



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

May 22, 2023

L.N. Chandler Rogers, Esq.
Attorney, Union County Board of Supervisors
Post Office Box 1771
New Albany, Mississippi 38652

Re: Delayed Receipt of Equipment During Last Six Months of Term

Dear Mr. Rogers:

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

Question Presented

If Union County issues a purchase order to purchase road equipment, but said equipment is not received until the next year during the last six months of the Board of Supervisors' term, is the Board of Supervisors in violation of the six month rule under Mississippi Code Annotated Section 19-11-27?

Brief Response

Once a purchase requisition request is received by the county purchasing clerk, and a subsequent purchase order is issued for equipment, the county funds are obligated and a purchase is made. Thereafter, even if the equipment is not received until the last six months of the Board of Supervisors' term, it would not be a violation of Section 19-11-27.

Applicable Law and Discussion

Section 19-11-27 provides:

No board of supervisors of any county shall expend from, or contract an obligation against, the budget estimates for road and bridge construction, maintenance and equipment, made and published by it during the last year of the term of office of such board, between the first day of October and the first day of the following January, a sum exceeding one-fourth ($\frac{1}{4}$) of such item of the budget made and published by it, except in cases of emergency. The clerk of any county is prohibited

from issuing any warrant contrary to the provisions of this section. *No board of supervisors nor any member thereof shall buy any machinery or equipment in the last six (6) months of their or his term unless or until he has been elected at the general election of that year.* The provisions of this section shall not apply to (i) projects of any type that receive monies from the Local System Bridge Replacement and Rehabilitation Program, the Emergency Road and Bridge Repair Fund, the 2018 Transportation and Infrastructure Improvement Fund or the Gulf Coast Restoration Fund; (ii) to expenditures on deficient bridges in the State Aid Road System or the Local System Road Program that have been deemed to be a deficient bridge as defined in Section 65-37-3; (iii) projects funded by the American Rescue Plan Act (ARPA) as well as any matching funds required under ARPA; or (iv) to a contract, lease or lease-purchase contract approved by a unanimous vote of the board and executed pursuant to the bidding requirements in Section 31-7-13. Such unanimous vote shall include a statement indicating the board's proclamation that the award of the contract is essential to the efficiency and economy of the operation of the county government.

As amended by Laws 2023, S.B. 2734 § 1, eff. Mar. 14, 2023 (emphasis added).¹ We note for informational purposes that Section 19-11-27 does provide exceptions to the six-month prohibition, including projects that receive monies from specific listed funds (including ARPA) and contracts executed pursuant to Section 31-7-13.

Counties must operate a Central Purchasing department, and it is the responsibility of that department to “purchase all equipment, heavy equipment, machinery, supplies, commodities, materials and services used by any office or department of the county except for those offices or departments whose expenditures are not required by law to be approved by the board of supervisors.” Miss. Code Ann. § 31-7-101. The “system shall comply with the requirements prescribed by the State Department of Audit. . . .” Miss. Code Ann. § 31-7-103. Accordingly, for any purchase over \$2,000.00, a requisition request, a purchase order, and a receiving report is required. Miss. Code Ann. § 31-7-103. *See MS AG Op., Nowak at *3 (Mar. 1, 2013) (“Any office or department of the county whose expenditures are required by law to be approved by the board of supervisors, must be made by the purchase clerk to ensure that the purchase is in compliance with the purchasing laws.”)*

Under the process mandated by the Office of the State Auditor, a purchase requisition request must be signed by one with authority in the particular department making the request. The purchase requisition obligates the funds of that department. Thereafter, the purchase clerk prepares a purchase order based upon the purchase requisition. The purchase order must contain a description of the commodity or service, the quantity of commodity ordered, the unit price of the commodity, and total amount of the purchase order. *See Professional Education Curriculum for County Purchase Clerks*, <https://www.osa.state.ms.us/downloads/purchase-manual.pdf>. This office has previously opined that a supervisor must “submit[] a requisition form to the county purchasing clerk.” MS AG Op., *Bryant at *3 (May 1, 2001)*. “The purchasing clerk determines how the item

¹ H.B. 1734 § 1, eff. July 1, 2023 further amends Section 19-11-27 but has no bearing on the question asked and answered in this opinion.

will be purchased, e.g., by bid, state contract, etc., and if there are sufficient funds in the budget for that budget item, as approved and amended by the board of supervisors, to make the purchase.” *Bryant* at *3. “If the request is within the budget and otherwise proper, the purchasing clerk may then initiate a purchase order and notify the vendor of the purchase order number.” *Id.* An item may not be ordered if it “would exceed the approved budget then in place.” *Id.* at *4. This further evidences the obligation of county funds at the time of the purchase requisition and purchase order.

Section 19-11-27 states that the board of supervisors may not “buy” machinery or equipment in the last six months of their term. The statute does not define “buy.” Black’s Law Dictionary does not define “buy” but refers users to the word “purchase,” which is “[t]he acquisition of an interest in real or personal property by *sale*, discount, negotiation, mortgage, pledge, lien, issue, reissue, gift, or any other voluntary transaction.” *Purchase*, BLACK’S LAW DICTIONARY (11th ed. 2019) (emphasis added). “Sale” is defined as “[t]he agreement by which such a transfer [of property for a price] takes place,” with one of the four elements being “a price in money paid *or promised*.” *Sale*, BLACK’S LAW DICTIONARY (11th ed. 2019) (emphasis added). The purchase order is the written agreement evidencing the sale of property between a vendor and the county.

It is therefore the opinion of this office that equipment and machinery are “bought” or “purchased” at the time the purchase order is issued because it is at that point that a price is mutually agreed-upon, and the county funds are encumbered. The following opinions to the contrary are modified prospectively to conform herewith: MS AG Op., *Nowak* (July 8, 2011) and MS AG Op., *Holleman* (June 28, 2019).

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/ Gregory Alston*

Gregory Alston
Special Assistant Attorney General