



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

November 1, 2024

The Honorable Noah Sanford  
Mississippi House of Representatives  
Post Office Box 1018  
Jackson, Mississippi 39215-1018

Re: Core Powers

Dear Representative Sanford:

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

# OFFICIAL OPINION

## Questions Presented

1. Does a corrections officer, classified as a non-peace officer without power to make arrests, employed by the Mississippi Department of Corrections (“MDOC”), exercise core powers of the executive branch?
2. Does a compliance inspector employed by the Mississippi Department of Health and tasked with inspecting businesses for compliance with rules and regulations exercise core powers of the executive branch?
3. Does a parole officer employed by MDOC, tasked with supervising parolees and without the authority to make arrests, exercise core powers of the executive branch?

## Brief Response

1. Whether a corrections officer, classified as a non-peace officer without power to make arrests, employed by MDOC, is a position exercising “core powers” is ultimately a determination of fact to be made by the Commissioner of Corrections.
2. Whether a compliance inspector employed by the Mississippi Department of Health, tasked with inspecting businesses, is a position exercising “core powers” is ultimately a determination of fact to be made by the State Health Officer.

3. Whether a parole officer employed by MDOC, tasked with supervising parolees and without the authority to make arrests, is a position exercising “core powers” is ultimately a determination of fact to be made by the Commissioner of Corrections.

### Applicable Law and Discussion

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)). As noted in your request, each position that you ask about is in the executive branch.

You first ask if a MDOC corrections officer, classified as a non-peace officer without the power to make arrests, exercises core powers of the executive branch. In MS AG Op., *Anderson* at \*1 (Mar. 3, 2000), this office opined that a correctional officer supervising inmates at a DOC Community Work Center could not also serve as a justice court judge. We reasoned that “the job of a correctional officer . . . is similar to that of a police officer,” and cited *In re Anderson*, 447 So. 2d 1275, 1276 (Miss. 1984), which held that a justice court judge could not dually serve as a police officer because the two positions are in different branches of government. MS AG Op., *Anderson* at \*1. However, prior to reaching this conclusion in *Anderson*, we noted that “[i]t is not clear that such a job as correctional officer would be one where the individual is exercising a function at the core of the power of the executive branch, or whether his duties as such would be ‘ongoing and in the upper level of governmental affairs’, having ‘a substantial policy-making character.’” *Id.* (citing *Dye*, 507 So. 2d at 343). Ultimately, whether a MDOC corrections officer, classified as a non-peace officer without the power to make arrests, exercises core powers of the executive branch is a factual determination to be made by the Commissioner of Corrections. *See* Miss. Code Ann. § 7-5-25 (providing the Office of the Attorney General may only opine upon questions of state law).

You next ask if a compliance officer employed by the Department of Health and tasked with inspecting businesses for compliance with rules and regulations exercises core powers of the executive branch. Our office has opined that a pipeline inspector job requiring “technical work” in a “non-supervisory position” would not exercise core powers of the executive branch. *See* MS AG Op., *Gore* at \*2 (Feb. 1, 2019). If the same determination is made in regard to a Department of Health compliance officer tasked with inspecting businesses, such officer would likewise not be exercising core powers of the executive branch. However, such determination should be made by the State Health Officer.

Finally, you ask if a MDOC parole officer, tasked with supervising parolees and without the authority to make arrests, exercises core powers of the executive branch. Please see responses to questions one and two. While the position of a MDOC parole officer, tasked with supervising parolees, 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 to be made by the Commissioner of Corrections. MS AG Op., *Hudson* at \*1.

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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