



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

June 29, 2023

Stephanie N. Morris-Harris, Esq.
Attorney, Bolivar County Board of Supervisors
Post Office Box 698
Cleveland, Mississippi 38732

Re: Unauthorized Purchase

Dear Ms. Morris-Harris:

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

Background

According to your request, the Bolivar County (“County”) Road Manager secured a \$600 purchase order for the one-week rental of certain equipment in September 2022. However, the equipment was not returned to the rental company until January 2023, resulting in invoices to the County totaling \$7,272. The additional rental fees incurred for the rental of the equipment were not authorized by the Bolivar County Board of Supervisors (“Board”), and thus, according to your request, violate the relevant purchase laws.

Questions Presented

1. May Bolivar County petition a court of competent jurisdiction for authority to pay the additional invoices, or must the court proceeding be initiated by the vendor?
2. Is there any authority under which Bolivar County may initiate an action in court to correct the error/failure and pay the vendor?

Brief Response

Mississippi Code Annotated Sections 19-13-23 and 19-13-31 provide the statutory scheme for persons having claims against a county. Under this scheme, a person must first file a claim with the clerk of the board of supervisors. If the board of supervisors rejects or refuses the claim, the claimant may appeal to the circuit court or may bring suit against the county.

Applicable Law and Discussion

As an initial matter, opinions of this office are limited to prospective questions of state law. Miss. Code Ann. § 7-5-25. This office does not validate or invalidate past actions. Therefore, to the extent your request deals with the County's compliance with the central purchasing requirements established in Sections 31-7-101 *et seq.*, this office must decline to respond with an official opinion. MS AG Op., *Brock* (Nov. 8, 2019). However, for informational purposes only, we find the following purchasing laws relevant to your described circumstances: Section 65-17-1(9) (providing county road manager may lease equipment "as may be necessary for operation of the county road department in conformity with the budget, in accordance with the central purchase system and existing laws and subject to approval of the board as to price or rental"); Section 65-7-95 (providing requirements for board of supervisors to rent road machinery or equipment); and Section 31-7-13(b) (providing bidding requirement and procedure for purchases over \$5,000 but not over \$75,000).

Regarding the County's ability to seek court authority or initiate a court action to pay the subject invoices, it is the opinion of this office that Mississippi law does not authorize the County to do so. Section 19-13-23 sets forth how claimants must submit claims against counties. It provides:

Any person having a just claim against any county shall first file the same on or before the last day of the month for which such claim may be payable, with the clerk of the board of supervisors for presentation to the board for allowance, which said claim shall be properly dated and itemized, and shall be accompanied by any evidence of performance or delivery as required by Section 19-13-25. The claimant may amend said claim at any time before final rejection or allowance, and may appear before the board and submit further evidence or argument in support thereof, having a continuance for either or both of said purposes if desired.

Section 19-13-31(1) sets forth the requisite process once a claim has been submitted in accordance with Section 19-13-23. Section 19-13-31(1) states, in pertinent part:

At each regular meeting of the board, the claims docket shall be called All claims found by the board to be illegal, *and which cannot be made legal by amendment*, shall be rejected or disallowed. All other claims shall be audited, and all those found proper upon due proof shall be allowed in the order in which they appear on the docket, whether or not there shall then be sufficient money in the several funds on which warrants must be drawn for their payment. Those claims as to which a continuance is requested by the claimant, and those found to be defective but which might be perfected by amendment shall be continued.

. . .

If the board shall reject any such claim in whole or in part, or refuse, when requested at a proper time, to pass finally thereon, the claimant may appeal to the circuit court, or may bring suit against the county on such claim.

...

In processing claims of vendors the board of supervisors shall be subject to the provisions of Sections 31-7-301, 31-7-305, 31-7-309, 31-7-311, and 31-7-313.

(Emphasis added).

In summary, once a claimant has properly filed a claim against the County in accordance with Section 19-13-23, the Board shall then follow the procedures for the administration of claims set out in Section 19-13-31. If the Board makes the factual determination that a claim can be made legal by amendment, then it may be approved and allowed. However, if the Board makes the factual determination that a claim is “illegal, and . . . cannot be made legal by amendment,” it “shall be rejected or disallowed.” Miss. Code Ann. § 19-13-31(1). Beyond this, to be allowed, claims must be audited and determined proper upon due proof. *Id.*; *see also* MS AG Op., *Sanders* at *2 (Oct. 18, 2013) (opining that a county board of supervisors “must examine the evidence before it concerning the claim . . . make findings of fact, and reflect the same in the minutes”). If a claim is rejected or refused by the Board pursuant to Section 19-13-31, the claimant must appeal to the circuit court or bring suit against the County. Miss. Code Ann. § 19-13-31(1); *see also* Miss. Code Ann. § 11-51-75 (providing procedure to appeal a judgment or decision of the board of supervisors of a county).

It is thus the opinion of this office that Sections 19-13-23 and 19-13-31 do not authorize the County to petition a court of competent jurisdiction for authority to pay an invoice, nor do they authorize the County to initiate an action in court to correct the County’s failure to pay an invoice.

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