



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

January 14, 2022

Mark S. Formby
Chairman, Mississippi Workers' Compensation Commission
Post Office Box 5300
Jackson, Mississippi 39296-5300

Re: Mississippi Workers' Compensation Commission Annual Assessment

Dear Mr. Formby:

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

Background

Pursuant to Section 71-3-99(1), the Workers' Compensation Commission ("Commission") collects an annual assessment to fully fund the Commission's appropriated budget, which is prorated among all insurance carriers and self-insureds writing workers' compensation insurance in the State of Mississippi. The gross claims for compensation and medical services and supplies paid by the insurance carriers and self-insurers are the basis for computing the amount to be assessed. According to your request, subsequent to the enactment of the Mississippi Budget Transparency and Simplification Act of 2016, Miss. Code Ann. § 27-104-201, *et. seq.*, the Mississippi State Agencies Self-Insured Workers' Compensation Trust ("Trust") ceased to pay its annual assessment. You state that the remaining insurance carriers and self-insureds must now fulfill the Trust's former portion of the assessment. You further state that the Trust continues to be funded through premiums paid by the member state agencies calculated by the liabilities incurred by each agency and that the Commission is a member of the Trust and, thus, pays such premium.

Questions Presented

- (1) Would the annual assessment collected from the Trust by the Commission amount to a "charge for services or resources" or is it an assessment outside the legislative intent of Mississippi Code Annotated Section 27-104-203?
- (2) Does the premium collected by the Trust from the Commission amount to a "charge for services or resources" provided by the Trust to the Commission, or is it an assessment outside the legislative intent of Section 27-104-203?

Brief Response

- (1) The annual assessment collected by the Commission and authorized by Section 71-3-99 is of the type of interagency charge contemplated by the general prohibition against interagency charges in Section 27-104-203. Thus, the Commission does not have the authority to assess the Trust under Section 71-3-99.
- (2) No. We have previously opined, and still do opine, that the premium collected by the Trust is not the type of interagency charge contemplated or prohibited by Section 27-104-203. Thus, the Commission must continue to pay the Trust the premium collected pursuant to Section 27-104-31(1)(e).

Applicable Law and Discussion

As an initial matter, we note that opinions of this office are issued on prospective questions of law pursuant to Section 7-5-25. Official opinions do not validate nor invalidate past actions. We offer the following for future guidance.

Section 27-104-203 provides a general prohibition against interagency charges stating, in relevant part, “From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent, audit fee, personnel fee or other charge for services or resources received.” Miss. Code Ann. § 27-104-203(1). Furthermore, Section 27-104-205 lists the state agencies that have their expenses defrayed by Legislative appropriation from the State General Fund and includes the Commission as one of those agencies. Miss. Code Ann. § 27-104-205(1). This section further provides, in pertinent part, “Beginning July 1, 2016, any fees, assessments or other revenues charged for the support of the above-named state agencies shall be deposited into the State General Fund...” *Id.*

Section 71-3-85 *et seq.* governs the Workers’ Compensation Commission. In addition to the more general statutes above, Section 71-3-100 states that all funds received by the Commission, as established by Section 71-3-85 *et seq.*, are to be paid to the State Treasurer, who will deposit the funds into the State General Fund. Furthermore, this section specifically reaffirms the language of Section 27-104-205 by stating that from and after July 1, 2016, the expenses of the Commission are defrayed by Legislative appropriation from the General Fund and that all user charges and fees authorized by Section 71-3-85 *et seq.* must be deposited into the General Fund. Finally, Section 71-3-100 specifically incorporates the prohibition against interagency charges provided in Section 27-104-203 stating, “From and after July 1, 2016, the Workers’ Compensation Commission shall not charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of Section 71-3-85 *et seq.*” Miss. Code Ann. § 27-104-203.

Section 71-3-99 requires the Commission to estimate annually in advance the amounts necessary for its administration and then authorizes the Commission to assess each carrier and self-insurer Two Hundred Fifty Dollars (\$250.00). Miss. Code Ann. § 71-3-99(1)(b). The proceeds of that assessment are to be deducted from the total estimate of expenses, and then the remaining expenses of the administration are to be prorated among the carriers writing compensation insurance in the state and self-insurers. *Id.* Section 71-3-99(4) specifically requires that such amounts collected be paid into the State General Fund.

In response to your first question, it is our opinion that the assessment authorized in Section 71-3-99 is the type of interagency charge contemplated and prohibited by Section 27-104-203 because Section 71-3-100 tracks the prohibitive language of Section 27-104-203 and applies that prohibition to those funds “received by authority of Section 71-3-85 *et seq.*” The Legislature displayed its clear intent for the general prohibition of interagency charges to apply to the Commission when it amended Section 71-3-100 to both incorporate the prohibitive language of Section 27-104-203 and to provide that fees authorized and received by the Commission must go into the General Fund for its legislative appropriation. Therefore, the assessment authorized by Section 71-3-99 is the type of interagency charge no longer permitted according to Section 27-104-203 and may not be assessed by the Commission against another state agency pursuant to Section 71-3-100.

In response to your second question, Section 27-104-31 is the enabling statute for the Trust. That section also authorizes the Trust to require that state agencies make premium payments, contributions to self-insurance funds, or both, that are “necessary to meet the obligations created by the comprehensive risk management program.” Miss. Code Ann. Section 27-104-31(1)(e). Subsection (1)(e) provides that the funds required by the statute shall be used to pay claims under the workers’ compensation self-insurance fund. *Id.*

When previously asked about the implications of Section 27-104-203 on the Trust, we opined that the premiums collected by the Trust are not prohibited by Section 27-104-203. MS AG Op., *Upchurch* at *3 (June 30, 2016). Additionally, we said Section 27-104-203 “does not apply to any trust fund account maintained by the sixteen agencies, including the DFA; nor does it prohibit the sixteen agencies, including the DFA, from maintaining clearing accounts in approved depositories.” *Id.* Our opinion remains the same. Notably, the entire Trust is funded by state agencies. The funds are exempt from the appropriation process and do not lapse into the State General Fund. Miss. Code Ann. Section 27-104-31(1)(e).

As a general rule of statutory construction, in the event of a conflict between a general statute and a specific statute on the same subject, the specific statute preempts the general statute. *Townsend v. Estate of Gilbert*, 616 So. 2d 333, 335 (Miss. 1993). Therefore, the specific authority of the Trust to collect premium payments or contributions under Section 27-104-31 preempts the general prohibition in Section 27-104-203. Thus, the Commission should continue to pay to the Trust the premium payments collected pursuant to Section 27-104-31(1)(e).

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 C. Overby*

Abby C. Overby
Special Assistant Attorney General