



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

July 20, 2023

The Honorable Christopher D. Hemphill
Justice Court Judge, Lowndes County
309 S. Martin Luther King Drive
Columbus, Mississippi 39702

Re: Jurisdiction Under Mississippi Code Annotated Section 37-13-91(7)

Dear Judge Hemphill:

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

Question Presented

Although you pose multiple questions in your request, we understand you to be asking what is a “court of competent jurisdiction as it pertains to parent or child” pursuant to Section 37-13-91(7).

Brief Response

As used in Section 37-13-91(7), “a court of competent jurisdiction as it pertains to parent or child” is any court that would have jurisdiction over child-neglect matters—the underlying determination or the resulting criminal prosecution—as it pertains to parent or child.

Applicable Law and Discussion

Section 37-13-91 is known as the Mississippi Compulsory School Attendance Law. You seek guidance on what is a “court of competent jurisdiction as it pertains to parent or child” pursuant to Section 37-13-91(7), which provides, in pertinent part:

When a school attendance officer has made all attempts to secure enrollment and/or attendance of a compulsory-school-age child and is unable to effect the enrollment and/or attendance, the attendance officer shall file a petition with the youth court under Section 43-21-451 or shall file a petition *in a court of competent jurisdiction as it pertains to parent or child*.

(emphasis added).

In responding to your inquiry, we note that Section 37-13-91(5) and Section 97-5-39 are also relevant. Section 37-13-91(5) provides:

Any parent, guardian or custodian of a compulsory-school-age child subject to this section who refuses or willfully fails to perform any of the duties imposed upon him or her under this section or who intentionally falsifies any information required to be contained in a certificate of enrollment, shall be guilty of contributing to the neglect of a child and, upon conviction, shall be punished in accordance with Section 97-5-39.

Section 97-5-39 speaks to child neglect, delinquency, or abuse, and Subsection (1)(a) provides:

Except as otherwise provided in this section, any parent, guardian or other person who intentionally, knowingly or recklessly commits any act or omits the performance of any duty, which act or omission contributes to or tends to contribute to the neglect . . . of any child . . . shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00), or by imprisonment not to exceed one (1) year in jail, or by both such fine and imprisonment.

Finally, Section 97-5-39(8) provides that “[a]ny criminal prosecution arising from a violation of [Section 97-5-39] shall be tried in the circuit, county, justice or municipal court *having jurisdiction*; provided, however, that nothing herein shall abridge or dilute the contempt powers of the youth court.” (emphasis added).

Reading these provisions together, various courts may have jurisdiction over matters brought pursuant to Section 37-13-91(7). In fact, *any* court that would have jurisdiction over child-neglect matters —the underlying determination or the resulting criminal prosecution— as it pertains to parent or child would be a “court of competent jurisdiction.”

First, as indicated by the direct reference to youth court within Section 37-13-91(7), youth courts “have exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child” with limited exceptions. Miss. Code Ann. § 43-21-151(1). Accordingly, it is the opinion of this office that, depending on a particular county’s court system, the county court, the chancery court, or the municipal court —via the youth court division— will have jurisdiction over child-neglect matters and, accordingly, matters brought pursuant to Section 37-13-91(7). This is because these courts have “competent jurisdiction as it pertains to . . . child.”

Further, regarding jurisdiction as it pertains to parents, “[t]he several courts of justice organized under the constitution and laws of this state, shall possess the sole and exclusive jurisdiction of trying and punishing all persons in the manner prescribed by law, for crimes and offenses committed in this state.” Miss. Code Ann. § 99-11-1. As stated *supra*, Section 37-13-91(5) provides that a parent, guardian, or custodian who ultimately fails to comply with the Mississippi Compulsory School Attendance Law “shall be guilty of contributing to the neglect of a child and, upon conviction, shall be punished in accordance with Section 97-5-39.” Section 97-5-39 provides

that such crime is “a misdemeanor, and upon conviction shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00), or by imprisonment not to exceed one (1) year in jail, or by both such fine and imprisonment.”

To this end, circuit courts have jurisdiction over “all prosecutions in the name of the state for treason, felonies, crimes, and misdemeanors, except” those that are vested in another court. Miss. Code Ann. § 9-7-81; *see also* Miss. Const. Art. 6, § 156. County courts “have jurisdiction concurrent with the justice court in all matters, civil and criminal of which the justice court has jurisdiction” as well as “over criminal matters in the county assigned by a judge of the circuit court district in which the county is included.” Miss. Code Ann. § 9-9-21(1). Justice courts have limited criminal jurisdiction, including concurrent jurisdiction with circuit courts “over all crimes whereof the punishment prescribed does not extend beyond a fine and imprisonment in the county jail; but the Legislature may confer on the justice court exclusive jurisdiction in such petty misdemeanors as the Legislature shall see proper.” Miss. Const. Art. 6, § 171. And lastly, municipal judges “have the jurisdiction to hear and determine, without a jury and without a record of the testimony, all cases charging violations of the municipal ordinances and state misdemeanor laws made offenses against the municipality and to punish offenders therefor as may be prescribed by law.” Miss. Code Ann. § 21-23-7(1).¹ Accordingly, it is the opinion of this office that, depending on the applicable facts, the municipal court, the justice court, the county court, or the circuit court may each be a “court of competent jurisdiction as it pertains to parent” pursuant to Section 37-13-91(7).

Finally, pursuant to Section 7-5-25, this office may only address questions of law and may not address mixed questions of fact and law. As such, we cannot opine upon which particular court(s) will have competent jurisdiction in a particular circumstance. However, we note that we find no state law requirement that one court be given precedence over another. A Section 37-13-91(7) action may be brought in the court of the filer’s discretion as long as it is brought within a court that has competent jurisdiction.

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

¹ *See also Collins v. State*, 594 So. 2d 29, 33 (Miss. 1992) (noting “when a municipality incorporates a state-defined misdemeanor as an offense against the municipality, an act is considered an offense against the municipality only if the municipality brings the action” and that Section 21-23-7(1) “does not . . . deprive a county court of jurisdiction over misdemeanors committed within a municipality that lies within the county.”).