



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

March 28, 2023

Betty W. Sanders, Esq.
Attorney, Leflore County
107 Kimbrough Street
Greenwood, Mississippi 38930

Re: Legal Counsel for County Official

Dear Ms. Sanders:

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

Background

In your request, you explain that state and federal lawsuits have been filed against the Leflore County Sheriff ("Sheriff"). The state action against him is in his individual capacity. The federal action was filed against him in both his official and individual capacities. The lawsuits seek specific performance in the form of a request for mandamus relief to force the Sheriff to execute an arrest warrant related to the Emmett Till case. The federal lawsuit seeks monetary damages in the form of payment of the plaintiff's attorney fees. The Sheriff has requested that Leflore County pay for his attorney fees and legal defense.

Questions Presented

1. What threshold findings of fact are required to be made on the record by the Leflore County Board of Supervisors to provide the Sheriff with legal counsel and a defense?
2. Do the Leflore County Supervisors have to find that the County has a pecuniary interest in the state lawsuit in order to provide the Sheriff with legal counsel and a defense?

Brief Response

1. The Leflore County Supervisors have the discretion to provide legal counsel for the Sheriff, if they make a factual determination, spread across the minutes, that the County has an interest in the litigation pursuant to Mississippi Code Annotated Section 25-1-47 and/or Section 19-3-47(1)(b).

2. No. The requirement in Section 19-3-47(1)(b) that the Supervisors determine that they have a pecuniary interest applies only to “criminal cases against a county officer for malfeasance or dereliction of duty in office, when by the criminal conduct of the officer the county may be liable to be affected pecuniarily.”

Applicable Law and Discussion

As an initial matter, opinions of this office are offered on prospective questions of state law pursuant to Section 7-5-25. We understand that as of the date this opinion is being issued, Leflore County has not retained counsel to defend the Sheriff. Further, we offer no comment on the underlying litigation referenced in your request. Based on a conversation subsequent to this request, we understand that you are not asking about the applicability of the Mississippi Tort Claims Act. Miss. Code Ann. §§ 11-46-1, *et seq.* This opinion is limited to what findings a county must make on the record to provide an employee or officer with legal counsel and whether the County must have a pecuniary interest in the litigation to provide such defense. The following is offered for prospective purposes subject to the limitations discussed above.

Counties have the discretion to provide legal counsel for its employees and officers pursuant to Section 25-1-47, which applies to all state and local governmental entities, and Section 19-3-47, which is specific to counties. In discussing legal representation of county officers and employees, Mississippi courts and this office alike have looked to Section 25-1-47 *and* Section 19-3-47(1)(b). *See Richardson v. Canton Farm Equip., Inc.*, 608 So. 2d 1240, 1253 (Miss. 1992) (“Without doubt, supervisors are empowered to employ counsel and defend themselves when sued in causes arising out of their official position whether they be sued in their official capacity, individually, or both. *See, e.g.,* Miss. Code Ann. §§ 19-3-47 and 25-1-47 (1972).”); *Madison Cnty. v. Hopkins*, 857 So. 2d 43, 51 (Miss. 2003) (providing that Sections “25-1-47 and 19-3-47 without question allow a county to provide legal counsel for the defense of any claim against an employee of that county.”)

Section 25-1-47 provides:

Any municipality of the State of Mississippi is hereby authorized and empowered, within the discretion of its governing authorities, to investigate and provide legal counsel for the defense of any claim, demand, or action, whether civil or criminal, made or brought against any state, county, school district, or municipal officer, agent, servant, employee, or appointee as a result of his actions while acting in the capacity of such officer, agent, servant, employee, or appointee; and such municipality is hereby authorized to pay for all costs and expenses incident to such investigation and defense.

This office has opined that “municipality” in Section 25-1-47 includes counties. MS AG Op., *Neyman* at *1 (Feb. 21, 2014).

In addition to Section 25-1-47, counties are authorized to provide legal counsel in both civil and criminal cases pursuant to Section 19-3-47(1)(b), which provides:

The board of supervisors shall have the power, in its discretion, to employ counsel in all civil cases in which the county is interested, including eminent domain

proceedings, the examination and certification of title to property the county is acquiring *and in criminal cases against a county officer for malfeasance or dereliction of duty in office, when by the criminal conduct of the officer the county may be liable to be affected pecuniarily*, with the counsel to conduct the proceeding instead of the district attorney, or in conjunction with him, and to pay the counsel out of the county treasury or the road fund that may be involved reasonable compensation, or if counsel so employed is retained on an annual basis as provided in this subsection, reasonable additional compensation for his services.

(Emphasis added.) This office has previously opined that Section 19-3-47 authorizes a county to employ “counsel to represent a county official who has been sued individually upon a finding of fact by the board of supervisors that the county has an interest in said case.” MS AG Op., *Coleman* at *2 (Oct. 20, 2006). The specific “interest” of the public entity would obviously depend upon the underlying facts of each case and would be a case-by-case determination. For both Section 19-3-47 and Section 25-1-47, the public entity must approve the representation and spread it across the minutes “prior to the engagement of that representation.” *Coleman* at *2; *see also* MS AG Op., *Jackson* at *1 (Dec. 30, 1992).

We understand from our subsequent conversation that your second question, regarding the possible requirement that the county have a *pecuniary* interest in the litigation, stems from prior opinions of this office, which appear to be inconsistent. In MS AG Op., *Brown* (Dec. 23, 1987), this office opined that the county could provide legal counsel to a circuit clerk sued in his individual capacity pursuant to Section 19-3-47(1)(b) and Section 25-1-47 if the supervisors determined that the county was interested in and may be pecuniarily affected by the litigation in question. In MS AG Op., *Peresich* (Nov. 21, 1990), this office withdrew a prior opinion and clarified “that the requirement that the political subdivision be ‘interested in’ and ‘pecuniarily affected’ by litigation before counsel can be employed by said political subdivision to defend an officer or employee set forth in Section 19-3-47(1)(b) is applicable only to counties and not municipalities.” It remains the opinion of this office that Section 19-3-47 applies only to counties. However, we further opine that the limitation that the county must have a pecuniary interest applies only to criminal cases “when by the criminal conduct of the officer the county may be liable to be affected pecuniarily.” Miss. Code Ann. § 19-3-47(1)(b). To the extent that any previously issued opinions state otherwise, they are hereby modified prospectively to conform with this opinion. As we understand your request, the lawsuits filed against the Sheriff are civil in nature and do not allege criminal conduct. Thus, there is no requirement that that Supervisors determine that the County has a pecuniary interest to provide the Sheriff with legal counsel for the litigation as described in your request.

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