



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 3, 2023

Tim C. Holleman, Esq.
Attorney, Harrison County Board of Supervisors
1720 23rd Avenue
Gulfport, Mississippi 39501

Re: Justice Court Judge's Salaries

Dear Mr. Holleman:

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

Background

According to your request, upon receiving a copy of the opinion that our office issued to Judge Brandon Ladner on May 18, 2023, the clerk of the board of supervisors ("Board") recalculated the salaries of justice court judges and determined that they had not been paid the correct salaries for over three years.

Question Presented

Can the Board correct and pay justice court judges' salaries for periods more than three years before the error was discovered, or are such claims barred by the statute of limitations even though such errors were not discovered until the recently issued opinion to Judge Ladner?

Brief Response

Claims against the county for unpaid compensation are subject to a three-year statute of limitations, which begins to run "when the plaintiff first had the right to demand payment of the officer or board authorized to allow or disallow the claim sued upon." Miss. Code Ann. §§ 15-1-49 and 15-1-51. The point at which the statute of limitations begins to run for a particular claim and the salary owed are factual determinations to be made by the Board and cannot be made by this office.

Applicable Law and Discussion

The Mississippi Supreme Court has held that statutes of limitations run in favor of the county against claims of unpaid compensation. *Forrest County v. Thompson*, 37 So. 2d 787, 792 (1948). Section 15-1-49 provides a three-year statute of limitations after the cause of action accrued for actions for which no other period of limitation is prescribed. This three-year statute of limitations in Section 15-1-49 applies to claims for additional compensation allegedly owed by the county. MS AG Op., *Barbour* at *4 (Nov. 18, 2016). Pursuant to Section 15-1-51, “[t]he statutes of limitation shall run in favor of the state, the counties, and municipal corporations beginning at the time when the plaintiff first had the right to demand payment of the officer or board authorized to allow or disallow the claim sued upon.” The Mississippi Court of Appeals has recognized “that a cause of action accrues when it comes into existence as an enforceable claim, that is, when the right to sue becomes vested. . . . In other words, the statute of limitations begins to run when all the elements of a tort, or cause of action, are present.” *Ferguson v. Mississippi Farm Bureau Cas. Ins. Co.*, 147 So. 3d 374, 378 (Miss. Ct. App. 2014) (internal citations omitted). Further, the statute of limitations is an affirmative defense that must be raised when claims are made against a county and cannot be waived. MS AG Op., *Neyman* at *1 (July 29, 2011).

The point at which a specific cause of action accrues for individual claims of unpaid compensation is a factual determination that must be made by the local governing authorities, subject to judicial review, and is outside the scope of an official opinion. See *Neyman* at *1 (“The determination of whether the claim at issue is barred by the statute of limitations is one that cannot be made by this office by way of official opinion. Such a determination must be made by the board of supervisors, consistent with law and fact, or by a court of competent jurisdiction.”).

We note that Section 25-1-47 allows counties to settle claims. See MS AG Op., *Sanders* at *2 (Mar. 28, 2023) (opining that municipalities in Section 25-1-47 includes counties). This office has consistently opined that the authority to settle a claim does not require the filing of a lawsuit, but the claim must be bona fide and just. MS AG Op., *Dailey* at *1 (Feb. 24, 2022). The county also “must make a factual finding that it is legally obligated for the claim and such claim is not exempt from liability.” *Id.* This office cannot make factual determinations.

Because your question deals with the expenditure of public funds, you may wish to also contact the Technical Assistance Division of the Office of the State Auditor for further guidance.

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/ Beebe Garrard

Beebe Garrard
Special Assistant Attorney General