



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

February 24, 2022

Sheriff David Gore  
Webster County Sheriff's Office  
87 Government Avenue  
Eupora, Mississippi 39744

Re: Location of County Jail

Dear Sheriff Gore:

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

### **Background**

According to your request, the current jail for Webster County was built in Eupora in 1965 with the approval of the Mississippi Legislature and in accordance with an agreement between Webster County and the Town of Eupora. However, you state that the current jail is now in poor condition. You further state that a local businessman has offered to donate two buildings, including one building that currently houses the 911 office, for the relocation to the Town of Mathiston of the sheriff's office and county jail. Walthall is the county seat for Webster County.

### **Question Presented**

May the sheriff's office and county jail be relocated to a town that is not the county seat?

### **Brief Response**

The sheriff must keep his office at or within one-half mile of the county courthouse in accordance with Section 25-1-99 of the Mississippi Code. The county jail must be located in the county seat unless there is specific legislation expressly and clearly authorizing the jail to be located away from the county seat or if a county chooses the joint construction option with a municipality in accordance with Section 17-5-1.

### Applicable Law and Discussion

Several county offices, including the sheriff's office, must be kept at the county courthouse or within a half-mile of the courthouse if an office shall not be provided at the county courthouse for them. Miss. Code Ann. § 25-1-99.

With respect to the county jail, this office has consistently opined that a county jail must be located within the municipal boundaries of the county seat. *See* MS AG Op., *Nowak* (Jan. 15, 2009); MS AG Op., *Nowak* (May 12, 2010); MS AG Op., *Carroll* (Aug. 11, 2000). *Corpus Juris Secundum* defines a county seat as follows:

A "county seat" is the town or city where the seat of a county government is located, where the county court and other courts are held, and where the county officers perform their duties and functions. While a county seat is a place where a county courthouse is located, ordinarily, the term applies not merely to the lot and buildings used for transacting public business, but to the territory occupied by such town as may be designated a county seat.

20 C.J.S. Counties § 70.<sup>1</sup>

Section 259 of the Mississippi Constitution provides:

No county seat shall be removed unless such removal be authorized by two-thirds of the electors of the county voting therefor; but when the proposed removal shall be toward the center of the county, it may be made when a majority of the electors participating in the election shall vote therefor.

As noted in MS AG Op., *Nowak* at \*2-3 (Jan. 15, 2009), in its analysis of Section 259 of the Mississippi Constitution, the Mississippi Supreme Court quoted Justice Ethridge as follows:

In his able treatise on Mississippi Constitutions, Judge George H. Ethridge, who was a member of this Court for more than two decades, in discussing Section 259 of the Constitution, at page 449 of the text, said:

'The purpose of this section is to keep a county seat where it is located and prevent undue agitation of removal questions unless the demand is well warranted by the desires of a large portion of the voters of the county. At the county seat are situated the public offices, the court house and the jail and sometimes other public buildings. It costs a good deal of money to build suitable buildings for these purposes, and when they are once located they ought not to be removed for the mere accommodation of ambitious towns and cities. It was thought that it would be well to require more than a mere majority of the votes to authorize such removal in the interest of public peace and to save agitation and expense. It often happens that a

---

<sup>1</sup> This same definition is cited in *Jackson County Historical Society v. Jackson County Board of Supervisors*, 214 Miss. 156, 58 So. 2d 379 (1952) and MS AG Op., *Nowak* at \*2-3 (Jan. 15, 2009).

majority of the voters of a county are situated on one side of the center of the county, and sometimes they are located in a city near one side of the county. If in such case the removal could be authorized by a mere majority it would result in the county seat being placed at great distance to the people who have business at the county seat, and would increase the expense of holding courts by having long mileage for jurors and witnesses. The section recognizes the desirability of having the court house near the center of the county. It therefore provided when the removal shall be towards the center of the county that a mere majority will control the election and settle the election in favor of removal if the majority favors such removal.'

MS AG Op., *Nowak* at \*2-3 (Jan. 15, 2009); citing *Jackson County Historical Society v. Jackson County Board of Supervisors*, 214 Miss. 156, 58 So. 2d 379 (1952).

We have further opined that "legislation may be enacted to expressly and clearly authorize the jail to be located away from the county seat." MS AG Op., *Nowak* (May 12, 2010).

Separately, Section 17-5-1 permits a county to contract with a municipality for the joint construction, preservation and use of a jail between a county and any municipality within the county. In such case, the jail would not be required to be in the county seat. Based on the supplemental information you provided, we understand this to be the method by which the jail was built in Eupora. Notably, this office does not opine on or interpret contracts. Thus, we have not reviewed the 1965 agreement between Eupora and Webster County and offer no comment on its application to your question.

Accordingly, it is the opinion of this office that Webster County may only establish a county jail in the Town of Mathiston if there is specific legislation expressly and clearly authorizing the jail to be located away from the county seat or if it is constructed pursuant to Section 17-5-1.<sup>2</sup>

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/ *Beebe Garrard*

Beebe Garrard  
Special Assistant Attorney General

---

<sup>2</sup> Mathiston is located within both Webster and Choctaw Counties. Should Webster County and Mathiston choose to jointly establish a jail in Mathiston pursuant to Section 17-5-1, the jail must be located in the part of the municipality located in Webster County.