



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

April 26, 2023

James C. Simpson, Jr., Esq.
Attorney, Harrison County Utility Authority
2510 14th Street, Suite 1125
Gulfport, Mississippi 39501

Re: Harrison County Utility Authority

Dear Mr. Simpson:

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

Background

In your request, you provide that the Harrison County Utility Authority (“HCUA”) is a political subdivision of the state of Mississippi formed pursuant to Section 49-17-727 of the Mississippi Gulf Coast Region Utility Act (the “Act”). Miss. Code Ann. §§ 49-17-701, *et seq.* The HCUA comprises six member agencies, being the five incorporated cities in Harrison County and Harrison County itself. It is governed by a statutorily constituted board of directors comprising the five mayors of the municipalities in the County and two members of the Harrison County Board of Supervisors. The HCUA provides potable water, wastewater, and solid waste services to and on behalf of its member agencies within Harrison County under authority of the Act and pursuant to separate agreements among the member agencies.

While Gulfport remains a statutory member of the HCUA and its mayor a member of the board of directors, Gulfport has withdrawn from the agreement among the member agencies to participate in solid waste services and elected not to participate in HCUA’s solid waste contract. Instead, Gulfport has chosen to contract directly with a third-party vendor for its solid waste collection and disposal services. Gulfport remains a party to the potable water and wastewater agreements among the members.

Questions Presented

1. Since Gulfport has withdrawn from the agreement among the member agencies to a joint contract for solid waste services and is not to receive or participate in the services to be provided under the new HCUA solid waste collection and disposal contract, may Gulfport

abstain or simply not vote on the new HCUA contract, or is Gulfport required to vote under the statutory requirement that all actions affecting rates must be by unanimous vote of all members of the board?

2. May the HCUA enter a contract for solid waste services affecting rates for all participating member agencies with only the affirmative votes of the participating member agencies?
3. Keeping in mind that the members of the HCUA and its directors are set by statute and remain the same regardless, if your opinion is that a non-participating agency is not required to vote on such a contract, may it nevertheless choose to vote on such matter? What would be the effect of a sole “no vote” by the non-participating agency on such a contract?
4. Expanding the question to all services provided by the HCUA (water, wastewater, and solid waste), may the HCUA enter into a contract affecting rates, bonds, or capital improvements for only certain participating member agencies or affecting less than all agencies, with only the affirmative votes of those participating or affected member agencies?

Brief Response

1. While Gulfport may abstain from voting, because the HCUA may only enter a solid waste services contract that affects rates by unanimous vote of all members of the board, the result of an abstention would prevent the unanimous vote needed to enter into the contract.
2. No. Based on plain language of Mississippi Code Annotated Section 49-17-429, the HCUA may only enter a contract for solid waste services by unanimous vote of all members of the board.
3. The responses to your first two questions render this question moot.
4. The HCUA may only enter a contract affecting rates, bonds, or capital improvements by unanimous vote of all members of the board. The statute does not provide for approval of such actions by only certain participating member agencies.

Applicable Law and Discussion

Pursuant to Section 49-17-729(1), the HCUA board of directors consists of “the mayor of each city participating in the authority and the (2) directors appointed by the board of supervisors.” According to Section 49-17-729(2), “[a]ll business of the Harrison County Utility Authority shall be transacted as provided in Section 49-17-741, except that all actions affecting rates, bonds or capital improvements must be by unanimous vote of all members of the board.”

You assert in your request that contracts with third parties for solid waste collection and disposal services do, in fact, directly affect the rates to be paid by the HCUA, the member agencies, and ultimately the residents. *See MS AG Op., Hornsby* at *1 (Apr. 24, 2015) (opining that the HCUA annual budget had to be approved by unanimous vote if found to affect rates, bonds, or capital

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improvements). Accordingly, it is the opinion of this office that contracts that affect rates for solid waste services are statutorily required to be approved by unanimous vote of all members of the board, which would include the mayor of the City of Gulfport.

In response to your questions regarding abstentions or not voting, generally, abstentions are counted with the prevailing side. However, the Mississippi Supreme Court has held that if a statute provides specific voting requirements, those requirements apply over general parliamentary procedures. *Oakman v. Town of Florence*, 624 So. 2d 995, 997 (Miss. 1993) (holding that an abstention could not be counted with the majority vote when the statute required a favorable vote of two thirds of all of the members of a legislative body). Thus, if the board member representing Gulfport abstains or does not vote on an action affecting rates, bonds, or capital improvements, the action would not pass because the statute requires a unanimous vote of all members of the board.

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