



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

September 7, 2022

William E. Holcomb, III
President, Issaquena County Board of Supervisors
Post Office Box 27
Mayersville, Mississippi 39113

Re: Donation of ARPA Funds to County Employees

Dear Mr. Holcomb:

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

Question Presented

Is it legal for the Issaquena Board of Supervisors to donate one thousand dollars (\$1,000.00) each from American Rescue Plan Act funds deposited into the county treasury to county employees that stayed on the job during the pandemic and are still employed by the county?

Brief Response

Sections 66 and 96 of the Mississippi Constitution prohibit the Issaquena Board of Supervisors from granting additional compensation for services already rendered and included in a previously agreed upon contract.

Applicable Law and Discussion

As an initial matter, we are aware that the federal government has issued rules and regulations governing the expenditure of American Rescue Plan Act (“ARPA”) funds, and note, for informational purposes, that any expenditure of ARPA funds by the county must comply with any applicable federal rules and regulations governing the same. However, this office is not authorized to interpret or opine on federal laws or regulations by official opinion. *See, e.g., MS AG Op., Snell* at *2 (Mar. 16, 2018). Thus, we must decline to respond by way of an official opinion regarding the legality of using federal funds in a specific manner in accordance with federal laws and regulations. Once turned over to the state, the rules for expenditure of state funds also apply. *MS AG Op., Adams* at *1 (Jan. 10, 2003). Therefore, we offer the following opinion limited to the authority of a county board of supervisors to use county funds for donations to employees.

Article IV, Section 66 of the Mississippi Constitution provides, “[n]o law granting a donation or gratuity in favor of any person or object shall be enacted except by the concurrence of two-thirds of the members elect of each branch of the Legislature, nor by any vote for a sectarian purpose or use.” Further, Article IV, Section 96 provides, in relevant part, “[t]he Legislature shall never grant extra compensation, fee, or allowance, to any public officer, agent, servant, or contractor, after service rendered or contract made, nor authorize payment, or part payment, of any claim under any contract not authorized by law....”

We have previously said that Sections 66 and 96 prohibit a public entity from paying employees extra compensation or bonus payments for past services because doing so would equate to an unlawful donation. MS AG Op., *Eleuteris* at *1 (Nov. 1, 2013). *See also* MS AG Op., *Adams* at *1 (Jan. 10, 2003) (teachers who were currently under contract to perform services during school year could not be given extra compensation for services already rendered and covered by contract); MS AG Op., *Chiles* at *1 (Nov. 10, 2020) (“A county may only expend county funds for incentive pay, including “hazard pay,” when such incentives are contracted for prior to the date when services are to be performed.”) Therefore, the board of supervisors could not legally donate funds from the county treasury to county employees for services already rendered because those services were performed pursuant to a previously agreed upon contract. Such use of the funds would be in direct violation of both Sections 66 and 96.

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/ Abigail C. Overby

Abigail C. Overby
Special Assistant Attorney General