



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

January 9, 2023

Kenneth Wayne Jones
Hinds County Administrator
Post Office Box 1727
Jackson, Mississippi 39215-1727

Re: Payroll Processing Company

Dear Mr. Jones:

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

Questions Presented

1. Can Hinds County transfer county funds budgeted for county employee payroll to a third-party payroll processing company who in turn would use the county funds to pay county employees?
2. If the answer to question one is yes, what conditions must be met in order to do so?
3. How is MS AG Op., *Kellar* (Aug. 23, 2013) distinguishable from the scenario in question one?
4. Does MS AG Op., *Goodwin* (Mar. 30, 2001) apply to the ability of Hinds County to make payments to a payroll processing company to pay county employees?

Brief Response

1. No. The chancery clerk has the statutory duty to issue pay certificates for county employees. Hinds County has no authority to delegate to a third party the duty to pay county employees.
2. The response to your first question renders your second question moot.
3. In MS AG Op., *Kellar* (Aug. 23, 2013), this office opined that a vendor could authorize a third party to act as a receiver of funds owed. In your request, you are asking whether Hinds

County can allow a third-party processor to assume the payroll duties of the chancery clerk, which is not permissible for the reasons stated in our response to your first question and further discussed below.

4. The opinion in MS AG Op., *Goodwin* (Mar. 30, 2001) that a board of supervisors cannot contract for services that may infringe on the exercise by the chancery clerk of his statutory duties remains the opinion of this office.

Applicable Law and Discussion

The chancery clerk is statutorily obligated to keep a uniform system of accounts and must comply with all corresponding regulations adopted by the State Auditor pursuant to Section 19-11-13 of the Mississippi Code. The chancery clerk maintains the claims docket, including payroll, and issues warrants to pay claims as ordered by the board of supervisors in accordance with Section 19-13-29. “[T]he board of supervisors has the option of paying employees either by way of the claims docket . . . or using the more streamlined system outlined in 19-13-31(2) without going through the claims process.” MS AG Op., *Allen* at *1 (May 4, 2012). According to your facts, Hinds County pays its county employees pursuant to Section 19-13-31(2), which provides:

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.

This office has previously opined that “[t]he board of supervisors cannot contract for services that may infringe on the exercise by the chancery clerk of his statutory duties. Such duties include but are not limited to the issuance of warrants under the seal of his office. . . .” MS AG Op., *Goodwin* at *1 (Mar. 30, 2001). This office was previously asked about a situation in which a county hired a bookkeeper as specifically allowed under Section 19-3-61. MS AG Op., *Miller* at *1 (Apr. 18, 2003). We reiterated “that the chancery clerk remains, by law, the county auditor and clerk of the board of supervisors” and that the assignment of bookkeeping functions to the county bookkeeper may not infringe upon the chancery clerk’s exercise of his statutory duties, including those under the above cited Section 19-11-13. *Miller* at *1. Accordingly, Hinds County may not delegate the performance of the county’s or the chancery clerk’s statutory payroll duties and responsibilities to a private entity.

In your third and fourth questions, you ask how two prior Attorney General opinions are distinguishable or harmonious to your current opinion request. In MS AG Op., *Kellar* (Aug. 23, 2013), this office opined that “a county, upon agreement of the vendor authorizing the third party processor to act as the authorized receiver of funds owed, may make payments to a third party

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processor by electronic transfer, subject to the systems and procedures established by the Department of Audit pursuant to Section 7-7-211.” *Kellar* at *1. However, your present question is not about the ability of a third party to receive payments on behalf of a vendor. Rather, you are seeking to have a third-party processor assume the statutory duties of the chancery clerk with respect to payment of employee salaries. As discussed above, the chancery clerk must issue pay certificates in accordance with the specific procedure outlined in Section 19-13-31. Thus, *Kellar* does not apply to your situation. In MS AG Op., *Goodwin* (Mar. 30, 2001), this office opined that “[t]he board of supervisors cannot contract for services that may infringe on the exercise by the chancery clerk of his statutory duties.” *Goodwin* at *1. This remains the opinion of this office.

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

OFFICIAL OPINION