



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

August 23, 2023

Shannon Crow, Esq.  
Attorney, Yalobusha County Board of Supervisors  
203 Wagner Street  
Water Valley, Mississippi 38965

Re: Mississippi Code Annotated Section 65-1-179(4)

Dear Mr. Crow:

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

### **Background**

According to your request, in February 2019, a bridge in Yalobusha County (the “County”) suffered irreparable damage due to flooding. In August 2019, the County and the Mississippi Department of Transportation (“MDOT”) entered into an agreement to construct a new bridge (the “Project”). Pursuant to the agreement, federal reimbursement for the cost of the Project would be 80%, and the County would be solely responsible for the remaining costs.

In October 2020, the County declared necessity for borrowing money, pursuant to Mississippi Code Annotated Sections 17-21-51, *et seq.*, for the sole purpose of paying costs it incurred on the Project. The County directed that the General Obligation Note (“Note”) in the principal amount of \$686,604.87 be offered for sale on sealed bids, and Trustmark National Bank was confirmed and approved as the highest bidder. The note requires the County to make five (5) annual payments of \$137,320.97 plus interest at 1.61%, commencing on February 1, 2022 and ending on February 1, 2026. The 2022 and 2023 payments were paid from funds budgeted by Yalobusha County Supervisory District 5 where the Project is located.

In 2021, the County and MDOT accepted a bid for the Project in the amount of \$16,240,280.65. To date, the Project is ongoing, and the estimated total cost is in excess of \$20 million, including necessary work outside of the construction contract.

On or about August 1, 2022, the County and MDOT entered a Memorandum of Understanding outlining the County’s receipt of \$3,140,000.00 in Section 65-1-179 Emergency Road and Bridge

Repair funds to be used on the Project. The County desires to use these Emergency Road and Bridge Repair funds to service its debt on the Note.

### **Questions Presented**

1. May Emergency Road and Bridge Repair funds be used to repay money borrowed out of necessity by the County to pay Project costs when the money was borrowed prior to the County's award of the Emergency Road and Bridge Repair grant?
2. May the County's Emergency Road and Bridge Repair funds be used to reimburse the budget of Yalobusha County Supervisory District 5 for the Note payment remitted on February 1, 2022 and/or for the Note payment remitted on February 1, 2023?
3. May the County's remaining three (3) Note payments be paid from its Emergency Road and Bridge Repair funds?

### **Brief Response**

1. Borrow and expend are not synonymous. If the County makes the factual determination that payment on the subject note is an "expen[se] on the [P]roject," the County may use the Emergency Road and Bridge Repair funds to make such payments that become due *after* the date the County received the Emergency Road and Bridge Repair funds.
2. No. Even assuming the County makes the factual determination that payment towards the Note is an "expen[se] on the [P]roject," the County may not reimburse itself for any amount that it expended on the Project prior to the date it received the Emergency Road and Bridge Repair funds.
3. Please see the response to your first question.

### **Applicable Law and Discussion**

Section 65-1-179(1) sets forth the creation of a special fund in the State Treasury known as the Emergency Road and Bridge Repair ("ERBR") Fund. Section 65-1-179(2) provides how the fund shall be utilized:

Money in the fund shall be utilized by the Mississippi Department of Transportation, with the advice of the Emergency Road and Bridge Repair Fund Advisory Board, to provide funding for emergency repairs to roads, streets and highways in this state and emergency bridge repairs on public roads, streets and highways in this state, as determined by a majority vote of the Mississippi Transportation Commission.

Relevant to this opinion, Section 65-1-179(4) provides, in pertinent part, "[u]nder no circumstances . . . shall Emergency Road and Bridge Repair Fund monies be used to reimburse

any amount *that has been expended on the project prior to the award of such monies to the recipient.*" (emphasis added).

While the statute does not define the term "expend," Merriam-Webster defines the term as "to pay out" or "to make use of for a specific purpose." MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/expend> (last visited August 23, 2023). You ask whether ERBR funds may be used to repay money borrowed out of necessity by the County to pay Project costs when the money was borrowed prior to the County's award of the ERBR grant. Merriam-Webster defines "borrow" as "to receive with the implied or expressed intention of returning the same or an equivalent." MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/borrow> (last visited August 23, 2023). Accordingly, "expend" and "borrow" are not synonymous.

It is therefore the opinion of this office that if the County makes the factual determination that payment on the subject note is an "expen[se] on the [P]roject," the County may use the ERBR funds to make such payments that become due *after* the County's receipt of the ERBR funds. This is because the expenditure occurs when the payment is made. This said, pursuant to Section 65-1-179, any payment must still be in accordance with the County's Memorandum of Understanding with MDOT.

Finally, the County's receipt of ERBR funds may implicate federal law. This opinion does not consider such implications because this office may not opine on matters of federal law. Miss. Code Ann. § 7-5-25.

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