



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

June 29, 2023

Raymond L. Edwards, Esq.
City Prosecutor, Pass Christian
Post Office Box 277
Pass Christian, Mississippi 39571

Re: Mississippi Code Annotated Section 97-23-93(9)

Dear Mr. Edwards:

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

Question Presented

As provided in Mississippi Code Annotated Section 97-23-93(9), may “three (3) or more separate mercantile establishments” be interpreted as one mercantile establishment on three different visits?

Brief Response

Applying the plain meaning of Section 97-23-93(9), “three (3) or more separate mercantile establishments” may not be interpreted as one mercantile establishment on three different visits. However, House Bill 795 from the 2023 legislative session amends Section 97-23-93(9) to allow prosecutors to “aggregate the total price of merchandise shoplifted from the same or separate mercantile establishments within the same legal jurisdiction over a period of thirty (30) or fewer days.” This amendment takes effect July 1, 2023.

Applicable Law and Discussion

Currently, Section 97-23-93(7) provides that “[a] person convicted of shoplifting merchandise for which the merchant’s stated price exceeds One Thousand Dollars (\$1,000.00) shall be guilty of a felony and, upon conviction, punished as provided in Section 97-17-41 for the offense of grand larceny.” Section 97-23-93(9) currently states, “[f]or the purpose of determining the gravity of the offense under subsection (7) of this section, the prosecutor may aggregate the value of merchandise shoplifted from three (3) or more separate mercantile establishments within the same legal jurisdiction over a period of thirty (30) or fewer days.”

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You ask if “three (3) or more separate mercantile establishments” may be interpreted as one mercantile establishment on three different visits. Pursuant to Section 1-3-65, “[a]ll words and phrases contained in the statutes are used according to their common and ordinary acceptance and meaning; but technical words and phrases according to their technical meaning.” *See also Watson v. Oppenheim*, 301 So. 3d 37, 41–42 (Miss. 2020) (“If the statute’s language is clear and unambiguous, we apply its plain meaning and refrain from using principles of statutory construction.”) As stated by the Mississippi Supreme Court, “the text of the statute [is] the best evidence of legislative intent.” *Div. of Medicaid v. Miss. Indep. Pharmacies Ass’n*, 20 So. 3d 1236, 1240 (Miss. 2009). The text of Section 97-23-93(9) does not indicate that “three (3) or more separate mercantile establishments” could also mean one mercantile establishment on three different visits. It is thus the opinion of this office that as Section 97-23-93(9) currently reads, “three (3) or more separate mercantile establishments” may not be interpreted as one mercantile establishment on three different visits.

This said, House Bill 795 from the 2023 legislative session amends subsections (7) and (9) of Section 97-23-93 as follows:

(7) A person convicted of shoplifting merchandise for which *the total price of all items shoplifted in violation of this act* exceeds One Thousand Dollars (\$1,000.00) shall be guilty of a felony and, upon conviction, punished as provided in Section 97-17-41 for the offense of grand larceny.

OFFICIAL ... OPINION

(9) For the purpose of determining the gravity of the offense under subsection (7) of this section, the prosecutor may aggregate the *total price* of merchandise shoplifted from *the same or* separate mercantile establishments within the same legal jurisdiction over a period of thirty (30) or fewer days.

(Emphasis added). This amendment “shall take effect and be in force from and after July 1, 2023.” Laws 2023, H.B. 795, eff. July 1, 2023.

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