



December 21, 2023

Mr. Don Pittman
President, Pat Harrison Waterway District
9283 Pine Springs Road
Meridian, Mississippi 39305

Re: Executive Director of PHWD and Separation of Powers

Dear Mr. Pittman:

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

Question Presented

May an elected member of a county board of supervisors also be the executive director of the Pat Harrison Waterway District?

Brief Response

The separation of powers doctrine prohibits a person from holding positions in two different branches of government if both positions exercise “core powers” within their respective branch. A member of the county board of supervisors exercises core powers within the judicial branch of government. The Pat Harrison Waterway District is a state agency, which falls within the executive branch of government. Whether the position of executive director of the Pat Harrison Waterway District, as you describe it, is a position exercising “core powers” is ultimately a determination of fact upon which this office may not opine.

Applicable Law and Discussion

The scope of this opinion is limited to whether simultaneous service in two public positions violates the separation of powers doctrine. We refer you to the Mississippi Ethics Commission regarding potential conflicts of interest or other ethical implications arising out of simultaneous service. Also, this office can neither validate nor invalidate past action. Section 7-5-25 of the Mississippi Code limits opinions of this office to prospective questions of state law.

The powers of the government of the State of Mississippi are divided into three distinct departments: the legislative branch, the judicial branch, and the executive branch. MISS. CONST. art. I, § 1. The separation of powers doctrine prohibits a person from holding positions in two different branches of government if both positions exercise “core powers” within their respective branch. *See* MISS. CONST. art. I, § 2; MS AG Op., *Hudson* at *1 (June 26, 2020). “‘Core power’ has been defined by the Court to include those circumstances ‘where the acts are ongoing and are in the upper level of governmental affairs and have a substantial policy-making character.’” MS AG Op., *Hudson* at *1 (quoting *Dye v. State*, 507 So. 2d 332, 343 (Miss. 1987)).

Turning to the specific question at hand, “[t]his office has consistently opined that a member of a board of supervisors exercises ‘powers at the core’ of the judicial branch of government.” MS AG Op., *Gore* at *1 (Feb. 1, 2019). *See also Carl Ronnie Daricek Living Tr. v. Hancock Cnty. ex rel. Bd. of Sup’rs*, 34 So. 3d 587, 597 (Miss. 2010) (noting that boards of supervisors “are part of the judicial branch of state government”). The Pat Harrison Waterway District (“PHWD”), however, is a state agency and is part of the executive branch of government. Miss. Code Ann. § 51-15-103; *see* MS AG Op., *Hendrix* at *1 (June 15, 2001); *Alexander v. State by and through Allain*, 441 So. 2d 1329, 1338 (Miss. 1983) (“[E]xecutive power [i]s the power to administer and enforce the laws as enacted by the legislature and as interpreted by the courts.”). Accordingly, a member of the board of supervisors may not simultaneously serve as the executive director of the PHWD if such position exercises core powers within the executive branch of government.

The PHWD provides camping, cabins, and recreational facilities in Mississippi and is responsible for managing the rivers and their tributaries along the Pascagoula River Basin. PAT HARRISON WATERWAY DISTRICT, <https://www.phwd.net> (last visited December 13, 2023). Pursuant to Section 51-15-119(1)(l), the PHWD board of directors “shall have the right to employ a general manager or executive director, who shall, at the discretion of the board, have the power to employ and discharge employees.” This authority to hire and discharge employees is the only power granted by statute to the executive director, and that authority is only at the discretion of the board. *Id.* While the position of executive director of the PHWD may meet the criteria of a position exercising “core powers,” i.e., ongoing acts in the upper level of governmental affairs with substantial policy-making character, it is ultimately a determination of fact to be made by the PHWD board of directors. MS AG Op., *Hudson* at *1.

If it is determined that the executive director of the PHWD exercises “core powers” within the executive branch, an individual may not simultaneously serve as the executive director of the PHWD and a member of a county board of supervisors. Such simultaneous service would constitute a violation of the separation of powers doctrine. However, if it is determined that the executive director of the PHWD does not exercise “core powers,” such simultaneous service will not violate the separation of powers doctrine.

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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

OFFICIAL OPINION