



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

February 24, 2022

John McAdams
Chancery Clerk, Harrison County
Post Office Drawer CC
Gulfport, Mississippi 39502

Re: Local State of Emergency

Dear Mr. McAdams:

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

Questions Presented

1. Does the president of the board of supervisors have, in a state of emergency, the authority to independently, without a county board of supervisors ("Board") vote, direct the County Administrator to close all county services (excluding 1st and 2nd Judicial District Courthouses) which directly affect County business?
2. In anticipation of extreme weather conditions from a severe natural disaster such as a hurricane, does an elected official (tax collector, tax assessor, circuit clerk and chancery clerk) who maintains offices within the county courthouse, have the authority to close their individual offices?
3. Is that elected official referenced in question 2 required to seek approval from the Board prior to closing his/her individual office if the county courthouse remains open for business?
4. Can a telephonic poll taken among the Board members, conducted by the president, be classified as an official action of the Board if the telephonic poll was taken without the participation of the clerk of the Board?
5. If the answer to Question 4 is yes, it is important that guidance be provided on the following question. If private virtual meetings are conducted by the president of the Board or among the Board as a whole, without participation from the county chancery clerk, do these Board actions need to be ratified at a later board meeting to ensure the minutes of the actions are properly documented?

Brief Response

1. Pursuant to Section 7-5-25, the Attorney General may only issue official opinions to public officials “upon any question of law relating to their respective offices.” Because it relates to the authority of the president of the Board or the county administrator, we cannot issue an official opinion to you on this question.
2. No. The chancery clerk does not have the independent authority to close his office in anticipation of extreme weather conditions.
3. The chancery clerk’s office may only be closed under the Emergency Management Law pursuant to an order of the Board. Additionally, as clerk of the chancery court, the chancery clerk’s office must comply with Rule 77 of the Mississippi Rules of Civil Procedure and any orders issued by the court.
4. To the extent your question relates to a specific prior action, we do not by official opinion validate or invalidate past actions. As a general matter, a board of supervisors must conduct its meetings in accordance with the Open Meetings Act, Miss. Code Ann. § 25-41-1, *et seq.*, and record its official action in the minutes.
5. See Response 4.

Applicable Law and Discussion

As an initial matter, pursuant to Section 7-5-25, official opinions of this office are limited to prospective questions of law relating to the requesting official’s respective office. Official opinions are not issued to advise one public officer about another public officer’s duties and responsibilities or address the validity of past actions. Thus, we must decline to respond to your questions regarding past action or the authority of the Board and limit this opinion to your authority as chancery clerk. Further, because your questions ask about your authority in relation to actions of the local board of supervisors, this opinion is specific to local emergency declarations, though it may still be affected by applicable executive orders and/or declarations of emergency issued by the Governor or the President of the United States.

Section 25-1-99 generally requires the chancery clerk’s office to be open Monday through Friday from 8:00 a.m. to 5:00 p.m. Additionally, the Mississippi Constitution requires that all state courts, including chancery courts, remain open for business to ensure that the courts fulfill their constitutional and statutory duties. *See* Miss. Const. Art. 3, §§ 24, 25, 26, and 26A. The chancery clerk is required by law to keep the office hours set by Rule 77 of the Mississippi Rules of Civil Procedure.

In accordance with the Emergency Management Law, Miss. Code Ann. Section 33-15-1, *et seq.*, the president of the Board or the Board itself has the authority to declare a local emergency. Miss. Code Ann. § 33-15-7(d). During the local emergency, the Board “may promulgate orders and regulations necessary to provide for the protection of life and property.” *Id.* It is the opinion of this office that if a local emergency has been declared, the Board has the authority to close county

offices or grant the applicable elected local official discretion to close his office if the Board determines that it is necessary pursuant to the Emergency Management Law. Absent such direction from the Board, a chancery clerk does not have the independent authority to close his or her individual office in anticipation of extreme weather conditions from a severe natural disaster. We suggest that you contact the Administrative Office of Court for further direction on compliance with Rule 77 during extreme weather conditions.

As stated above, we cannot respond by official opinion to your fourth and fifth questions to the extent they relate to specific past actions. For informational purposes, public bodies must comply with the Open Meetings Act and may conduct official meetings through teleconference or video means in accordance with Section 25-41-5. The chancery clerk, as clerk of the Board, is required by Section 19-3-27 to “not only keep and preserve the minutes, but also create or make the minutes by entering on them all actions taken by the board.” MS AG Op., *Sherard* at *1 (Oct. 10, 1997). However, in *Sherard*, we also noted that the Board “has the ultimate authority to determine what should be included and what should be omitted from the minutes, so long as the statutory requirements are met.” *Id.* at *2. Additionally, we note that the Board has the authority to call emergency meetings in accordance with Section 19-3-19(3).

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