



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

May 11, 2026

Risher G. Caves, Esq.
Attorney, Clarke County Board of Supervisors
Post Office Drawer 167
Laurel, Mississippi 39441-0167

Re: Repair of Dam on Private Property Under Section 19-5-92.1

Dear Mr. Caves:

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

Background

According to your request, due to beaver activities in a pond, a dam on private property needs serious repair and bolstering. If left unrepaired, the breached dam threatens to wash out a nearby public road.

Question Presented

If the Clarke County (“County”) Board of Supervisors (“Board”) makes a finding by entry upon its minutes that such work to repair the dam and the expenses incurred thereby are necessary to promote the public health, safety, and welfare of the citizens of the County under Mississippi Code Annotated Section 19-5-92.1, may the County undertake the repair work and bear the expenses to repair the dam on private property?

Brief Response

If the Board meets the requirements set forth in Section 19-5-92.1(1)-(2), including but not limited to making the factual determinations that (a) the work to repair the dam falls within the category of allowances set forth in Section 19-5-92.1(1), and (b) doing so will (1) promote the “health, comfort and convenience of the inhabitants of the county,” and (2) “promote the public health, safety and welfare of the citizens of the county,” the County may repair the dam.

Applicable Law and Discussion

To begin, Section 7-5-25 authorizes this office to opine upon prospective questions of state law only; we are unable to opine upon determinations of fact. MS AG Op., *Barton* at *1 n.2 (May 17, 2021).

Section 19-5-92.1(1) authorizes a county board of supervisors to perform certain water-related work “whenever the board determines that the health, comfort and convenience of the inhabitants of the county will be promoted.” This authority includes the ability to “[a]lter and change the channels of streams or other water courses” and “[i]ncur costs and pay necessary expenses for: . . . [p]roviding labor, materials and supplies to clean or clear drainage ditches, creeks or channels or conduits, both natural and man-made and to prevent erosion of such ditches, creeks or channels.” Miss. Code Ann. § 19-5-92.1(1).

Subsection (2) makes clear that “[t]he work performed and the expenses incurred under subsection (1) of this section *may take place on public or private property.*” Miss. Code Ann. § 19-5-92.1(2) (emphasis added). But in the instance that private property is involved, a county board of supervisors must meet certain requirements, including:

- (a) Make a finding, as evidenced by entry upon its minutes, that such work and/or expenses are necessary in order to promote the public health, safety and welfare of the citizens of the county;
- (b) Give notice, in writing, to all owners of property that will be affected by the work for such period of time as is reasonable to allow such owners to express any objections;
- (c) Not receive written objection to the work by any owners of property that will be affected by the work within the period of time allowed to express objections; and
- (d) Unless otherwise agreed, in writing, by the county and the landowner, construct or install a culvert or bridge, at the county’s expense, at an appropriate location or locations to provide the landowner ingress and egress to all of the property to which the landowner had access immediately before performance of the work by the county.

Miss. Code Ann. § 19-5-92.1(2).

Based on the foregoing, if the Board (a) determines that work to repair the dam falls within the category of allowances set forth in Section 19-5-92.1(1), and (b) meets the requirements set forth in Section 19-5-92.1(1)-(2), including but not limited to making the factual determinations that doing so will (1) promote the “health, comfort and convenience of the inhabitants of the county,” and (2) “promote the public health, safety and welfare of the citizens of the county,” it may repair

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the dam.¹ Lastly, we recommend speaking to the Mississippi Department of Environmental Quality regarding this matter and any potentially relevant watershed resources.

If this office may be of 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

¹ As noted in Section 19-5-92.1(2)(a), all findings should be “evidenced by entry upon [the board’s] minutes.”