



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

September 21, 2022

J. Richard Barry, Esq.
Attorney, Kemper County Board of Supervisors
505 Constitution Avenue
Meridian, Mississippi 39301

Re: Countywide Policy Requiring Direct Deposit of Payroll

Dear Mr. Barry:

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

Question Presented

Can the Kemper County Board of Supervisors adopt a policy requiring all employees to sign up and be paid by direct deposit for their payroll at a banking facility of the employee's choosing?

Brief Response

No. The Kemper County Board of Supervisors cannot require all county employees to accept payroll payments via direct deposit.

Applicable Law and Discussion

Opinions of this office are limited to prospective questions of state law. Miss. Code Ann. § 7-5-25. To the extent your request deals with previously enacted Board policies, we must decline to respond with an official opinion. MS AG Op., *Brock* at *1 (Nov. 8, 2019). Additionally, we cannot opine or comment on federal employment policies, which you mention in your request. MS AG Op., *Berry* at *1 (Feb. 10, 2014) ("Our office does not opine on federal law issues or questions of fact, and we restrict our opinions to questions of state law.") We offer the following for prospective purposes only.

For payroll as well as other claims, the chancery clerk of each county prepares and maintains the claims docket for the board of supervisors' approval. Miss. Code Ann. § 19-13-29. The claims docket shall be called at each regular meeting of the board with all proper claims being allowed.

Miss. Code Ann. § 19-13-31(1). However, for monthly salaries of county employees, the following procedure may be followed:

Notwithstanding the provisions of this section to the contrary, the chancery clerk may be authorized by an order of the board of supervisors entered upon its minutes, to issue pay certificates against the legal and proper fund for the salaries of officials and employees of the county or any department, office or official thereof without prior approval by the board of supervisors as required by this section for other claims, provided the amount of the salary has been previously entered upon the minutes by an order of the board of supervisors, or by inclusion in the current fiscal year budget and provided the payment thereof is otherwise in conformity with law and is the proper amount of a salaried employee and for hourly employees for the number of hours worked at the hourly rate approved on the minutes.

Id. at (2). Section 19-1-31 does not speak to payment by electronic transfer. However, this office has previously opined that the governing authorities of several public entities, including counties, could make electronic transfers for insurance payments and payroll-related insurance coverage as well as claims in general. MS AG Op., *Bryant* at *1 (Aug. 10, 2001). “[E]lectronic transfers may be used for payment of claims in general, subject to systems and procedures established . . . pursuant to Miss. Code Ann. Section 7-7-211 to ensure safe handling of the funds.” *Bryant* at *1. The *Bryant* opinion cited several sections of 2001 Miss. Laws Ch. 400 (S.B. 2678), now codified as the “Uniform Electronic Transactions Act,” in explaining why payment of claims may be made electronically. Miss. Code Ann. §§ 75-12-1 *et seq.* The Uniform Electronic Transactions Act “facilitates electronic transactions consistent with other applicable law” “between two or more persons relating to the conduct of business, commercial, or governmental affairs.” Miss. Code Ann. §§ 75-12-11 and 75-12-3. “Persons” is defined to include an individual as well as a governmental agency. *Id.* at § 75-12-3. The Act applies to “. . . transactions between parties each of which has agreed to conduct transactions by electronic means.” *Id.* at § 75-12-9.

While payment by electronic transfer is acceptable, Sections 19-13-29 and 19-13-31 do not authorize the chancery clerk or board of supervisors to require county employees to accept the payment of their salaries by electronic transfer or direct deposit.

Consequently, following the *Bryant* opinion, this office further opined that “a municipality, ***upon agreement of the payee***, may make payroll payments to its employees . . . by electronic transfer, subject to systems and procedures established by the Department of Audit pursuant to Section 7-7-211.” MS AG Op., *Clark* at *1 (June 8, 2007) (emphasis added). Therefore, while a municipality has the authority to pay employees through direct deposit, “[a] municipality may not force its employees to be compensated via electronic deposit.” MS AG Op., *Lawrence* at *1 (Jan. 17, 2014). Counties, therefore, like municipalities, may make payroll payments to its employees via direct deposit but only when an employee has agreed to such.

Additionally, county elected officials have the option to adopt their own policies of personnel administration. Section 19-2-9(1) states:

The board of supervisors of each county which is required to operate on a countywide system of road administration as described in Section 19-2-3 shall adopt and maintain a system of countywide personnel administration for all county employees other than those employees subject to subsection (2) of this section.

Section 19-2-9(2) requires elected officials who are authorized to hire their own employees to either “adopt and maintain a system of personnel administration for their respective employees or adopt the system of personnel administration adopted by the board of supervisors.” *Id.* If the elected officials decide to adopt their own personnel system, it must be filed with the county board of supervisors. *Id.* This office has previously opined:

Although any such system [of personnel administration adopted by an elected official] must be filed with the clerk of the board of supervisors, it is entirely independent of any policy adopted and implemented by the board of supervisors. Stated differently, the countywide personnel system and policy implemented by the board of supervisors has absolutely no application to employees of the offices of those various elected officials described by Section 19-2-9(2) unless the elected official in question chooses not to adopt and implement an independent system.

MS AG Op., *Haygood* at *4 (May 1, 2012) (citation omitted). Personnel administration “is essentially human resource management, and includes matters such as hiring, firing, **compensation** and work hours.” MS AG Op., *Abraham* at *2 (Apr. 18, 2012) (emphasis added). When the payroll warrants being issued are for an elected official’s employees, “it is those elected officials who are responsible, and liable on their bonds, to make such assurances” that payroll amounts are valid. *Id.* at *2.

It is the opinion of this office that the method of payroll delivery is also within the purview of personnel administration.

Therefore, for the foregoing reasons, the Board may not require all county employees to sign up and be paid by direct deposit for their payroll.

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/ *Misty Monroe*

Misty Monroe
Assistant Attorney General