



November 28, 2022

Craig Slay, Esq.
Attorney, Rankin County Board of Supervisors
211 E. Government Street, Suite A
Brandon, Mississippi 39042

Re: Additional Employment for Sheriffs

Dear Mr. Slay:

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

Questions Presented

1. Is the salary cap for sheriffs, set forth in Mississippi Code Annotated Section 25-3-25, applicable only to the salary earned by an individual for performing his or her duties *as sheriff*, so that an individual serving as sheriff may be paid above the statutory cap for overseeing the FEMA Safe Room and performing work outside his or her sheriff's duties?
2. Would an individual's simultaneous employment as the sheriff of a county and administrator of the county's FEMA Safe Room—a position within the county's emergency operations department—comport with Mississippi's separation of powers doctrine?

Brief Response

1. The salary cap in Section 25-3-25 applies only to an individual's role as sheriff. If a sheriff has separate employment in addition to his or her role as sheriff, the salary cap in Section 25-3-25 would not apply to the compensation for his or her second job.
2. A sheriff simultaneously working for the county emergency operations department would not violate the separation of powers doctrine because both positions are within the executive branch of government.

Applicable Law and Discussion

This office has previously opined that “[e]xcept where expressly prohibited, there is no prohibition against an elected official having other employment that is not incompatible with the duties of the elected office.” MS AG Op., *Horhn* at *2 (Dec. 7, 2007). An individual may simultaneously serve as sheriff and be employed in a separate position. *Id.* Pursuant to Section 25-3-25, the annual salary for sheriffs is “fixed as full compensation for their services” and set based upon the population of the county. When asked whether an individual could simultaneously serve as sheriff of a county and as the elected municipal police chief, we opined that he could receive a salary for each office or position. MS AG Op., *Lee* at *1 (Dec. 14, 2007). We further opined that because the sheriff’s salary is set by statute, it could “not be reduced below the minimum required in that section.” *Id.* Thus, in response to your first question, it is the opinion of this office that the salary cap in Section 25-3-25 applies only to an individual’s service as sheriff and would not apply to the compensation for separate employment. We offer no opinion on whether working for the county emergency operation’s department would be compatible with the duties of sheriff.

With respect to your second question, the separation of powers doctrine prohibits an individual in one branch of government from simultaneously serving in another branch of government. Miss. Const. Art. 1 §§ 1-2. Based on a later conversation with you, we understand that the county emergency operations department you reference in your request is a local organization for emergency management established in accordance with Section 33-15-17. This office has previously opined that the local emergency management division is within the executive branch of government. MS AG Op., *Horne* at *1 (Aug. 1, 2007). A sheriff also serves within the executive branch of government. MS AG Op., *Winter* at *1 (Aug. 8, 2014). Accordingly, it is the opinion of this office that there is no violation of the separation of powers doctrine for an individual to simultaneously serve as sheriff and be employed by the county emergency operations department as both are within the executive branch of government.

We refer you to the Mississippi Ethics Commission regarding any potential conflicts of interest or other ethical implications arising from the situation you describe in your request. Additionally, because the Hatch Act, 5 U.S.C. 1501 *et. seq.*, may restrict the political activity of individuals employed by state or local executive agencies who work in connection with programs financed in whole or in part by federal loans or grants, including prohibiting candidacy for partisan office, you may wish to consult with the U.S. Office of Special Counsel for questions regarding the applicability of the Hatch Act.

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