



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

July 31, 2024

Scott F. Slover, Esq.
Attorney, Adams County Board of Supervisors
314 State Street
Natchez, Mississippi 39120

Re: Authority to Enact Ordinance Regarding Indexing Instructions

Dear Mr. Slover:

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

Question Presented

Does Mississippi Code Annotated Section 89-5-33 preclude a board of supervisors from enacting an ordinance that would require landowners to include additional filing information, such as a Property Indexing Number (“PIN”), with the chancery clerk as part of the requisite indexing instructions?

Brief Response

Section 19-3-40(1) provides a county board of supervisors the general authority to adopt ordinances. So long as the proposed ordinance is not contradictory of state law, the board of supervisors may enact an ordinance that would require landowners to include additional filing information, such as a PIN, on deeds filed with the chancery clerk as part of the requisite indexing instructions.

Applicable Law and Discussion

Section 19-3-40(1) gives a county board of supervisors the general authority, with certain limitations, to adopt ordinances with respect to county affairs:

The board of supervisors of any county shall have the power to adopt any orders, resolutions or ordinances with respect to county affairs, property and finances, for which no specific provision has been made by general law and which are not inconsistent with the Mississippi Constitution, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi; and any such board shall likewise

have the power to alter, modify and repeal such orders, resolutions or ordinances. Except as otherwise provided in subsections (2) and (3) of this section, the powers granted to boards of supervisors in this section are complete without the existence of or reference to any specific authority granted in any other statute or law of the State of Mississippi.

(emphasis added).¹

In addressing Section 19-3-40, commonly known as the “home rule,” the Mississippi Supreme Court has held:

[i]f a county or municipality passes an ordinance which stands in opposition to the law as pronounced by the legislature, the ordinance, to the extent that it contradicts state law, will be found void by this Court, as the laws of this state supersede any and all local ordinances which contradict legislative enactments.

Delphi Oil, Inc. v. Forrest Cnty. Bd. of Sup’rs, 114 So. 3d 719, 722 (Miss. 2013) (quoting *Ryals v. Bd. of Sup’rs of Pike Cnty.*, 48 So. 3d 444, 448 (Miss. 2010)). In *Delphi Oil*, the Court further explained, “[w]hen faced with the question of whether a local law is preempted by a legislative enactment, the Court determines whether the ordinance contradicts state statutory law.” *Id.* Where an ordinance is merely additional or supplementary and not inconsistent with state law, it is not preempted. *Id.* at 723-724.

As noted in your request, Section 89-5-33 provides general indexing instructions. Specifically, Section 89-5-33(3) states:

Every surveyor or other person who prepares a legal description of land or who prepares an instrument utilizing an existing description and every person who prepares a deed of trust *shall (except as herein provided) include an indexing instruction which shall state the section, township and range and one or more quarter sections or governmental lots or other applicable subdivisions of each section in which the land is located.* The preparer, at his option, may elect to note the quarter-quarter section in which the land is located, but shall not be required to do so. However, if the section or quarter sections or governmental lots or other applicable subdivisions of the section cannot feasibly be determined by such surveyor or other person, the indexing instruction shall contain a statement to that effect and shall then state all of the sections and quarter sections or governmental lots or other applicable subdivisions of the section in which the described land could possibly be located. The indexing instruction shall be distinctly set apart in the instrument so as to be readily apparent to the chancery clerk.

...

¹ Subsections (2) and (3) of Section 19-3-40 are inapplicable to the subject issue.

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To be accepted for recording, an instrument *shall state the name, address and telephone number of the person, entity or firm preparing it. If prepared by an attorney, the instrument shall also include the attorney's Mississippi bar number.*

(emphasis added).

As stated *supra*, Section 19-3-40(1) provides a county board of supervisors the general authority to adopt ordinances with respect to county affairs with certain limitations, none of which are applicable to the proposed ordinance. Therefore, following the reasoning set forth in *Delphi Oil*, it is the opinion of this office that a board of supervisors has the authority to enact an ordinance that would require landowners to include additional information on deeds filed with the chancery clerk as part of indexing instructions so long as the ordinance does not contradict state law; otherwise, it would be preempted. *Delphi Oil, Inc.*, 114 So. 3d at 722. Although Section 89-5-33(3) does not require landowners to include a PIN on their deeds filed with the chancery clerk as part of the indexing instructions, it likewise does not prohibit such requirement. In other words, the proposed ordinance would not be contradictory of the state law regarding indexing instructions.

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