



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

October 24, 2025

Brett Robinson, Esq.
Attorney, City of Laurel
414 West Oak Street
Laurel, Mississippi 39440

Re: Mississippi Code Annotated Section 31-5-25

Dear Mr. Robinson:

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

Background

The City of Laurel (“City”) entered into a contract with a company for work on a drainage repair project. Shortly before final completion of the project, the City discovered that the legally and contractually required performance bond submitted to the City was, in fact, fraudulent. The subject project has been completed to the satisfaction of the City, but there is no performance bond on the project. The contractor has submitted a request for final payment.

Question Presented

May the City of Laurel pay the contractor the final payment under the contract without obtaining the written consent of a surety, since no such surety exists?

Brief Response

No. Mississippi Code Annotated Section 31-5-3 requires “the usual bond with good and sufficient sureties” for municipal public works contracts, and Section 31-5-25(1)(b)(iv) prohibits final payment absent the written consent of an existing surety.

Applicable Law and Discussion

Section 31-5-3 states, in relevant part, as follows:

Any person, firm or corporation entering into a formal contract with this state, any county thereof, *municipality therein*, or any public board, department, commission,

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or political subdivision of this state, for the construction or maintenance of public buildings, works or projects or the doing of repairs to any public building, works or projects *shall be required before commencing same to execute the usual bond with good and sufficient sureties, as required by law. . . .*

(emphasis added). Public works contractors for a municipality must submit “the usual bond with good and sufficient sureties.”

Further, Section 31-5-25(1)(b)(iv) provides as follows:

In no event shall said final payment due the contractor be made until the consent of the contractor's surety has been obtained in writing and delivered to the proper contracting authority.

(emphasis added).

It is the opinion of this office that the plain language of the above-cited statute prohibits the City from paying the contractor the final payment in the absence of the written consent of an existing surety. The fact that such surety does not exist does not permit the City to circumvent Section 31-5-25 and pay the contractor anyway. *See MS AG Op., Thompson at *2 (Mar. 3, 1994) (“ . . . the consent of the contractor’s surety must be obtained in writing prior to the issuance of final payment to the contractor.”)* (emphasis added).

In addition, Section 21-39-15 provides as follows:

If any member of the governing body of a municipality shall knowingly vote for the payment of any claim not authorized by law, he shall be subject to indictment and, upon conviction, be fined by a sum not exceeding double the amount of such unlawful claim or appropriation, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

Please note that we are not opining on any previous payments the City may have made to the contractor; this opinion is limited in scope to your question about the final payment.

Finally, because your request deals with the expenditure of public funds under circumstances evidencing a potential fraud upon the State, we also refer you to the Technical Division of the Office of State Auditor.

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/ Caleb A. Pracht

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Caleb A. Pracht
Special Assistant Attorney General

OFFICIAL OPINION