



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

December 5, 2022

T. Michael Reed, Esq.  
School Board Attorney  
Richton Municipal Separate School District  
Post Office Box 0081  
Hattiesburg, Mississippi 39403

Re: Teacher's Assistants' Pay Schedule

Dear Mr. Reed:

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

### **Background**

You provide in your request that some teacher's assistants employed by the Richton Municipal Separate School District have requested that a portion of their pay be withheld each month so that they may continue to be paid during the summer months. The teacher's assistants are employed on a 10-month contract and paid on an hourly basis, presuming a 40-hour work week, in the amount that correlates to the statutorily required salary. They are not asking to be paid for work not performed but are asking that the school district, in effect, "escrow" a portion of their paycheck each month and pay them in June and July of each year when they would otherwise not receive a paycheck.

### **Questions Presented**

1. Can the School Board grant the request of the teacher's assistants and withhold a portion of their pay in escrow so that they might continue to draw a paycheck during the summer (June and July)?
2. Can the School Board pay teacher's assistants on a salary basis rather than an hourly basis? If so, can the salary be paid over 12 months versus the 10 months the teacher's assistants actually work?

### **Brief Response**

1. So long as the requirements of Mississippi Code Annotated Sections 37-9-39 and 37-151-103(1), which provide the manner for paying teacher's assistants, are met, we find no statutory prohibition against paying assistant teachers for hours worked in twelve monthly installments to include June and July. Any questions regarding escrow should be directed to the Mississippi Auditor's Office.
2. Sections 37-9-39 and 37-151-103(1) provide the manner in which teacher's assistants are to be paid. We find no statutory prohibition against teacher's assistants being paid their equal installments on a salary basis over twelve months.

### **Applicable Law and Discussion**

As an initial matter, you mention in your request that the teacher's assistants are employed on contract. Also, though not mentioned in your request, this office is aware that assistant teacher pay is addressed and governed by the Fair Labor Standards Act. Pursuant to Section 7-5-25, the Attorney General is authorized to issue official opinions on questions of state law only. Accordingly, this office does not issue official opinions that either require the interpretation of contracts or an analysis of federal law. *See, e.g., MS AG Op., Welch* at \*1 (June 23, 2021) (“[W]e cannot by official opinion interpret the terms or provisions of an agreement or contract or infer facts that may be relevant to our opinion.”); *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.”). Therefore, the following opinion answers your questions only to the extent that state law applies and does not consider or infer facts about any relevant contract provisions or consider any implications or requirements of relevant federal law including the Fair Labor Standards Act. This opinion also does not consider any potentially relevant tax implications.

Section 37-9-39 governs payment times for school district employees and, consistent with the provisions of Section 37-151-103(1), requires school districts to process a monthly payroll for licensed employees and allows the processing of either a monthly or bimonthly payroll for nonlicensed employees. Additionally, Section 37-9-39 requires that payment be made in equal installments beginning in the first month of employment, regardless of the number of days worked in any particular month, but it does not specify salary or hourly payments, nor does it specify over how many months the employees may or must be paid.

Pursuant to Section 37-61-1, the fiscal and scholastic years run from July 1 through June 30 each year, and Section 37-61-3 generally prohibits the expenditure of appropriated funds outside of the fiscal year in which the funds are appropriated. However, Section 37-61-3 specifically states that it does not “prohibit the payment of salaries of . . . teachers and other school employees whose salaries are payable in twelve (12) monthly installments after the close of the fiscal year from amounts on hand for such purpose at the end of the fiscal year.”

Relying on Section 37-7-39, we have previously opined that licensed and nonlicensed school employees may elect to receive salary and wage payments over a twelve-month year. *See MS AG Op., Adams* at \*1 (Mar. 14, 2003). Accordingly, and since Section 37-61-3 contemplates that

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teachers and other employees may be paid salaries in twelve (12) monthly installments, it remains the opinion of this office that so long as the school district complies with the requirements of Sections 37-9-39 and 37-151-103(1) in paying assistant teachers for hours worked, we find no statutory prohibition against paying assistant teachers in equal installments on a salary basis over a twelve-month period.

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

OFFICIAL OPINION