaneous Service on a School Board and Airport Board

Dear Mr. Hensarling:

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

Background Facts

The McComb/Pike County Airport Board is a joint airport board formed pursuant to Title 61, Chapter 5 of the Mississippi Code and jointly owned by the City of McComb and Pike County.

Question Presented

May a person currently serving on the McComb School Board serve on the McComb–Pike County Airport Board simultaneously?

Brief Response

Because both a school board and an airport board fall within the executive branch of government, serving simultaneously on both boards would not violate the separation of powers doctrine.

Applicable Law and Discussion

The scope of this opinion is limited to whether simultaneous service on the aforementioned boards violates the separation of powers doctrine. We refer you to the Ethics Commission regarding any potential conflicts of interest or other ethical implications arising out of service on these boards.

Article I, Section 1 of the Mississippi Constitution of 1890 sets forth the three branches of government:

The powers of the government of the State of Mississippi shall be divided into three distinct departments, and each of them confided to a separate magistracy, to-wit: those which are legislative to one, those which are judicial to another, and those which are executive to another.

MISS. CONST. art. I, § 1. Article I, Section 2 prohibits an individual from simultaneously holding a position in two branches of government:

No person or collection of persons, being one or belonging to one of these departments, shall exercise any power properly belonging to either of the others. The acceptance of an office in either of said departments shall, of itself, and at once, vacate any and all offices held by the person so accepting in either of the other departments.

MISS. CONST. art. I, § 2; *see also* MS AG Op., *Liner* at *1 (Jan. 31, 2020) (“A person who exercises ‘core powers’ in one branch of government cannot simultaneously hold a position in another branch of government if that position also exercises ‘core powers’.”). Those provisions, however, do not prohibit an individual from holding more than one position within the same branch of government. MS AG Op., *Junkin* at *1 (Mar. 8, 1996).

This office has previously opined that members of a public school board serve within the executive branch of government. MS AG Op., *Bounds* at *3 (July 27, 2006). Moreover, the Mississippi Supreme Court has provided guidelines for determining within which branch of government a particular office or duty falls. Citing the Mississippi Supreme Court, we have stated:

The Mississippi Supreme Court articulated the differences between the duties of the executive and legislative branches of government in Alexander v. Allain, 441 So. 2d 1329, 1338 (Miss. 1983) and defined “executive power” as: ...the power to administer and enforce the laws as enacted by the legislature and interpreted by the courts...Execution is at the core of executive power. We also find pertinent the following distinction: “Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty of such enforcement. The latter are executive functions.”

MS AG Op., *Bounds* at *2 (July 27, 2006) (quoting MS AG Op., *Crook* at *1 (Sept. 12, 2002) (internal citations omitted)). Therefore, the legislative power includes authority to enact laws, and the executive power includes authority to administer and enforce laws enacted by the legislative branch, while the judicial branch interprets the same. *Id.*

With respect to airport boards, Mississippi’s “Municipal Airport Law” is codified in Sections 61-5-1 through 61-5-49, and joint airport boards, such as the McComb-Pike County Airport Board, are established pursuant to Section 61-5-37. That joint board enjoys authority to exercise, on behalf of its constituent public agencies—the City of McComb and Pike County—all the powers of each public agency, with respect to the airport. Miss. Code Ann. § 61-5-37.

Mr. Robert Hensarling

October 7, 2021

Page 3

Among those powers enjoyed by joint boards include authority to plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police airports and air navigation facilities. Miss. Code Ann. § 61-5-5. Joint boards also enjoy authority to enter into contracts, leases, and other arrangements; adopt, amend, and repeal reasonable ordinances, resolutions, rules, regulations, and orders necessary for the management, government and use of airport or air navigation facilities; appoint airport guards and police; receive and expend state and federal monies for various purposes; dispose of property; and other powers, subject to certain limitations set forth in Section 61-5-39. Miss. Code Ann. § 61-5-9 *et seq.*

After careful consideration of such authority, this office is of the opinion that a joint airport board, created pursuant to Section 61-5-37, exercises powers within the executive branch of government.

Even an airport board's authority to establish and enact ordinances, rules, regulations, and standards for the management, government, and use of the airport or air navigation facility under Section 61-5-13 does not strip a joint airport board of its executive nature. When revisiting the question as to within which branch of government a school board member executes his or her powers, this office rejected the assertion that the board's power to "prescribe and enforce rules and regulations not inconsistent with the law or with the regulations of the State Board of Education for their own government and the government of schools" strips the board of its executive nature. MS AG Op., *Bounds* at *3 (July 27, 2006). Instead, we opined that by executing such and all other powers granted to the school board by the Legislature, pursuant to *Alexander v. Allain*, 441 So. 2d 1329 (Miss. 1983), a school board exercises executive power. *Id.*

Because both a public school board and a joint airport board fall within the executive branch of government, simultaneous service on both boards does not violate the separation of powers doctrine.

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/ Abby Cummings*

Abby Cummings
Special Assistant Attorney General