



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

May 19, 2023

Andrea Sanders, Commissioner
Mississippi Department of Child Protection Services
Post Office Box 346
Jackson, Mississippi 39205

Re: Utilization of Mississippi Department of Child Protection Services' State Funds

Dear Commissioner Sanders:

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

Background

According to your request, you are seeking an official opinion on whether Mississippi Department of Child Protection Services' state funds may be used for certain purposes without violating Sections 66 or 96 of the Mississippi Constitution or any other Mississippi law.

Questions Presented

1. May the Mississippi Department of Child Protection Services' state funds be utilized to purchase a vehicle or other personal property for the parent of a child in the agency's custody?
2. May the Mississippi Department of Child Protection Services' state funds be utilized to pay private school tuition, and room and board, on behalf of a child in state custody?

Brief Response

1. State law does not currently provide the Mississippi Department of Child Protection Services with unrestricted, broad authority to use its state funding. Therefore, absent specific authority based on the pertinent circumstances, using Mississippi Department of Child Protection Services' state funds to purchase a vehicle or other personal property for the parent of a child in the agency's custody would be a violation of Section 66 of the Mississippi Constitution.

2. State law does not currently provide the Mississippi Department of Child Protection Services with unrestricted, broad authority to use its state funding. Therefore, absent specific authority based on the pertinent circumstances, using Mississippi Department of Child Protection Services' state funds to pay private school tuition, and room and board, on behalf of a child in state custody would be a violation of Section 66 of the Mississippi Constitution.

Applicable Law and Discussion

Your request asks whether Mississippi Department of Child Protection Services' (MDCPS) state funds may be used for certain purposes without violating Sections 66 or 96 of the Mississippi Constitution or other Mississippi law. Article IV, Section 96 is not applicable to this matter as it only pertains to donations to public officers, agents, servants, or contractors, not children in state custody or parents of children in state custody. However, 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." *See also* MS AG Op., *Rodolfich* at *1 (July 31, 2020); MS AG Op., *Brown* at *1 (Oct. 6, 2006) ("Section 66 . . . prohibits donations which are not specifically authorized by law.").

In other opinions where this office has considered a potential violation of Section 66, we looked to the relevant state law that could be applicable in authorizing the proposed use of funds. *See Rodolfich* at *2. In *Rodolfich*, we noted that community colleges were authorized to expend funds to provide awards to individuals with outstanding performance based on the community colleges' broad authority set forth in Section 37-29-67(1) of the Mississippi Code, which provides:

Subject to the provisions of Sections 37-29-1 through 37-29-273, the board shall have *full power to do all things necessary* to the successful operation of the district and the college or colleges or attendance centers located therein to insure educational advantages and opportunities to all the enrollees within the district.

(Emphasis added). We then juxtaposed such broad authority to the limited authority granted to school districts in Section 37-7-301(s), which sets forth:

Activity funds may only be expended for any necessary expenses or travel costs, including advances, incurred by students and their chaperons [sic] in attending any in-state or out-of-state school-related programs, conventions or seminars and/or any commodities, equipment, travel expenses, purchased services or school supplies which the local school governing board, in its discretion, shall deem beneficial to the official or extracurricular programs of the district, including items which may subsequently become the personal property of individuals, including yearbooks, athletic apparel, book covers and trophies

We therefore concluded that a public school district could not offer monetary incentives to students based upon their prospective performance on the ACT. *See Rodolfich* at *2 ("It is the opinion of this office that monetary awards for prospective ACT Test performance do not constitute

‘commodities, equipment, travel expenses, purchased services or school supplies’ as contemplated by Section 37-7-301(s).”).

Applying this logic to the matter at hand, we note that state law does not currently provide MDCPS with unrestricted, broad authority to use its state funding. State law does not speak to MDCPS’s authorization to use its state funds to purchase a vehicle or other personal property for the parent of a child in the agency’s custody. Likewise, state law does not speak to MDCPS’s authorization to use its state funds to pay private school tuition and room and board, on behalf of a child in state custody. More specific provisions, however, may apply in some circumstances.

For example, Section 37-23-77 —applying exclusively to children with mental or physical conditions as set forth in Sections 37-23-61 and 37-23-63— does in some instances provide state funding for education for children under the legal guardianship of the State Department of Human Services, or any other state agency. However, because your request does not inquire about circumstances regarding “exceptional children,” this opinion does not fully consider, and should not be considered applicable to, the specific group of children contemplated by Section 37-23-77.

Section 43-15-17 could also potentially be applicable. Section 43-15-17, regarding “[s]upportive services payments authorized,” sets forth:

(1) The Department of Child Protection Services is authorized to make such payments as may be appropriate for supportive services to facilitate either the return of children to their natural parents or their adoption, depending upon and contingent upon the availability of the Department of Child Protection Services securing or having sufficient funds to render this supportive service. Upon court order, the parent(s) shall be responsible for reimbursing the department for any foster care or kinship care payments made on behalf of his or her child, based upon financial ability to pay, until such time as there is a termination of parental rights regarding the child, or the child is adopted.

Because this provision does not provide specific allowances (like Section 37-7-301(s)) but does provide specific facilitation requirements, i.e., “supportive services to facilitate either the return of children to their natural parents or their adoption,” a determination of whether this provision would apply to any particular circumstances would ultimately be a question of fact. Pursuant to Section 7-5-25, this office may not address questions of fact. *See also* MS AG Op., *Barton* at *2 n.2 (May 17, 2021).

Nonetheless, based on the specific questions presented and information provided in your subject request, it is the opinion of this office that, as it currently stands, state law does not generally authorize the use of MDCPS funds to (1) purchase a vehicle or other personal property for the parent of a child in the agency’s custody or (2) pay private school tuition, and room and board, on behalf of a child in state custody. Such uses would be a violation of Section 66 of the Mississippi Constitution.

However, in the 2023 Regular Session, the Legislature passed House Bill 1149 (“H.B. 1149”), which makes MDCPS an independent agency rather than a subagency of the Department of Human

Services and, among other things, amends MDCPS's powers and duties. The act takes effect July 1, 2023. While H.B. 1149 is not retroactive, it will change MDCPS's spending authority moving forward. Relevant to your request, H.B. 1149 provides, in part:

(3) The Department of Child Protection Services shall provide the services authorized by law to every individual determined to be eligible therefor, and in carrying out the purposes of the department, the commissioner is authorized:

- (a) To formulate the policy of the department regarding child welfare services within the jurisdiction of the department;*
- (b) To adopt, modify, repeal and promulgate, after due notice and hearing, and where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing or effectuating the powers and duties of the department under any and all statutes within the department's jurisdiction;*
- (c) To apply for, receive and expend any federal or state funds or contributions, gifts, devises, bequests or funds from any other source;*
- (d) To enter into and execute contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the programs of the department; and*
- (e) To discharge such other duties, responsibilities, and powers as are necessary to implement the programs of the department.*

...

(7) The Department of Child Protection Services shall have the following powers and duties:

- (a) To provide basic services and assistance statewide to needy and disadvantaged individuals and families;*
- (b) To promote integration of the many services and programs within its jurisdiction at the client level thus improving the efficiency and effectiveness of service delivery and providing easier access to clients;*
- (c) To employ personnel and expend funds appropriated to the department to carry out the duties and responsibilities assigned to the department by law*

(Emphasis added) (amending Miss. Code Ann. § 43-26-1).

As shown, H.B. 1149 still does not authorize MDCPS to use funds for the specific purposes about which MDCPS has inquired —i.e., to purchase a vehicle for a parent of a child in state custody and to pay private school tuition, room, and board. However, it does provide MDCPS with general, broad authority to use its funding, including its state funding, to carry out its duties and responsibilities. *See id.* (“The Department of Child Protection Services shall have the following powers and duties: (a) to provide basic service and assistance statewide to needy and disadvantaged individuals and families; . . . [and] (c) to . .

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. expend funds appropriated to the department to carry out the duties and responsibilities assigned to the department by law . . .”).

It is therefore the opinion of this office that once House Bill 1149 takes effect on July 1, 2023, MDCPS may utilize its state funding to purchase a vehicle for a parent of a child in state custody or to pay private school tuition, room, and board for a child in state custody without violating Section 66, if MDCPS makes a factual determination that doing so would “carry out the duties and responsibilities assigned to [it] by law.” As stated *supra*, such a determination would ultimately be a determination of fact, on which this office may not opine. Miss. Code Ann. § 7-5-25.

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/ Maggie Kate Bobo*

Maggie Kate Bobo
Special Assistant Attorney General

OFFICIAL OPINION