



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

December 16, 2025

Kasey Burney Young, Esq.
Attorney, Town of Weir
Post Office Box 1187
Ackerman, Mississippi 39735

Re: Municipal Elected Official Waiver of Pay as PERS Retiree

Dear Ms. Young:

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

Background

According to your request, a newly elected alderman for the Town of Weir (“Town”) has requested to waive payment for the position of alderman because of his Public Employee Retirement System of Mississippi (“PERS”) retirement status. PERS has confirmed that the Town has a joinder agreement with the board of trustees of PERS, which provides PERS coverage to its locally elected officials, such as aldermen.

Questions Presented

1. Is it lawful for the Town to accept a waiver of pay by the alderman?
2. If it is lawful, must the board make a finding of acceptance of the PERS waiver form or is submission of said form the only necessary step to ensure compliance?

Brief Response

1. Yes. It is lawful for the Town to accept “a waiver of all salary or compensation” pursuant to Mississippi Code Annotated Section 25-11-127(6)(a).
2. Pursuant to Section 25-11-127(6)(a)(i), a member must annually file such waiver “in the office of the employer and the office of the executive director of the system.” There is no requirement that the board make a finding of acceptance of the PERS waiver form.

Applicable Law and Discussion

Section 25-11-127 addresses the reemployment of retired persons. Relevant here, Subsection (6)(a) provides:

A member may retire and continue in municipal or county elective office provided that the member has reached the age and/or service requirement that will not result in a prohibited in-service distribution as defined by the Internal Revenue Service, or a retiree may be elected to a municipal or county office, provided that the person:

- (i) Files annually, in writing, in the office of the employer and the office of the executive director of the system before the person takes office or as soon as possible after retirement, a waiver of all salary or compensation and elects to receive in lieu of that salary or compensation a retirement allowance as provided in this section, in which event no salary or compensation shall thereafter be due or payable for those services; however, any such officer or employee may receive, in addition to the retirement allowance, office expense allowance, mileage or travel expense authorized by any statute of the State of Mississippi; or
- (ii) Elects to receive compensation for that elective office in an amount not to exceed twenty-five percent (25%) of the retiree's average compensation. In order to receive compensation as allowed in this subparagraph, the retiree shall file annually, in writing, in the office of the employer and the office of the executive director of the system, an election to receive, in addition to a retirement allowance, compensation as allowed in this subparagraph.

Accordingly, because the Town has a joinder agreement with PERS that provides PERS coverage to its locally elected officials such as the subject alderman, it is lawful for the Town to accept the alderman's waiver of pay pursuant to Section 25-11-127(6)(a)(i). *See also* MS AG Op., *Davis* at *1-2 (Feb. 10, 2003) (concluding same).

You next ask if the board must make a finding of acceptance of the PERS waiver form or if the submission of said form is the only necessary step to ensure compliance. Pursuant to Section 25-11-127(6)(a)(i), a member must annually file such waiver "in the office of the employer and the office of the executive director of the system." There is no requirement that the board make a finding of acceptance of the PERS waiver form.

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*

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Maggie Kate Bobo
Special Assistant Attorney General

OFFICIAL OPINION