

# COUNTY GOVERNMENT *in Mississippi*

FIFTH EDITION



# **County Government in Mississippi**

**Fifth Edition**

**Sumner Davis and Janet P. Baird, Editors**

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**With forewords by Gary Jackson, PhD, and Derrick Surrette**

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This publication is designed to provide accurate and authoritative information regarding the organization and operation of county government in Mississippi. It is distributed with the understanding that the editors, the individual authors, and the Center for Government & Community Development in the Mississippi State University Extension Service are not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required by the readers, the services of the Office of the Attorney General of Mississippi, the Office of the State Auditor of Mississippi, a county attorney, or some other competent professional should be sought.

## **FOREWORD FROM THE MISSISSIPPI STATE UNIVERSITY EXTENSION SERVICE**

The Mississippi State University Extension Service is a vital, unbiased, research-based, client-driven organization. Extension is Mississippi State University's lead unit for outreach and engagement and is dedicated to delivering the information people need to make qualified decisions about their economic, social, and cultural well-being. As director, I focus on these core values, which are important to Mississippi State, our unit's success and future, and, most importantly, our clientele. As we serve the people of Mississippi, we strive to—

- be honest, open, and fair to everyone;
- provide an advanced, up-to-date knowledge base;
- respond quickly with valid and consistent information;
- work collectively as a team of professionals; and
- make a significant impact in the lives of Mississippians.

Like the counties of our state, Mississippi State University Extension exists to provide services that improve the lives of Mississippians. In addition to the programs we provide in the areas of agriculture, natural resources, family and consumer education, 4-H youth development, and community resource development, MSU Extension, through the Center for Government and Community Development (GCD), provides three major types of services to local governments—education and certification programs for elected and appointed officials, specialized publications, and technical assistance.

The GCD currently works in conjunction with the following associations of local government officials to help meet and fulfill their educational needs: Mississippi Association of Supervisors, Mississippi Municipal League, Mississippi Association of County Board Attorneys, Mississippi Municipal Clerks and Tax Collectors Association, Mississippi Chancery Clerks Association, Mississippi Association of County Administrators/Comptrollers, Mississippi Assessors and Collectors Association, Mississippi Chapter of International Association of Assessing Officers, and Mississippi Civil Defense & Emergency Management Association. The center works with these associations to plan and implement a variety of educational programs, seminars, and workshops.

In cooperation with the State Department of Audit and the Mississippi Department of Revenue, the GCD manages legislatively mandated certification programs for county purchase clerks, receiving clerks, inventory control clerks, tax assessors, and tax collectors and manages professional education programs for county supervisors and county administrators. The GCD's Certification Program for Municipal Clerks and Tax Collectors and its Certified Appraiser School are nationally recognized. The GCD assists the Office of the Secretary of State in implementing a training program for municipal clerks and municipal election officials. Active in training in the areas of homeland security and emergency preparedness and management, the GCD works with the Mississippi Emergency Management Agency, Mississippi Office of Homeland Security, Mississippi State Department of Health, and Mississippi Board of Animal Health to provide training, seminars, and workshops for local government and emergency management officials.

Technical assistance is provided on a “time available” basis by the center to counties and municipalities in areas that include general management, financial administration, personnel administration, leadership development, economic development, and community facilities and services.

Through these activities, the GCD assists local government officials, local units of government, and associations of local government in their efforts to improve governance at the grassroots level and deliver services to the citizens of Mississippi. The center does not take an advocacy role in the business, legislative, or political affairs of the local governments or local government associations with which it works.

Our commitment remains strong to doing whatever we can to improve service delivery by county government in our state. This book is dedicated to that end.

Gary Jackson, PhD  
Director  
Mississippi State University Extension Service

## **FOREWORD FROM THE MISSISSIPPI ASSOCIATION OF SUPERVISORS**

*County Government in Mississippi, Fifth Edition* is a joint project of the Mississippi Association of Supervisors and the MSU Extension Center for Government and Community Development. Our goal with this publication is to provide county supervisors and other interested individuals with a single source that they can use to provide background information on a particular area, or as a reference to guide them to additional in-depth information. For newly elected officials, this book is an excellent information source as they become acquainted with the many areas and issues that comprise county government in this state.

The publication would not have been possible without the assistance of Mississippi State University Extension. The Mississippi Association of Supervisors would like to thank the Center for Government and Community Development faculty and staff and the contributing authors who donated their time and talents to make the fifth edition of *County Government in Mississippi* possible.

More than ever before, county supervisors must be informed of the many laws, regulations, and policies affecting county government in Mississippi. It is hoped that this book will serve as a tool to further assist county supervisors in governing more effectively. It is but one of the many educational resources provided by the Mississippi Association of Supervisors.

We hope that the information contained in this book will help county supervisors continue to advance within the role of their elected office.

Derrick Surette  
Executive Director  
Mississippi Association of Supervisors

## PREFACE

In 1985, Mississippi State University's Extension Center for Government and Community Development (GCD), in cooperation with the Mississippi Association of Supervisors (MAS), issued a *Handbook for Mississippi County Supervisors*. This original handbook has evolved during the last 30 years into the publication *County Government in Mississippi*.

*County Government in Mississippi* has grown and changed over the years, reflecting the various changes in county law and practice. As the publication has grown in scope, it has become recognized by the general public, various professionals who work or consult with counties, educators, and elected and appointed state and county officials as the leading work published on county government organization and practice in Mississippi.

This fifth edition is designed to incorporate the most recent changes in the law, as well as introduce the reader to the powers, duties, and responsibilities of Mississippi counties. While no book can provide everything there is to know about county government, this book provides the building blocks for elected and appointed county officials and other interested individuals to form a substantial knowledge base across a range of subjects.

Writing this publication was a collaborative effort of several very talented individuals—all knowledgeable about county government and all experts in their professions. Recognition should be given to these individuals in making this book possible and for their daily contributions to improving the operation of county government in Mississippi.

In an effort to continue to strengthen the ability of county governments to better serve their citizens, the MAS has once again supported this publication. This edition of *County Government in Mississippi* would not have been possible without the support of the MAS.

Finally, appreciation is due to Dr. Gary Jackson, MSU Extension director. Dr. Jackson has been a staunch advocate for the GCD and its efforts. This edition of *County Government in Mississippi* would not have been published without Dr. Jackson's continued support. His commitment to the improvement of local government service delivery and community development in Mississippi should be noted and lauded.

Responsibility for the final draft of the book, including any errors or shortcomings, falls to the editors. Readers of this publication who discover errors or who have suggestions for improvement are asked to communicate with the editors so that changes can be made when the book is next revised.

Sumner Davis, GCD Leader

Janet Baird, Extension Instructor

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**Judy Mooney** began working for the Mississippi Association of Supervisors (MAS) in 1985 as the office manager and meetings coordinator. In the early 1990s, the executive committee of the MAS developed two self-funded insurance programs, the Mississippi Public Entity Employee Benefit Trust (MPEEBT) and the Mississippi Public Entity Workers' Compensation Trust (MPEWCT). Judy helped with the development and operation of both programs and, in 1993, was promoted to assistant administrator of MPEEBT and MPEWCT. She served in this capacity until 2000, at which time she was promoted to administrator.

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## CONTENTS

Chapter 1: Historical and Constitutional Development of the County .....	1
The Development of County Government in the United States .....	2
A Brief Mississippi History .....	3
Constitutional Development of the Mississippi County .....	6
Chapter 2: Using the <i>Mississippi Code of 1972</i> , Annotated .....	9
What is the <i>Mississippi Code</i> ? .....	9
Does the <i>Code</i> Contain the Latest Version of the Statutes? .....	9
How Do I Find the Statutes on a Particular Subject?.....	9
The Index to the <i>Code</i> .....	9
The Index to Each Volume .....	10
The Table of Contents.....	10
Using the Internet.....	11
Chapter 3: The Office, Powers, and Duties of Supervisors .....	12
Introduction.....	12
The Board of Supervisors, Supervisor Districts, Term of Office, and Election .....	12
Board of Supervisors and Supervisor Districts.....	12
Nomination, Election, and Term of Office .....	12
Qualifications.....	13
Actions Necessary to Take Office after Election.....	13
Posting the Bond.....	13
Taking the Oath.....	14
Vacancies in Office.....	14
Removal from Office .....	15
Compensation .....	16
Privileges of Office.....	16
Conducting County Business through Meetings and Minutes of the Board of Supervisors.....	16
Introduction.....	16
Organizational Meeting .....	16
Presiding Officer and Board Quorum .....	16
Sheriff and Clerk of the Board.....	17
Regular Monthly Meetings .....	17
Alternate Meeting Times and Location .....	17
Adjourned Meetings.....	17
Duration of Sessions and Recessed Meetings.....	18
Specially Called and Emergency Meetings .....	18
Open Meetings Act .....	18
Subpoena Powers .....	19
Minutes of the Board .....	19
Powers and Duties of the Board of Supervisors .....	20
General Powers, Jurisdiction, and Home Rule .....	20
General Powers and Jurisdiction.....	20

Home Rule .....	21
Powers Regarding General Administration .....	22
Board Attorney.....	22
County Property, Offices, Furnishings, and Supplies.....	22
Other Administrative Matters .....	22
Elections.....	23
Powers Regarding Law Enforcement and Courts.....	23
Sheriff's Office .....	23
County Patrol Officers .....	23
Constables.....	24
County Jail .....	24
Corrections.....	24
Courts.....	24
Powers Regarding Health and Public Welfare.....	25
Zoning, Planning, Subdivision, and Building Regulations.....	25
Urban Renewal.....	25
Solid Waste Disposal.....	25
Fire Protection, Emergency Telephone Service, Utility Districts.....	25
Human Resource Agencies.....	26
Hospitals, Nursing Homes, and Health Centers.....	26
Public Welfare .....	26
Powers Regarding Taxation and Finance .....	26
Powers Regarding Arts, Recreation, Conservation, and Charitable Activities.....	27
Powers Regarding Public Works and Infrastructure.....	27
General Provisions .....	27
Roads and Bridges .....	27
Other Public Works.....	28
Powers Regarding Industrial Development .....	29
Powers Regarding Inter-Governmental Cooperation.....	29
Chapter 4: The District and Unit Systems of Organization .....	35
The Unit System of Road Administration .....	35
County Administrator .....	35
Road Manager.....	36
Road Department Management Materials (Forms) .....	36
County Engineer .....	38
Road Maintenance Facilities.....	38
Four-Year Road Plan .....	39
County Road System Map and Register .....	39
County-Wide Personnel System .....	39
Transportation for Board Members .....	40
Enforcement.....	40
The Beat System .....	41
County Administrator .....	41
County Engineer .....	41
Road Maintenance Facilities.....	41

County Road System Map and Register .....	42
Road Inspection .....	42
Personnel System .....	42
Chapter 5: Open Meetings, Public Records, Conflicts of Interest.....	44
Open Meetings Act .....	44
The Basics.....	44
Definitions.....	44
Notice.....	45
Minutes .....	45
Telephonic Meetings.....	45
Executive Session Procedure .....	45
Executive Session Reasons.....	46
Enforcement Procedure for Open Meetings Act.....	46
Open Meetings Cases.....	47
Public Records Act .....	48
The Basics.....	48
Procedure .....	48
Response and Costs.....	48
Confidential Business Information .....	48
Other Exemptions .....	49
Model Public Records Rules and Comments.....	49
Enforcement Procedure in Public Records Act .....	50
Public Records Opinions.....	50
Mississippi Ethics Laws.....	51
Section 109, Miss. Constitution of 1890.....	52
Section 25-4-105(1) .....	52
Subsection (3)(a) – The Contractor Prohibition.....	53
Subsection (3)(b) – Purchasing Goods or Services.....	53
Subsection (3)(c) – Purchasing Securities .....	54
Subsection (3)(d) – Inside Lobbying .....	54
Subsection (3)(e) – Post-Government Employment.....	54
Subsection 25-4-105(4) – Exceptions to Subsection (3).....	54
Subsection 25-5-105(5) – Insider Information .....	54
The Complaint Procedure of the Mississippi Ethics in Government Law.....	55
General.....	55
Complaints .....	55
Investigations .....	55
Ethics Hearings .....	56
Penalties .....	56
Appeals .....	57
Other Penalties.....	57
Confidential Records .....	57
The Statement of Economic Interest.....	58
Persons Required to File .....	58
Filing Dates.....	58

Contents .....	59
Required Filings.....	59
Enforcement Procedures .....	59
County Officers and Employees Advisory Opinions.....	60
County Agency or Department .....	60
County Coroner/Medical Examiner .....	61
County Employees .....	62
County Prosecuting Attorney.....	63
County Sheriff.....	63
County Supervisors.....	64
County Tax Assessor and/or Collector .....	65
County Constables .....	66
Circuit Clerks .....	67
Chancery Clerks.....	67
Mississippi Ethics Commission .....	68
 Chapter 6: Other Major County Officials.....	 69
Elected Officials.....	69
Chancery Clerk .....	69
Circuit Clerk.....	70
Constable.....	71
Coroner .....	72
Justice Court Judge .....	74
Sheriff .....	75
Tax Assessor/Collector .....	77
Appointed Officials.....	79
Board Attorney.....	79
County Administrator .....	80
County Engineer .....	83
Road Manager.....	84
 Chapter 7: Financial Administration.....	 88
Revenue Sources .....	88
Local Sources.....	88
State Sources .....	88
Federal Sources.....	88
Budgeting.....	89
The Budgetary Process .....	89
Organization of the Budget.....	89
Budget Calendar.....	91
Budget Forms and Requirements.....	91
Accounting.....	92
Appropriations .....	92
Claims .....	92
Warrants.....	94
Depositories .....	95



Transfer of Surplus Funds.....	96
Audits.....	96
<b>Chapter 8: Ad Valorem Tax Administration .....</b>	<b>98</b>
Property Assessment.....	98
Classes of Property .....	98
Audits and Responsibilities.....	99
The Ad Valorem Tax Formula.....	100
What Is a Mill and How Is It Used? .....	101
Setting the Ad Valorem Tax Levy .....	102
Purposes for Which Ad Valorem Taxes May Be Levied .....	102
Limits on the Levying of Ad Valorem Taxes .....	103
Advertising Prerequisite to Budgeting Increased Ad Valorem Revenue.....	103
Collection of Ad Valorem Taxes .....	104
Special Ad Valorem Tax Exemptions.....	105
Homestead Exemption .....	105
Industrial Exemptions .....	106
Glossary of Terms Related to Industrial Tax Exemptions.....	108
Free Port Warehouses .....	109
<b>Chapter 9: Purchasing.....</b>	<b>111</b>
Establishment of a Central Purchasing System .....	111
Purchase Clerk .....	112
Receiving Clerk .....	112
Inventory Control Clerk.....	112
Prescribed Forms and System.....	113
County Employees Serving as Purchase Clerk, Receiving Clerk, or Inventory Control Clerk.....	113
Bond of Purchase Clerk, Receiving Clerk, and Inventory Control Clerk.....	113
Training of Purchase Clerk, Receiving Clerk, and Inventory Control Clerk.....	113
Audit Requirements .....	114
Enforcement.....	114
Mississippi Public Purchasing Laws.....	114
Definitions.....	114
State Contract Price for Purchase of Commodities.....	116
Bid Requirements.....	116
When to Open Bids.....	117
Specification Requirements .....	117
Lowest and Best Bid .....	118
Lease-Purchase Agreements .....	118
Petroleum Products .....	118
Emergency Purchases .....	118
Exceptions to the Competitive Bid Process .....	119
Term Purchase Contracts .....	120

Purchase of Certain Motor Vehicles .....	121
Preference to Resident Contractors.....	121
Fuel Management System Bidding Procedure.....	121
Minority Set-Aside.....	122
Construction Contracts.....	122
Change Orders to Construction Contracts .....	123
Rebates, Refunds, Gratuities, Etc. from Vendors .....	123
Penalties for Violation of Public Purchasing Laws .....	123
Criminal .....	123
Civil .....	124
 Chapter 10: Borrowing and Debt Administration.....	126
Nature of County Bonds .....	126
Authority to Borrow and Home Rule.....	126
Types of County Bonds and Debt.....	127
General Obligation Bonds.....	127
Revenue Bonds .....	128
Industrial Development Revenue Bonds (IDRBs).....	128
Economic Development Bonds with State Involvement .....	128
Regional Economic Development Act Bonds .....	129
Mississippi Major Economic Impact Act .....	130
Mississippi Development Bank Bonds .....	130
Pollution Control Industrial Development Revenue Bonds.....	130
Urban Renewal Bonds .....	130
Solid/Hazardous Waste Disposal Bonds.....	131
Harbor and Port Improvement Bonds .....	131
Refunding Bonds .....	131
Tax Increment Finance Bonds .....	131
USDA Utilities and Community Facilities Loans .....	132
Short-Term Debt.....	132
Borrowing in Anticipation of Taxes .....	132
Borrowing in Anticipation of Confirmed Federal or State Grants or Loans.....	133
Borrowing to Meet Emergencies .....	134
Shortfall Notes .....	134
Short-Term Financing Procedure.....	134
Lease Financing .....	135
Bank Loans .....	136
Local and Private Legislation .....	136
Tax Considerations and Overview.....	136
Federal Tax Law .....	136
State Tax Law Exemption.....	137
Bank Eligible Bonds .....	137
Securities Overview – Disclosure and Continuing Disclosure.....	137
Public Sale Requirements .....	138
Voting Rights Preclearance.....	138

Major Steps in the Process for Issuance of Bonds .....	138
Alphabetical Reference to Certain Purposes.....	141
Miscellaneous Statutory Provisions Related to the Issuing of Bonds or Other Debt .....	144
Glossary of Selected Terms .....	146
 Chapter 11: Personnel Administration.....	151
Introduction.....	151
Basic Terms of Personnel Policies.....	152
Mississippi Employment Law.....	153
At-Will Employment .....	153
Workers' Compensation .....	154
Unemployment Compensation.....	154
Garnishments and Child Support.....	154
Nepotism .....	155
Federal Employment Law.....	155
Title VII and the Civil Rights Act of 1991 .....	155
ADEA (Age Discrimination in Employment Act).....	156
ADA (Americans with Disabilities Act).....	156
FLSA (Fair Labor Standards Act).....	156
FMLA (Family Leave and Medical Act).....	157
Military Leave.....	157
The Immigration Reform Act .....	157
COBRA (The Consolidated Omnibus Budget Reconciliation Act) .....	158
HIPAA .....	158
The United States Constitution .....	158
Drug Testing and the DOT .....	160
 Chapter 12: Records Management.....	162
Introduction.....	162
Basics of Records Management.....	163
What Is a Record?.....	163
Why Do Records Matter? .....	163
Who Should Learn about Records Management? .....	163
How Are Records Kept? .....	164
Where Should Records Be Kept? .....	164
How Long Should Records Be Kept?.....	164
Implementing A Records Management Program .....	165
Conclusion .....	166
 Chapter 13: County Planning and Zoning: An Overview.....	168
Introduction.....	168
The Planning Process.....	169
Step 1: Goals and Objectives .....	169
Step 2: Base Studies.....	170
Step 3: Citizen Participation .....	171

Step 4: Develop the Plan.....	171
Step 5: Implement the Plan.....	172
The Legal Basis.....	172
Zoning Ordinances, Subdivision Regulations, and Building Codes.....	174
Zoning Ordinances.....	174
Subdivision Regulations.....	175
Building Codes.....	175
Administration.....	175
Conclusion.....	176
Chapter 14: Municipal Boundary Expansion from a County Perspective.....	177
Introduction.....	177
County Standing to Oppose Annexation.....	177
Standing.....	178
Legal Authority.....	179
Politics.....	182
School Issues.....	183
Jurisdiction Over Roads and Streets.....	183
Utility Districts.....	183
County Parks.....	184
Financial Impact on the County.....	184
The Expansion Process.....	184
Classification.....	184
Creation.....	184
The Petition.....	185
Notice.....	185
Hearing.....	186
Public Convenience and Necessity.....	186
Reasonableness.....	186
Effective Date.....	187
Annexation Ordinance.....	187
Annexation.....	187
The Petition.....	187
Notice.....	188
Hearing.....	188
Reasonableness.....	188
Appeal.....	189
Post-Annexation.....	189
Citizen-Initiated Annexation.....	189
Deannexation.....	189
Municipality-Initiated Deannexation.....	189
Citizen-Initiated Deannexation.....	190
Combination.....	190
Post-Combination Operation.....	191
Abolition.....	191
Citizen-Initiated Boundary Changes.....	191

Conclusion .....	192
Addendum.....	193
Chapter 15: The Electoral Process.....	211
Introduction.....	211
The Statutory Law.....	211
State Law .....	211
Federal Law .....	211
Voter Registration.....	212
Elections.....	212
Primary Elections.....	212
General Elections .....	213
Special Elections.....	213
Candidate Qualifying Procedures .....	213
Primary Elections.....	213
General Elections .....	213
Special Elections.....	214
Printing of Ballots.....	214
Appointment and Training of Poll Workers .....	214
Conduct of Election .....	215
Voter ID .....	215
Challenges.....	215
Voter Assistance .....	216
Counting Ballots .....	216
Examination of Boxes.....	217
Contest of Election.....	217
Chapter 16: The Court System.....	219
Introduction.....	219
Overall.....	219
Justice Court.....	220
Municipal Court.....	220
County Court.....	221
Youth Court .....	221
Drug Court .....	221
General Jurisdiction Courts.....	222
Circuit Court .....	222
Chancery Court.....	222
Appellate Courts .....	223
Supreme Court .....	223
Court of Appeals.....	223
Support Staff and Other Personnel .....	224
Clerks .....	224
Law Enforcement Officers.....	225
Administrators.....	225
Court Reporters.....	225

Administrative Office of Courts .....	225
Commission on Judicial Performance .....	226
Mississippi Judicial College .....	226
Conference of Mississippi Judges.....	226
Other .....	226
Conclusion .....	226
Judicial Route of Appeal (Chart).....	228
Chapter 17: Community Economic Development.....	229
Introduction.....	229
Key Concepts and Definitions .....	229
Community Development versus Economic Development.....	230
Community Development Approaches.....	231
CED Frameworks and Strategies.....	233
Community Capitals Framework.....	233
Intelligent Community Framework.....	234
Creative Class .....	235
CARE Model .....	236
Cluster-Based Economic Development .....	237
Community Economic Development Issues.....	238
CED and Sustainability .....	240
Chapter 18: Environmental Issues .....	242
National Ambient Air Quality Standard.....	242
Mississippi Air Quality Regulation .....	242
Nitrogen Dioxide .....	243
Ozone .....	243
Sulfur Dioxide.....	243
Particulate Matter.....	244
Monitoring Ozone and Air Quality in Mississippi .....	244
Greenhouse Gas and Climate Change.....	245
Greenhouse Gas .....	245
PSD Construction Program.....	245
Title V Operating Program .....	245
EPA’s Future Plans .....	246
Climate Change.....	246
Smart Growth and Farmland Protection .....	246
Smart Growth.....	246
Farmland Protection.....	247
Mississippi Farmland Preservation.....	247
Environmental Justice.....	247
Environmental Justice and Small Grants Program .....	248
Brownfield Redevelopment .....	248
MDEQ’s Targeted Brownfield Assessment.....	248
Local Government Capital Improvements Revolving Loan Program .....	249
Environmental Protection Agency Protection .....	249

Brownfield Assessment Grant .....	249
Brownfield Revolving Loan Fund .....	250
Brownfield Cleanup Grants .....	250
Environmental Workforce Development and Job Training Grants .....	250
EPA's Targeted Brownfield Assessment.....	250
Environmental Covenants.....	251
Underground Storage Tanks (Gasoline and Diesel) .....	251
Public Water Supply .....	252
Safe Drinking Water Standards .....	252
Wastewater Treatment Plants .....	253
Total Maximum Daily Loads (TMDL).....	253
National Pollutant Discharge Elimination System (NPDES) .....	254
On-Site Wastewater Disposal Systems (Septic Tanks) .....	254
Stormwater Permitting.....	255
Municipal Separate Storm Sewer Systems (MS4s) .....	256
Solid Waste .....	257
Planning and Updates .....	257
Garbage.....	258
Rubbish (Classes I and II).....	259
Acceptable Wastes (Rubbish Class I).....	259
Prohibited Wastes (Rubbish Class I) .....	259
Acceptable Wastes (Rubbish Class II).....	260
Prohibited Wastes (Rubbish Class II).....	260
Hazardous Waste .....	260
Tire Disposal.....	261
Grant Programs .....	262
Solid Waste Planning.....	262
Hazardous Waste .....	263
Nonhazardous Solid Waste Corrective Action Trust Fund (CATF).....	263
Waste Tire Abatement Program.....	264
Diesel Engine Replacement .....	264
Energy Grants .....	265
Multimedia State and Tribal Assistance Grants (STAG) .....	266
Appendix A: Annual Agenda for Meetings of Boards of Supervisors .....	267
January .....	267
February .....	268
March .....	268
April .....	269
May .....	269
June .....	270
July.....	271
August.....	272
September .....	272
October.....	273
November.....	274

December .....	274
Other Matters .....	275
Appendix B: The State Aid Road Program.....	276
Local System Road Program .....	276
Local System Bridge Program .....	276
Bridge Replacement, Surface Transportation Plan, and Highway Safety Funds .....	277
Federal Highway Administration.....	277
Other FHWA Project Funding.....	277
Regulations .....	277
Appendix C: Selected Information on Mississippi Counties .....	279
Appendix D: The Mississippi Association of Supervisors, Inc. ....	283
Purpose.....	283
Office .....	284
Staff.....	284
Membership .....	284
Organization.....	285
Member Services .....	285
Appendix E: The Mississippi Association of Supervisors Insurance Trust.....	287
Appendix F: Mississippi Public Entity Services.....	288
Appendix G: The Center for Government and Community Development.....	289
Purpose.....	289
Educational Efforts .....	290
Staff.....	292
GCD Contact Information.....	292



## CHAPTER 1

# THE HISTORICAL AND CONSTITUTIONAL DEVELOPMENT OF THE COUNTY

**Michael T. Allen**

Historically, county governments have made up the largest territorial units of local government in the United States.<sup>1</sup> Today, there are 3,068 counties governing 98 percent of the nation's population. Forty-eight of the fifty states have some form of county government. Even the two states without functioning county governments – Rhode Island and Connecticut – are nevertheless divided into geographical regions called counties. All states with county governments refer to these local governmental units as *counties* except Alaska and Louisiana which call them *boroughs* and *parishes*, respectively.<sup>2</sup>

Across the nation, counties vary greatly in both size and population. The smallest is Arlington County, Virginia at 26.07 square miles while the largest is North Slope Borough, Alaska at 94,796.283 square miles. The least populous county is Loving County, Texas with 82 residents and the most populous is Los Angeles County, California with 9.8 million.<sup>3</sup>

In many rural areas of the nation, counties have historically been the primary and sometimes the only unit of local government.<sup>4</sup> This scenario remains true for many Americans today. Counties with populations of less than 50,000 are considered rural and make up almost 70 percent of all counties. However, these rural counties contain only about 16 percent of the nation's population.<sup>5</sup>

According to the 2010 U.S. Census, Mississippi contains a greater percentage of rural counties than does the nation as a whole. Of the state's 82 counties, 68 counties or 83 percent are classified as rural since they have populations of less than 50,000. Only 14 counties are classified as urban with populations greater than 50,000. Of these 14 counties, only five exceed 100,000 residents (DeSoto, Harrison, Hinds, Jackson, and Rankin). By population, Hinds is the largest county with 245,285 inhabitants and Issaquena the smallest with 1,406. Mississippi's 2010 population was 2,967,297.<sup>6</sup>

Mississippi has a total area of 48,432 square miles.<sup>7</sup> Like their populations, the sizes of the 82 counties vary considerably – the smallest in land area is Alcorn with 400 square miles and the largest<sup>8</sup> is Yazoo with 923 square miles.<sup>9</sup> Seventy-two counties have a single county seat where the county government is headquartered. The remaining ten have two county seats since the division of court districts splits them and both county sections have their own courthouse.<sup>10</sup>

In Mississippi, as in other states, county power descends from the state constitution and state law. Counties are creations of the state and are charged primarily with the purpose of providing state services.<sup>11</sup> The role of the county is an arm of the state and operating solely under state authority is often referred to as *Dillon's Rule*. This term was coined in the late 1800s as presiding Iowa State Supreme Court Judge John F. Dillon and the Court upheld the principle of state

supremacy over counties.<sup>12</sup> However, even though Mississippi tends to operate under “Dillon’s Rule,” through the home rule provision adopted by the Legislature in 1989 counties are granted greater authority to act in most areas not expressly forbidden by state law. Some notable exceptions to this provision are as follows: no county can appoint constitutional officers, impose new taxes, or give county funds to private organizations.<sup>13</sup>

While county development in Mississippi goes back two hundred years, the development of the county form of government in the United States goes back centuries further to medieval times and an area that was to become the nation of England.

## **THE DEVELOPMENT OF COUNTY GOVERNMENT IN THE UNITED STATES**

Similar to the present arrangement, the American county of the past served as a very important unit of local government positioned between town or municipal governments and the state government. Its historical roots extend deeply into the Colonial Era where most of its uniquely American features originated.

The American form of county government was adapted from the older British model in which the county served both as a local government and an administrative division for the national government.<sup>14</sup> The British model dates back to AD 603 when the territory that is now England was divided into cities and counties called *boroughs* and *shires*, respectively. Because the king or queen appointed the government officials in a shire, these local governments became important tools of the national government.<sup>15</sup> Some unique features and offices (such as the grand jury and the offices of sheriff, coroner, and justice of the peace) of the British model dating back to these Anglo-Saxon times are still found in many American counties.<sup>16</sup>

The Colonial Era brought about four major systems or styles of rural local government to the developing United States: the New England town, the commissioner system, the town-supervisor, and the southern county. All originating in England, these four systems were modified to meet the unique needs, rugged environment, and rapidly-growing settlements of the Colonies. The southern county system, adopted primarily in the South where it was generally called the “Virginia Plan,” proved to be the one patterned most like the traditional English system.<sup>17</sup>

The Virginia Plan or a similar arrangement was adopted throughout most of the Southern states. Under this system and in rural areas the county became the basic unit of local government and functioned as an arm of the state.<sup>18</sup> Governmental functions were under the control of the county court composed of justices of the peace. Besides its regular judicial duties, the responsibility of this court included levying taxes, appropriating money, and overseeing county affairs. In many of these early counties, officers were appointed by the governor or another state official. Over the years and following the example of Arkansas’ 1836 state constitution, most of these offices became elective rather than appointive.<sup>19</sup>

In the United States, all functioning county governments are administered by a locally-elected executive body. Most of these executive bodies contain three to five members; however, the number varies across and sometimes within the states. Although the titles of these executive

bodies vary, “board of commissioners” and “board of supervisors” are the most common designations.<sup>20</sup> In Mississippi by constitutional prescription, the county’s executive body is known as the board of supervisors and contains five locally elected members:

Each county shall be divided into five districts, a resident freeholder of each district shall be selected, in the manner prescribed by law, and the five so chosen shall constitute the board of supervisors of the county, a majority of whom may transact business.<sup>21</sup>

## A BRIEF MISSISSIPPI HISTORY

Long before a single county government existed in the land of the Anglo-Saxons, people were living in Mississippi who would influence the region for thousands of years to come. These people, called Indians by the European explorers, enriched Mississippi’s history and supplied many of the names that were given to counties, cities, and rivers within the State. Even the name *Mississippi* came from the local Indians who called the land *Misi sipi* meaning “Father of Waters.”

When European explorers first arrived in the region of *Misi sipi*, the people living there were of three major tribes and several smaller bands. The major tribes were the Natchez, the Choctaw, and the Chickasaw. It has been estimated that in the year 1700 these three tribes and the smaller bands had a total population of around 30,000. The Choctaws were the largest tribe with a population of somewhere between 5,000 and 10,000 at this time. The Alabamas, a smaller band living in what is now north-central Mississippi about the time the first European explorers arrived, later migrated eastward and settled in the present state of Alabama.<sup>22</sup>

The first known European explorers to enter Mississippi were Spanish. Hernando DeSoto, the first Spanish *conquistador* to set foot in Mississippi, came in 1540 and became the first recorded European to see the Mississippi River. However, it was the French who, over 200 years after Columbus “discovered” the New World, established the earliest colonial settlements in the region.<sup>23</sup>

The first French explorers were led by Robert Cavelier de La Salle and arrived in Mississippi around 1682. La Salle claimed the entire Mississippi Valley for the King of France in March of that year. Seventeen years later in 1699, Frenchman Pierre le Moyne d’Iberville established the first European colony in Mississippi and built *Fort Maurepas* near the site of present-day Ocean Springs in Jackson County. The settlement was called Biloxi after the friendly Biloxi Indians of the area.<sup>24</sup>

Other settlements began to spring up as more explorers arrived. In 1716, d’Iberville’s brother, Jean Baptiste le Moyne de Bienville, who had participated in the 1699 expedition that established the Biloxi colony, traveled up the Mississippi River to the present site of Natchez in Adams County. There he set up an important outpost named *Fort Rosalie*, and was later commissioned Governor of French Louisiana. Part of this territory was later to become the Mississippi Territory.<sup>25</sup>

After the French and Indian War (1755-1763), French Louisiana was divided between Spain and England. England received the land east of the Mississippi River, including much of the territory that was to become the State of Mississippi. The English called this region British West Florida. Spain gained New Orleans and all French territory west of the Mississippi River. In 1779, during the American War for Independence, Spain seized control of British West Florida. About fifteen years later, under the Treaty of San Lorenzo in 1795, Spain gave up its land north of the 31<sup>st</sup> parallel to the new United States government. In 1798, the Spanish left Natchez, and Natchez became the capital of the newly formed Mississippi Territory.<sup>26</sup>

The U.S. Congress officially designated the region as the Mississippi Territory on April 7, 1798. Congress enlarged the Territory in 1804 and again in 1812 to encompass the land areas of the present States of Mississippi and Alabama. At this time, the greatest population concentration was in the western portion (Adams County area) of the Territory. It was in this area that the first Mississippi counties of Adams and Pickering were established in 1799. These two counties had essentially identical forms of government, court systems, and political offices. The following year, on June 4, 1800, the third county, Washington County, was established.<sup>27</sup>

Several weeks before the creation of Washington County, on May 10, 1800, the U.S. Congress authorized the Mississippi Territory to elect a general assembly. The resulting Territorial Legislature first convened on September 22, 1800. During their second session, the Legislature altered the three existing counties' boundaries, changed the name of Pickering County to Jefferson County, and created two more counties. Over the next decade, other counties were added as the Territory's non-Indian population increased to 40,000 by 1810. In creating a new county, either a large county was divided to form two smaller counties or a recently-populated area was incorporated into a new county. By 1816, the southwestern portion of the Mississippi Territory contained fourteen counties. By this time, many of these county residents were eager for the Territory to be admitted to the Union as the State of Mississippi.<sup>28</sup>

The first stage in the quest for statehood began on December 27, 1814 when the Territorial Legislature approved a petition to the U.S. Congress for permission to hold a constitutional convention. This request was submitted to Congress on January 21, 1815 and sought approval to hold a constitutional convention and to draft a constitution suitable for admission of a new state into the Union. On March 1, 1817, after Congress passed and President James Monroe signed an enabling act, the Mississippi Territory was authorized to hold a constitutional convention, to adopt a constitution, and to set the boundaries for the proposed State of Mississippi. The enabling act also reorganized the eastern portion of the Territory as the Alabama Territory.<sup>29</sup>

The rationale behind splitting the Territory into two states was an attempt by Southern congressmen to strengthen the region's position in the U.S. Senate.<sup>30</sup> Thus Congress divided the Territory into two pieces in 1817 and authorized the western section to seek statehood first.<sup>31</sup>

Accordingly, in July 1817, the forty-eight elected delegates met in a Methodist church for Mississippi's first constitutional convention. The convention, held in the town of Washington in Adams County, lasted for six weeks and produced an eighteen-page constitution that was adopted on August 15, 1817. Congress approved the constitution and on December 10, 1817 formally admitted the State of Mississippi as the twentieth state of the Union. (Mississippi

escaped being named Washington by a mere six votes in the 1817 constitutional convention.)<sup>32</sup> Two years after Mississippi's statehood, on December 14, 1819, Congress admitted the eastern portion of the Territory to the Union as the twenty-second state, the State of Alabama.

Natchez, capital of the Mississippi Territory, became a temporary capital under statehood. In 1822, the Mississippi Legislature designated the city of Jackson as the state's new capital. The capital city, named in honor of General Andrew Jackson, overlooks the Pearl River on a site once known as LeFleur's Bluff.<sup>33</sup>

After statehood was achieved, Mississippi experienced rapid population growth and economic development. With the introduction of a superior Mexican variety, cotton soon became the state's primary crop. High cotton prices coupled with inexpensive land and good harvests caused enormous economic expansion in Mississippi.<sup>34</sup> This change brought calls to overhaul or replace the 1817 state constitution to make it more suitable for business. In December of 1830, the Legislature submitted to the voters the question of whether to call a state constitutional convention. The vote occurred in August 1831 and authorized a second constitutional convention to be convened. The convention began in September 1832 and by the middle of the next month (October 16, 1832) had completed its work. The electorate ratified the new constitution that year.<sup>35</sup>

The 1850s have been called the "Golden Age of the Cotton Kingdom" and were made possible largely by the agricultural development of the Mississippi Delta. During this time, Mississippi was known as one of the wealthiest states in the nation; however, this period was short-lived as "North and South" tensions strained to the breaking point. On January 9, 1861, Mississippi became the second state to secede from the Union.<sup>36</sup>

Mississippi was a totally independent state for nearly three months before joining the Confederate States of America on March 29, 1861. Jefferson Davis, a Mississippian, was elected President of the Confederacy. Mississippi became heavily involved in the ensuing War Between the States. Of the 78,000 Mississippi soldiers who fought for the Confederacy, over 59,000 were killed or wounded. Many battles were fought in the state and when the War finally ended, Mississippi was deeply impoverished and the economy was in shambles.<sup>37</sup>

After the War and during the later Reconstruction Era (1870-1876) there was much upheaval as Mississippians tried to return to their normal lives. Readmitted February 23, 1870, Mississippi became the first Confederate state to return to the Union.<sup>38</sup> Taxes were high and moods were low for many during this time. However, able leaders, some of whom were recently-freed black Mississippians, made the transition period more bearable. For example, in 1870, Mississippi sent Hiram Rhodes Revels to the U.S. Senate as the first black Senator in the nation. In 1875, another black Senator, Blanche K. Bruce, was elected. In the Mississippi Legislature, a former slave, John R. Lynch became Speaker of the House before he was later elected to two terms in the U.S. House of Representatives.<sup>39</sup>

## CONSTITUTIONAL DEVELOPMENT OF THE MISSISSIPPI COUNTY

After the War Between the States (1861-1865), Mississippi called two more constitutional conventions: one in 1869 and one in 1890. The *Constitution* that was adopted in 1890, although substantially amended, is still in effect today.

In Mississippi, the county governing body, or board of supervisors as it is called today, is officially part of the judicial branch of government. Historically, such a structure has always existed in the state. The first *Constitution* (1817) established this model and it was continued in all three later *Constitutions* (1832, 1869, and 1890). The judicial branch was seen as an appropriate home for this county governing body since its predecessor was the probate court that was sanctioned by the *1817 Constitution* and empowered with police and certain administrative powers. The *1832 Constitution* established a five-member board of police elected for two year terms to serve as the county governing body. This board's jurisdiction, in addition to police powers, was later expanded to include managing highways, roads, ferries, and bridges, and ordering elections to fill vacancies in county offices.<sup>40</sup>

The *Mississippi Constitution of 1869* was the state's first to mandate a five-member board of supervisors elected by district for two year terms. This board, replacing the previous board of police, was similarly authorized to manage roads, bridges, and ferries, as well as order elections to fill county office vacancies. Additionally, the board of supervisors was mandated to perform other duties as defined by the state Legislature.<sup>41</sup>

In Article 6, Section 120, the *1890 Constitution* continued this prescription for a five-member board of supervisors elected by district. As in the preceding *Constitutions*, the *1890 Constitution* also placed this provision under the article dealing with the state's judicial functions. However, according to the Mississippi Supreme Court, the county board of supervisors is not limited to simply performing judicial functions. The board is recognized as possessing mixed duties containing functions that are partly executive, legislative, and judicial in nature.<sup>42</sup> These mixed duties are discussed in Chapter 3 which covers the office, powers and duties of supervisors.

The *1890 Constitution* also addressed the issue of county creation. As of 1890, there were 75 counties in existence. After the adoption of this *Constitution*, only seven more counties were created. Humphreys County, created in 1918, was the last of these seven bringing the statewide total to its current 82.<sup>43</sup>

To create a new county, Article 14, Section 260 of the *Constitution* requires an election in which a majority of the qualified electors from the affected area approve of the county's creation. Such an election cannot be held in that area more often than once every four years. Additionally, any new county must be at least 400 square miles in size and no existing county can be reduced below that size.

Even though no new counties have been created in Mississippi for over 80 years now, the historical and constitutional development of the county in Mississippi continues. Each session of the Legislature adds something new to the legal framework in which county governments operate. Each county election brings new faces and change to the boards of supervisors and

county offices throughout the state. However, in spite of frequent change, county government leaders can be confident in the strength and durability of the county form of government as it has been developed over many centuries. Armed with this confidence, they can then build on this sound legal and constitutional foundation and make their county government excel.

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<sup>1</sup> Vincent L. Marando and Robert D. Thomas. *The Forgotten Governments: County Commissioners as Policy Makers* (Gainesville, FL: University Presses, 1977), p. 1.

<sup>2</sup> National Association of Counties, "County Government Overview." Washington, D.C., 2010. [Online October 27, 2011] Available <http://www.naco.org/Counties/Documents/CountyOverview-June2010.pdf>

<sup>3</sup> U.S. Census Bureau. 2010 Census U.S. Gazetteer Files: Counties.; U.S. Census Bureau: State and County QuickFacts. U.S. Census 2010.

<sup>4</sup> Gordon K. Bryan, "County Government and Administration in Mississippi" (Ph.D. dissertation, University of California, Los Angeles, 1949), p. 1.

<sup>5</sup> National Association of Counties, "County Government Overview."

<sup>6</sup> U.S. Census Bureau: State and County QuickFacts. U.S. Census 2010.

<sup>7</sup> Composed of a total land area of 46,923 square miles and a total water area of 1,509 square miles.

<sup>8</sup> In terms of total area, Jackson County is the largest with 1,043 square miles, 320 of which are water and 723 are land.

<sup>9</sup> U.S. Census Bureau: State and County QuickFacts. U.S. Census 2010.

<sup>10</sup> Mississippi, Secretary of State, *Mississippi: Official and Statistical Register 2008-2012*, p.242.

<sup>11</sup> Tanis J. Salant, "County Governments: An Overview," *Intergovernmental Perspective* (Winter 1991): 6.

<sup>12</sup> Blake R. Jeffery, Tanis J. Salant, and Alan L. Boroshok, *County Government Structure: A State by State Report* (Washington, D.C.: National Association of Counties, 1989), p. 2.

<sup>13</sup> *Ibid.*, p. 66.

<sup>14</sup> Victor S. DeSantis, *The Municipal Year Book 1989* (Washington, D.C.: International City Management Association, 1989), p. 55; Salant, "County Governments: An Overview," p. 5.

<sup>15</sup> Jeffery, Salant, and Boroshok, *County Government Structure: A State by State Report*, p. 1.

<sup>16</sup> Paul W. Wager, ed., *County Government Across the Nation* (Chapel Hill: University of North Carolina Press, 1950), p. 5.

<sup>17</sup> *Ibid.*, p. 5-6.

<sup>18</sup> Salant, "County Governments: An Overview," p. 5.

<sup>19</sup> Wager, *County Government Across the Nation*, p. 344-45.

<sup>20</sup> Salant, "County Governments: An Overview," p. 6.

<sup>21</sup> Mississippi, *Constitution*, Art. 6, § 170. (Hereinafter cited as *Const.*, § ....)

<sup>22</sup> John K. Betterworth, *Mississippi Yesterday and Today*, (Austin, TX: Steck-Vaughn Company, 1964), p. 2, 21.

<sup>23</sup> *Ibid.*, p. 37-46.

<sup>24</sup> *Ibid.*, p. 37-46; Mississippi, Secretary of State, *Mississippi Official and Statistical Register 1988-1992*, by Dick Molpus, (1989), p. 19.

<sup>25</sup> *Ibid.*, p. 19.

<sup>26</sup> *Ibid.*, p. 19-20.

<sup>27</sup> Bryan, "County Government and Administration in Mississippi," p. 6-7, 10, 13.

<sup>28</sup> *Ibid.*, p. 15; Robert B. Highsaw and Charles N. Fortenberry, *The Government and Administration of Mississippi* (New York: Thomas Y. Crowell Company, 1954), p. 1.

<sup>29</sup> Bryan, "County Government and Administration in Mississippi," p. 16-18; Tip H. Allen, Jr., "The Enduring Traditions of the State Constitutions," in *Mississippi Government and Politics: Modernizers Versus Traditionalists, Politics and Governments of the American States*, Dale Krane and Stephen D Shaffer (Lincoln: University of Nebraska Press, 1992), p. 44.

<sup>30</sup> Allen, "The Enduring Traditions of the State Constitutions," p. 43-44.

<sup>31</sup> Highsaw and Fortenberry, *The Government and Administration of Mississippi*, p. 1.

<sup>32</sup> Bryan, "County Government and Administration in Mississippi," p. 16-18; Allen, "The Enduring Traditions of the State Constitutions," p. 44.

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<sup>33</sup> Mississippi, Secretary of State, *Mississippi Official and Statistical Register 1988-1992*, p. 20.

<sup>34</sup> *Ibid.*, p. 20.

<sup>35</sup> Bryan, "County Government and Administration in Mississippi," p. 22.

<sup>36</sup> Mississippi, Secretary of State, *Mississippi Official and Statistical Register 1988-1992*, p. 20.

<sup>37</sup> *Ibid.*, p. 20.

<sup>38</sup> John W. Winkle III, *The Mississippi State Constitution: A Reference Guide*. Reference Guides to the State Constitutions of the United States, no. 12 (Westport, CT: Greenwood Press, 1993), p. 8.

<sup>39</sup> *Ibid.*, p. 21.

<sup>40</sup> Dana B. Brammer, *A Manual for Mississippi County Supervisors*, 2<sup>nd</sup> ed. County Government Series, no. 10 (University, MS: Bureau of Governmental Research, University of Mississippi, 1973), p. 8.

<sup>41</sup> *Ibid.*, p. 9; *Const.* §§ 20-21.

<sup>42</sup> *Ex parte Fritz*, 86 Miss. 210, (1905); Brammer, *A Manual for Mississippi County Supervisors*, p. 9.

<sup>43</sup> Highsaw and Fortenberry, *The Government and Administration of Mississippi*, p. 345-46.



## CHAPTER 2

### USING THE *MISSISSIPPI CODE OF 1972*, ANNOTATED

Michael Lanford

#### WHAT IS THE *MISSISSIPPI CODE*?

The *Mississippi Code* is a collection of all the laws, or statutes, passed by the legislature and signed by the governor which govern the State of Mississippi. It includes the *Mississippi Constitution*, adopted in 1890 and the *Constitution of the United States*. It contains the latest versions of statutes as amended by the legislature and contains references, or annotations, to court cases interpreting the statutes.

The *Code* is presently 21 volumes plus a two-volume paperback Index. Volume 1 begins with the *U.S. and Mississippi Constitutions* and the Mississippi statutes follow. Each statute is referenced with a three-figured number starting with section (§) 1-1-1 in Volume 1 and ending with § 99-43-49 in Volume 21(A). These numbers represent the title, chapter, and section of the *Code*. Statutes, or *Code* sections, on counties and county officers can be found in Volume 5 at § 19-1-1 and the sections that follow (*et seq.*). For example, a statute describing the jurisdiction of county supervisors is found in § 19-3-41.

#### DOES THE *CODE* CONTAIN THE LATEST VERSION OF THE STATUTES?

Each year after the legislature meets the *Code* is updated. This usually occurs in July or August. The publisher of the *Code* will send out supplements or “pocket-parts.” These newsprint supplements are inserted into a pocket in the back cover of each volume and will contain the latest amendments and court cases. Sometimes this pocket-part will become too big to be inserted in the volume, and the publisher will simply provide a free-standing paperback supplement for that volume. Always check to make sure your copy of the *Code* contains the latest supplement. When looking up a code section it is a good idea to always check the supplement first; if the section is printed in the supplement there is no reason to look further in the main volume.

#### HOW DO I FIND THE STATUTES ON A PARTICULAR SUBJECT?

The statutes may be searched using the *Code*'s table of contents and two indexes.

##### **The Index to the *Code***

If you have no idea where to begin, look up the subject in which you are interested in the two-volume index that is arranged alphabetically. First define to yourself your question or subject matter. For example, you may be interested in what the supervisor's duties are with regard to garbage collection in the county. You might begin by looking in the Index under “garbage”, or “supervisors”, or “counties”. Under “S” in the index you will find no entry for county

supervisors. Under “C” there is a large list of entries under “county board of supervisors” but no entry for garbage or for solid waste. However, in the “G” section of the index you will find the entry “GARBAGE AND TRASH”. Under that entry you will find a number of headings one of which is “Solid waste management. General provisions, 17-17-1 to 17-17-507.” You can then go to those code sections listed and read the statutes. After each statute there may be cross-references to other similar statutes, research and practice references, annotations to attorney general’s opinions and judicial decisions which help to explain the background, meaning, and current interpretation of the statute.

As you can see, there will often be some trial and error involved at least until you become familiar with the *Code* and its Index. If you do not find any references to your subject on your first attempt, try to think of another word that might be used to describe your subject. For example, you might find references to the laws that you are looking for under “Solid Waste”.

### The Index to Each Volume

You may already know that many county government statutes are found in Volume 5 of the *Code*. Instead of using the large Index for the entire *Code*, you could go directly to Volume 5 and turn to the much smaller index found in the last few pages. There you can look up the same words using the detailed list of statutes contained only in that particular volume dealing with your subject.

### The Table of Contents

After you become somewhat familiar with the contents of the *Code* you may find it easier to look up a statute simply by “eyeballing” the *Code*. On the spine of each volume is printed the subject matter with which that particular volume deals. For example, the spine of Volume 14 (reproduced on this page) indicates that the topics, “Highways, Bridges and Ferries” are covered in the volume. After this topic description, the spine of the book indicates that the *Code* sections found in the volume are §§ 65-1-1 to 69-35-33. You might want to begin with this volume and find out what the supervisors’ duties are in maintaining roads. Pull this volume. On the inside of the front cover the first page you will find is the Table of Contents. This table lists the subject matter and *Code* sections contained within. As you go down the list you will find several different subjects one of which is “Public Roads and Streets; Private Way . . . . § 65-7-1”. If you then turn to that statute you will find a more detailed table of contents listing each statute and describing in a few words the subject with which the statute deals. For example, “§ 65-7-1. Jurisdiction over county roads...” and “§ 65-7-3. Standard for working roads.”, etc.

<hr/> <b>MISSISSIPPI CODE 1972 Annotated</b> <hr/>
<b>Titles 65 to 69</b>
Highways, Bridges and Ferries
Alcoholic Beverages
Agriculture, Horticulture and Animals
<b>§§65-1-1 to 69-49-1</b> <hr/>
<b>14</b>

A statute will often be followed by cross references to other *Code* sections dealing with a related topic. For example, *Code*, § 65-7-1 is followed by a cross-reference to a statute that requires all bridges and culverts to be the same width as the roadway, namely *Code*, § 65-21-1.

## **Using the Internet**

You can also find the *Code*, without all the references to cases and attorney general's opinions, on the Internet. You can find it on the Secretary of State's web site at [www.sos.ms.gov](http://www.sos.ms.gov). There you may search the *Code* by using keywords or by typing in the *Code* section.

## CHAPTER 3

# THE OFFICE, POWERS, AND DUTIES OF SUPERVISORS

Samuel W. Keyes, Jr.

### INTRODUCTION

The governing authority for counties in Mississippi is the board of supervisors.<sup>1</sup> Through the lawful actions of the board county priorities are set, projects funded and the business of the county conducted. This chapter offers a brief survey of the office of county supervisor and the powers and duties assigned to county boards of supervisors by Mississippi's *Constitution* and *Code*. This chapter does not provide an exhaustive analysis. Rather, it is designed to present an overview of the office and the board and review the many areas of public interest and the tools the board has available to address these matters. For in depth guidance on particular areas of responsibility, the relevant provisions of the *Constitution* and *Code* and other chapters in this book should be consulted.

### THE BOARD OF SUPERVISORS, SUPERVISOR DISTRICTS, TERM OF OFFICE, AND ELECTION

#### Board of Supervisors and Supervisor Districts:

The board of supervisors for each county consists of five supervisors, each being elected from one of five supervisor districts. Every county is divided into five supervisor districts which are to be as equal as possible in population.<sup>2</sup> The board may, by a three-fifths ( $\frac{3}{5}$ ) absolute majority (three of the five members of the board) vote, change the boundaries of the districts, provided that the changed boundaries conform, as far as possible, to "natural, visible artificial boundaries" (streets, highways, railroads, rivers, lakes, bayous, or other lines of demarcation, except county lines and municipal corporate limits)<sup>3</sup> and provided the districts conform to State and Federal statutory and constitutional requirements. If the boundaries of the districts are changed by order of the board of supervisors as provided in this section, the order shall be published in a newspaper having general circulation in the county once each week for three (3) consecutive weeks.<sup>4</sup>

#### Nomination, Election and Term of Office

Nominations for election to the office of county supervisor are made via primary elections conducted by the political parties<sup>5</sup> or via a petition of qualified electors.<sup>6</sup> The general election for the office of county supervisor is held on the first Tuesday after the first Monday in November of general election years.<sup>7</sup> The qualified electors in each district elect one member to the board for a term of four years.<sup>8</sup> The term of office of a supervisor starts on the first Monday of January after the election.<sup>9</sup>

## **Qualifications**

The *Constitution*<sup>10</sup> and *Code*<sup>11</sup> require that a supervisor be a resident freeholder (property owner) in the district from which he is chosen valued at least at \$1,500. However, the freeholder requirement was declared unconstitutional in 1985 as a denial of equal protection of the laws in *Williams v. Adams County Board of Election Commissioners*, 608 F.Supp. 599 (S.D.Miss. 1985).

In addition, the *Constitution* provides that a public officer (such as a supervisor) must be a qualified elector;<sup>12</sup> must not be liable as principal for public money unaccounted for;<sup>13</sup> must not have been convicted of “bribery, perjury, or other infamous crime”, including having been convicted of giving or offering a bribe to procure his own or any other person’s election or appointment;<sup>14</sup> and must not hold an office “of honor or profit” or “act for” a foreign government or the government of the United States.<sup>15</sup> Further, since November 3, 1992, any person convicted in another state of any offense which is a felony in Mississippi or convicted of any felony in a federal court is ineligible to hold the office.<sup>16</sup>

A person is not disqualified from holding office if he has been pardoned from a disqualifying offense or if the offense is manslaughter, any violation of the United States Internal Revenue Code, or any violation of Mississippi’s tax laws, unless the tax law violation also involved misuse or abuse of his office or money coming into his hands by virtue of his office.<sup>17</sup>

## **ACTIONS NECESSARY TO TAKE OFFICE AFTER ELECTION**

A supervisor is prohibited by law from exercising the duties and functions of the office until he has received a certificate of election, posted the required bond, and taken the oath of office prescribed by the *Constitution*.<sup>18</sup> A person who attempts to take office without having taken the oath of office or having posted the bond required by law is guilty of a misdemeanor punishable by a fine of up to \$500 or imprisonment in the county jail for a term not longer than one year, or both.<sup>19</sup>

### **Posting the Bond**

Each supervisor must post a bond, with sufficient surety, payable to the state for use of the county, equal to five percent (5%) of the sum of all state and county taxes shown on the county’s assessment rolls for the year prior to the year the supervisor is to take office – the bond not to exceed \$100,000.<sup>20</sup> The bond must be approved by the chancery clerk of the county and filed and recorded in the chancery clerk’s office.<sup>21</sup> The premium on the bond of a supervisor may be paid out of county funds, but any fee for approval of the bond must be paid by the supervisor.<sup>22</sup>

The bond must be made with a surety company authorized to do business in the state.<sup>23</sup> If a supervisor gives an affidavit, including two letters of refusal from bonding companies licensed to do business in the state, that he has made a diligent effort to obtain the required surety bond and has been unable to do so, he may make his official bond with two or more qualified personal sureties.<sup>24</sup>

A supervisor executes bond for the faithful performance of duty. Any supervisor who “knowingly or wilfully” fails, neglects, or refuses to perform the duties required by law, or violates his official obligations in any respect, is subject to suit upon his bond for the recovery of damages that the county may have sustained.<sup>25</sup>

If an official bond is found to be insufficient for any reason, the board of supervisors may require the posting of a new bond. If a new bond is required and not posted, the supervisor’s position is declared vacant and filled in the manner discussed in the “Vacancies in Office” section found below.<sup>26</sup>

### **Taking the Oath**

Each supervisor must take the oath found in § 268 of the *Constitution* from one of a number of individuals authorized to administer oaths.<sup>27</sup> The oath must be filed in the office of the chancery clerk of the county.<sup>28</sup>

## **VACANCIES IN OFFICE**

Vacancies in the office of supervisor may result from any one of a number of reasons. Vacancies may be caused by death; resignation; moving out of the district from which elected; accepting a position in the executive or legislative branches of state government; failure to “qualify” (discussed above); failure to account for public money for which he was responsible prior to election or appointment to the board; and removal from office.

In the case of an emergency, the governor may make a provisional appointment to fill a vacancy.<sup>29</sup> In situations other than emergencies, the Legislature has provided for the filling of a vacancy, as follows<sup>30</sup>:

1. If the unexpired term is less than six (6) months:
  - a. The board of supervisors appoints someone to fill the vacancy by an order entered upon the minutes, with the chancery clerk certifying the appointment to the secretary of state. The governor will commission the person appointed.
  - b. If the board is not in session, the president of the board, with the consent of an absolute majority of the members of the board, makes the appointment, with the chancery clerk certifying the appointment to the Secretary of State. The governor will commission the person appointed.
2. If the unexpired term is longer than six (6) months and the vacancy occurs in a year in which the election of supervisors would normally be held, the individual appointed in the manner described above will serve until a successor is elected.
3. If the unexpired term is longer than six (6) months and the vacancy occurs in a year in which the election of supervisors *would not* normally take place, the individual appointed in the manner described above will serve until a successor is elected in a special election which will be timed and conducted according to the requirements of law.

## REMOVAL FROM OFFICE

As is the case with other elected officers, a supervisor may be removed from office in several different ways and for a variety of reasons, including, but not necessarily limited to:

1. Impeachment by the Mississippi House of Representatives for “treason, bribery, or any high crime or misdemeanor in office.”<sup>31</sup>
2. Conviction in a court of competent jurisdiction of “willful neglect of duty or misdemeanor in office.”<sup>32</sup>
3. Conviction in any court of competent jurisdiction in any state or any federal court:
  - a. of any crime which is a felony under the laws of Mississippi or which is punishable by imprisonment for one year or more (*other* than manslaughter or any violation of the U. S. Internal Revenue Code);
  - b. of corruption in office or peculation (embezzlement);
  - c. of gambling or dealing in futures with “any money coming into his hands by virtue of his office.”

In certain cases, the attorney general of the state must file a motion for removal from office in the circuit court of the county of residence of the official. The circuit court, or the judge in vacation, must, upon notice and a proper hearing, issue an order of removal from office.<sup>33</sup>

4. Adjudication by a court of competent jurisdiction (or otherwise lawfully) to be of unsound mind during the term for which they are elected or appointed.<sup>34</sup>
5. Conviction of habitual drunkenness or being drunk while discharging the duties of his office (or when called upon to perform the duties of his office).<sup>35</sup>
6. Conviction of “intentionally, wilfully and knowingly” violating the laws governing public purchasing.<sup>36</sup>
7. Conviction of “wilfully” neglecting or refusing to return “any person committing any offense against the laws, committed in his view or knowledge, or of which he has any notice, or shall wilfully absent himself when such offense is being or is about to be committed, for the purpose of avoiding knowledge of the same, . . .”<sup>37</sup>
8. Conviction of accepting any “gift, offer or promise” prohibited by *Code*, § 97-11-11 (generally, a bribe to influence official action).<sup>38</sup>
9. Pursuant to a special election called in response to a removal petition, hearing, and finding by a governor appointed removal council that sufficient cause has been shown to justify removal for “knowingly or wilfully failing, neglecting, or refusing to perform any of the duties required of such officer by law.”<sup>39</sup>

## **COMPENSATION**

The annual salary of a supervisor is fixed by law<sup>40</sup> and is based upon the total assessed valuation of his county for the preceding taxable year. Note that in counties with producing oil wells, the total valuation of the oil produced, as reported by the Department of Revenue for the preceding calendar year, may be combined with the total assessed valuation to determine the salary category of the supervisors of that county. In addition, in any county in which the federal government or an agency of the federal government owns twenty-five percent (25%) of the real property (consequently, exempt from ad valorem taxes), the salary category of the members of the board of supervisors from that county moves to the next highest rate from that rate determined by the total assessed value of the property in the county.<sup>41</sup>

## **PRIVILEGES OF OFFICE**

State law provides that the members of a board of supervisors are exempt from working on the roads, serving in the militia, and jury duty.<sup>42</sup>

## **CONDUCTING COUNTY BUSINESS THROUGH MEETINGS AND MINUTES OF THE BOARD OF SUPERVISORS**

### **Introduction**

Supervisors must accomplish the business of the county by collective and official action of the board of supervisors.<sup>43</sup> It is essential that those actions be properly documented by the official minutes of the board.<sup>44</sup> Following are some of the administrative and procedural basics.

### **Organizational Meeting**

After posting the required bond and taking the oath of office, the members of the board of supervisors meet at the county courthouse on the first Monday in January after the election and organize the board by electing one of its members as the president (for the four year term) and one of the members as the vice president. The board, attended by the sheriff (or a deputy sheriff) and the clerk (chancery clerk or a deputy chancery clerk) may then proceed to discharge its duties.<sup>45</sup>

If an epidemic at the county seat or some other cause makes it impracticable for the board to meet on the first Monday in January after the election, the board must meet as early as it can safely do so, upon the call of any three members-elect of the board. This called meeting will be held at the place designated in the call of the meeting.<sup>46</sup>

### **Presiding Officer and Board Quorum**

The president of the board of supervisors (or the vice president in the absence or disability of the president) presides at all meetings of the board. If both the president and vice president are



absent or disabled, the board may elect another member to preside during the absence of the president or vice president.<sup>47</sup>

Three (3) members of the board of supervisors constitute a quorum. If a quorum of the board is not present on the first day of any regular, adjourned, or special meeting, the sheriff may adjourn the meeting from day to day until a quorum is present. A member of the board of supervisors, properly notified, who fails to attend any meeting will be fined \$5.00 per day for each day he is absent. Unless the absent supervisor provides a “sufficient excuse” at the next meeting, he must pay the fine into the county treasury. Until any such fine is paid, including any costs associated with collection of the fine, the supervisor cannot receive any “allowance” or warrants from the county.<sup>48</sup>

### **Sheriff and Clerk of the Board**

The sheriff (or a deputy sheriff) must attend all meetings of the board to execute its process and orders.<sup>49</sup> Provided, however, the board of supervisors may go into executive session without the sheriff at the discretion of the board.<sup>50</sup> The clerk of the board, the chancery clerk (or a deputy chancery clerk or a clerk pro tempore<sup>51</sup>), must attend meetings of the board to “keep and preserve a complete and correct record of all the proceedings and orders of the board.” The clerk records on the minutes the names of those members of the board in attendance and the names of those members absent.<sup>52</sup>

### **Regular Monthly Meetings**

State law requires every county board of supervisors to meet as a minimum the first Monday of every month.<sup>53</sup> The meeting generally must be held in the courthouse or chancery clerk’s office, but the board may meet in any other county-owned building located within one (1) mile of the courthouse, provided the board enters an order on its minutes designating and describing in full the building and room to be used as the meeting room for the board of supervisors and, more than thirty (30) days before the place for the meeting changes, posts in the chancery clerk’s office and in one (1) other place in the courthouse a “conspicuous, permanent notice” of the meeting location change and publishes notice in the manner prescribed by statute.<sup>54</sup> In counties having two (2) court districts the meetings of the board of supervisors must alternate between the two court districts.<sup>55</sup>

### **Alternate Meeting Times and Location**

As is the case with the organizational meeting of the board of supervisors, if it is not practicable for the board to meet at the normal time and in the normal place, the president, or the vice president in the absence or disability of the president, or any three members, may call a meeting in a place designated within the county.<sup>56</sup> However, the board of supervisors may not hold meetings or transact official acts outside the county in which they were elected.<sup>57</sup>

### **Adjourned Meetings**

The board of supervisors may adjourn a regular meeting to any date and time it determines by placing an order upon its minutes. The order providing for the adjourned meeting must specify

each item of business to be transacted at the adjourned meeting, and only items of business so specified can be transacted at the adjourned meeting.<sup>58</sup>

### **Duration of Sessions and Recessed Meetings**

Normally, at regular business meetings, the board of supervisors may sit for a period not to exceed ten days in any one month. In counties having a population of more than forty thousand and in counties having two court districts, the board may continue in session at regular meetings for a period not to exceed twelve days in one month. However, at regular meetings for the transaction of business under the state's revenue laws, the board in any county may continue in session as long as is required. Further, the board of supervisors may recess meetings from time to time to convene on a day fixed by an order of the board entered upon its minutes and may transact any business coming before it for consideration.<sup>59</sup>

### **Specially Called and Emergency Meetings**

When deemed necessary, a special meeting of the board of supervisors may be called by the president of the board (or vice president in the absence or disability of the president) or any three members of the board. Notice of the special meeting must be entered in full upon the minutes of the board and must specify each item of business to be transacted at the special meeting. Like an adjourned meeting, only the items of business specified in the notice of the special meeting can be considered or acted upon. The board must give at least five days' notice of the special meeting by posting an advertisement at the courthouse door or publishing an advertisement in a newspaper of the county. In cases of emergency arising from serious damage to county property, including roads and bridges, or from an epidemic or severe weather, or from a situation where immediate action is required for the repair of county roads and bridges, a special meeting may be called in the manner specified above for the purpose of considering the emergency and taking appropriate action. The notice shall state the time of the meeting and distinctly specify the subject matters of business to be acted upon and be signed before a notary by the officer or officers calling the meeting. At least three (3) hours before the time fixed for the meeting, notice shall be personally delivered to the members of the board who have not signed it and who can be found. The notice shall also be posted at the courthouse door at least three (3) hours before the time fixed for the meeting. If a member of the board cannot be found to complete the personal delivery of the notice, the president, vice president or any one of the two (2) members of the board calling an emergency meeting shall make every attempt, within the applicable notice period, to contact the board member that was not personally found by other available means, including, but not limited to, telephone or e-mail. The method of notice used to call the meeting shall be entered on the minutes of the emergency meeting, and business not specified in the notice shall not be transacted at the meeting.<sup>60</sup>

### **Open Meetings Act**

It is very important that the board make certain it complies in all respects with the requirements of the "Open Meetings Act"<sup>61</sup> which, among other things, enumerates very strict requirements with regard to giving public notice of meetings and the conduct of executive sessions. These requirements are discussed in some detail in Chapter 5 of this book. For now, just note that in

addition to the “public notice of meetings” requirements specified in the paragraphs above, the Open Meetings Act requires certain actions with respect to recess, adjourned, or special meetings. Specifically, the Act states:

*Any public body which holds its meetings at such times and places and by such procedures as are specifically prescribed by statute shall continue to do so and no additional notice of such meeting shall be required except that a notice of the place, date, hour and subject matter of any recess meeting, adjourned meeting, interim meeting or any special called meeting shall be posted within one (1) hour after such meeting is called in a prominent place available to examination and inspection by the general public in the building in which the public body normally meets. A copy of the notice shall be made a part of the minutes or other permanent official records of the public body.<sup>62</sup>*

### **Subpoena Powers**

The board has the power to subpoena witnesses in all matters coming under its jurisdiction and to fine and imprison any person for a contempt committed while the board is in session. The fine for contempt may not exceed fifty dollars (\$50.00) and the imprisonment may not extend beyond the continuance of the term. A person so fined or imprisoned may appeal to the circuit court.<sup>63</sup>

### **Minutes of the Board**

Minutes must be maintained of each and every meeting and same must be signed and published.<sup>64</sup> The requirement to properly maintain minutes cannot be over emphasized. The board of supervisors speaks and acts only through its minutes.<sup>65</sup> The minutes of each day’s proceedings must either be read and signed by the president (or vice president if the president is absent or disabled so as to prevent his signing the minutes) on or before the first Monday of the month following the day of adjournment of any “term” of the board of supervisors or be adopted and approved by the board as the first order of business on the first day of the next monthly meeting of the board.<sup>66</sup>

Mississippi’s Open Meetings Act provides with respect to minutes of meetings of public bodies the following:

*Minutes shall be kept of all meetings of a public body, whether in open or executive session, showing the members present and absent; the date, time, and place of the meeting; an accurate recording of any final actions taken at such meeting; and a record, by individual member, of any votes taken; and any other information that the public body requests be included or reflected in the minutes. The minutes shall be recorded within a reasonable time not to exceed thirty (30) days after recess or adjournment and shall be open to public inspection during regular business hours . . .<sup>67</sup>*

## **POWERS AND DUTIES OF THE BOARD OF SUPERVISORS**

The fundamental source of power for the board of supervisors is Article 6, § 170 of the *Mississippi Constitution of 1890*, which states:

Each county shall be divided into five districts, a resident freeholder of each district shall be selected, in the manner prescribed by law, and the five so chosen shall constitute the board of supervisors of the county, a majority of whom may transact business. The board of supervisors shall have full jurisdiction over roads, ferries, and bridges, to be exercised in accordance with such regulations as the legislature may prescribe, and perform such other duties as may be required by law; provided, however, that the legislature may have the power to designate certain highways as “state highways,” and place such highways under the control and supervision of the state highway commission, for construction and maintenance. The clerk of the chancery court shall be the clerk of the board of supervisors.

Pursuant to this constitutional provision, the boards of supervisors are delegated “full jurisdiction over [county] roads, ferries and bridges, to be exercised in accordance with such regulations as the legislature may prescribe . . .” This responsibility is unquestionably a matter of vital importance to the life of every county. However, it is important to recognize that roads and bridges represent only one of the board’s many concerns. The powers and duties of the board of supervisors have been substantially expanded over the years by legislative action. In today’s counties, the boards of supervisors are delegated a variety of other public duties of equal importance which touch virtually every facet of life. As is the case with the board of directors of a major corporation, the board of supervisors has the task of guiding and establishing policy for the complex multi-million dollar enterprise of county government. As members of the board, supervisors make decisions that directly impact economic development, public health, safety and welfare. Suffice it to say, the office of county supervisor is a position of public trust that has certain attendant duties and obligations. Those that enter into the office should not take these duties and obligations lightly.<sup>68</sup>

### **GENERAL POWERS, JURISDICTION, AND HOME RULE**

#### **General Powers and Jurisdiction**

The legislature prescribes the details of how the board exercises its constitutional powers and jurisdiction and prescribes what additional powers and duties are delegated. Normally, the “rules and regulations” prescribed by the legislature are found in the *Mississippi Code*. A good starting place to begin exploration of the statutory duties and responsibilities of the board of supervisors is *Code*, § 19-3-41. This statute outlines the basic jurisdictional parameters and lists a few of the general powers of the board. *Code*, § 19-3-41 affirms that the boards of supervisors shall have within their respective counties full jurisdiction over county roads, ferries and bridges, and jurisdiction over all matters of county police. The statute goes on to delegate a variety of miscellaneous powers including jurisdiction over the subject of paupers; authority to regulate or prohibit the sale and use of fireworks; authority to contract with licensed real estate brokers for

the purpose of offering county owned real property for sale; authority to contract with a private attorney or private collection agency to assist the county in the recovery of past due fees, fines, delinquent ad valorem tax on personal property and mobile homes; authority to contract with one or more constables of the county to collect certain delinquent criminal fines; and authority to engage in certain functions authorized under federal law in connection with federally funded programs. *Code*, § 19-3-41 also imposes on the board of supervisors an affirmative duty to erect and keep in good repair a courthouse and jail. Finally, to help the board meet its obligations, the board of supervisors is empowered to levy such taxes as may be necessary to meet the demands of the respective counties.

## **Home Rule**

In general terms, home rule can be defined as the authority of a county to regulate its own affairs. In Mississippi, home rule powers have been delegated by the legislature rather than the *Constitution*. The significance of this fact is that the home rule provision must be interpreted and applied in the context of other statutes and laws. The county home rule statute<sup>69</sup> provides in part:

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 subsection (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.

The Mississippi State Supreme Court has not, to date, taken occasion to thoroughly explore the boundaries of county home rule. As such, it is difficult to assess the full extent and nature of this provision. What we do know is that expressly excluded from the legislative grant of home rule is authority to:

(a) levy taxes other than those authorized by statute or increase the levy of any authorized tax beyond statutorily established limits, (b) issue bonds of any kind, (c) change the requirements, practices or procedures for county elections or establish any new elected office, (d) use any public funds, equipment, supplies or materials for any private purpose, (e) regulate common carrier railroads, (f) grant any donation, or (g) without prior legislative approval, regulate, directly or indirectly, the amount of rent charged for leasing private residential property in which the county does not have a property interest; unless such actions are specifically authorized by another statute or law of the State of Mississippi.

In other words, it is obvious that the above activities are prohibited unless expressly authorized elsewhere by Mississippi law. Even if the proposed activity is not one of those listed above, two (2) difficult issues must still be addressed. The first issue requires that a determination be made

that the proposed activity or exercise of power is in fact a legitimate public function relating to “county affairs, property and finances.” If it is not, then home rule cannot be used as a source of authority for such activity. If the activity is a legitimate public function of the county, there remains the equally difficult issue of determining whether or not there are statutes or laws that prohibit or otherwise control or regulate the proposed exercise of power. If the answer to this question is yes, then home rule still does not provide a source of authority to engage in the proposed activity, although the activity may be a legitimate public concern of the county.

Notwithstanding these difficulties, the county home rule statute does offer a potential source of authority that may, in proper circumstances, empower the board of supervisors with the authority and flexibility to address matters of “county affairs, property and finances” which have not otherwise been addressed by state law.

## **POWERS REGARDING GENERAL ADMINISTRATION**

### **Board Attorney**

The board is authorized to employ counsel to assist it in the conduct of meetings and to otherwise provide legal counsel with respect to matters of concern and interest to the board and county.<sup>70</sup>

### **County Property, Offices, Furnishings, and Supplies**

The board of supervisors is required by law to properly furnish the courthouse and supply and equip all county offices with necessary office supplies, equipment and furnishings.<sup>71</sup> To accomplish this objective, express statutory authority is delegated to the board of supervisors to purchase real estate for county buildings,<sup>72</sup> and dispose of surplus real property<sup>73</sup> and personal property<sup>74</sup> belonging to the county. The board is authorized to insure county personal and real property against casualty loss<sup>75</sup> and specifically employ a person to manage and care for county property.<sup>76</sup> An important administrative requirement with respect to county property is the statutory mandate that the boards of supervisors establish and maintain an accurate inventory control system.<sup>77</sup>

### **Other Administrative Matters**

Among the most important administrative responsibilities of the board of supervisors is the adoption of the county budget<sup>78</sup> and approval of expenditures and appropriation of county funds therefore.<sup>79</sup> These subjects are covered at length in other chapters of this book. Other general administrative duties include approval of the bonds of chancery clerk, circuit clerk, and other county officers and employees,<sup>80</sup> the establishment of vacation and sick leave policies and a system for county-wide personnel administration,<sup>81</sup> contracting for professional services,<sup>82</sup> attending professional educational programs,<sup>83</sup> providing a plan of liability insurance for the county and county employees,<sup>84</sup> providing for workers’ compensation coverage for county employees,<sup>85</sup> providing for unemployment compensation benefits for county employees,<sup>86</sup> establishing inmate canteen funds,<sup>87</sup> employing a county administrator,<sup>88</sup> providing for the

preservation and disposition of county records,<sup>89</sup> providing equipment for electronic storage of records,<sup>90</sup> and funding abstract of land titles in the chancery clerk's office.<sup>91</sup>

## **Elections**

With respect to elections, the board of supervisors has the responsibilities of determining the supervisor district lines,<sup>92</sup> providing for election districts and voting precincts,<sup>93</sup> providing voting machines,<sup>94</sup> making appointments to fill vacancies in county offices, and calling special elections in connection therewith.<sup>95</sup> The electoral process is covered in more detail in Chapter 15 of this book.

## **POWERS REGARDING LAW ENFORCEMENT AND COURTS**

The members of the board of supervisors are conservators of the peace within their respective counties, and possess the powers as such which are conferred on justice court judges.<sup>96</sup> However, the primary powers and duties of supervisors with respect to law enforcement and courts focus on funding the offices, employees, facilities and programs of the sheriff and the court system.

### **Sheriff's Office**

Under state law, the sheriff is required, at the July meeting of the board of supervisors, to submit a budget of estimated expenses of his office for the ensuing fiscal year beginning October 1 in a form prescribed by the Department of Audit. It is the responsibility of the board of supervisors to examine the sheriff's proposed budget and determine the amount to be expended by the sheriff in the performance of his duties for the fiscal year; the board may increase or reduce said amount as it deems necessary and proper.<sup>97</sup> The budget shall include amounts for compensating the deputies and other employees of the sheriff's office; for insurance providing protection for the sheriff and his deputies in case of disability, death and other similar coverage; for travel and transportation expenses of the sheriff and deputies; for feeding prisoners and inmates of the county jail; for equipment and supplies; and for such other expenses as may be incurred in the performance of the duties of the office of sheriff.

In addition to final budget approval, the board of supervisors is required to properly provide, furnish, and supply an office for the sheriff.<sup>98</sup> The board has the discretionary authority to authorize the purchase of motor vehicles and equipment needed for operation of the sheriff's office.<sup>99</sup> In instances where identifying marks and decals will hinder official investigations, the board may approve the sheriff's use of unmarked vehicles subject to statutory limitations.<sup>100</sup> The board may also purchase and maintain law enforcement dogs for the sheriff's use<sup>101</sup> and establish radio stations for law enforcement.<sup>102</sup>

### **County Patrol Officers**

The board of supervisors has discretionary authority to employ and equip county patrol officers whose duty it shall be to patrol the roads of the county and to enforce the road and motor vehicle laws.<sup>103</sup>

## **Constables**

The board of supervisors is required to furnish each constable with motor vehicle identification, a state prescribed blue flashing light which can be attached to the constable's vehicle, and at least two complete uniforms.<sup>104</sup>

## **County Jail**

The board of supervisors is required to cause to be erected and kept in good repair a good and convenient jail.<sup>105</sup> At least annually, the board of supervisors, or a competent person authorized by the board of supervisors, is required to examine into the state and condition of the jail in regard to its safety, sufficiency and accommodation of the prisoners and to take such legal measures as may be best to secure the prisoners against escape, sickness and infection and have the jail cleansed.<sup>106</sup>

## **Corrections**

The board of supervisors has certain duties and responsibilities with regard to the care and treatment of county convicts and working county convicts on a county farm, public roads, or other public works of the county.<sup>107</sup> The board may, in its discretion, establish a public service work program for state inmates that are in the custody of the county<sup>108</sup> and it may participate in joint state-county work programs for state inmates.<sup>109</sup> The board may allow the sheriff to operate an inmate canteen facility.<sup>110</sup>

## **Courts**

The board of supervisors is required by law to erect and keep in good repair in each judicial district a courthouse,<sup>111</sup> provide a place for the holding of court,<sup>112</sup> properly furnish the courthouse,<sup>113</sup> and provide a county law library.<sup>114</sup> The board of supervisors is required to bear the costs of criminal prosecutions brought in the county,<sup>115</sup> appoint one member of the county jury commission,<sup>116</sup> and provide funding for the office of the county prosecutor in those counties where such an office has been established.<sup>117</sup> Under certain circumstances, counties, acting through the board of supervisors, may assist in selected expenses of the office of district attorney.<sup>118</sup>

The board of supervisors is required to include in its general fund budget an amount sufficient to cover its pro rata share of certain circuit and chancery court administrative operations and expenses approved by the court, including but are not necessarily limited to, provisions for court reporters,<sup>119</sup> family masters,<sup>120</sup> and court administrators.<sup>121</sup> Certain specific discretionary authority relating to the operation of the chancery court includes the board's authority to fund proper storage and indexing of chancery and probate court actions.<sup>122</sup>

In counties where a county court is established, the board has the duty to make provisions for office space and funding county court personnel and operations.<sup>123</sup> The same holds true for youth court in those counties that have exercised the discretion to establish a youth court.<sup>124</sup>



With regard to justice courts, the board of supervisors is responsible for appointing a justice court clerk and may appoint such other employees for the justice court as it deems necessary.<sup>125</sup> The board shall provide courtrooms for the justice court and provide office space and furnish each justice court office and provide necessary office supplies.<sup>126</sup>

## **POWERS REGARDING HEALTH AND PUBLIC WELFARE**

The county boards of supervisors are delegated a variety of discretionary powers designed to address public health and welfare concerns of county citizens. The following is a survey of some of those powers.

### **Zoning, Planning, Subdivision, and Building Regulations**

The board of supervisors has discretionary authority, with respect to the unincorporated area of the county, to adopt land use, zoning, building, subdivision, and related regulations for the purpose of promoting health, safety, morals or the general welfare of the county<sup>127</sup>. The board may, in order to more effectively carry out such activity, create a county planning commission or permit department. It also has authority to abate nuisances on private property in certain circumstances.<sup>128</sup> County planning and zoning is explored in a Chapter 13 of this book.

### **Urban Renewal**

A variety of urban renewal and development tools are available to the board of supervisors under the Urban Renewal Law<sup>129</sup> to assist in the removal of slums and blighted areas and foster redevelopment in the affected areas.

### **Solid Waste Disposal**

The Solid Waste Disposal Law of 1974<sup>130</sup> requires the board of supervisors to provide for collection and disposal of garbage and the disposal of rubbish. To accomplish this responsibility, the county may employ its own personnel and equipment or contract with private or public entities for the service.<sup>131</sup> Or, the county may create or join a regional solid waste management authority established for the purposes of accomplishing this required service<sup>132</sup> or establish a garbage disposal district.<sup>133</sup>

### **Fire Protection, Emergency Telephone Service, Utility Districts**

The board of supervisors is required to appoint a county fire coordinator<sup>134</sup> and has the discretionary authority to purchase, operate and maintain fire trucks and other fire fighting equipment.<sup>135</sup> The board may incorporate water, sewer, garbage disposal and/or fire protection districts within the county,<sup>136</sup> form fire protection grading districts,<sup>137</sup> establish emergency communication (E-911) districts,<sup>138</sup> and establish and fund a mosquito control commission.<sup>139</sup>

## **Human Resource Agencies**

The board of supervisors may exercise discretionary authority to create human resource agencies responsible for administration of human resource programs authorized by federal law.<sup>140</sup>

## **Hospitals, Nursing Homes, and Health Centers**

The board of supervisors is empowered to establish homes for the aged,<sup>141</sup> establish and operate nursing homes for paupers and destitute aged,<sup>142</sup> provide for temporary care of pauper insane,<sup>143</sup> construct public health buildings and clinics,<sup>144</sup> appropriate and expend monies for treatment of the indigent sick and promotion of public health of the county via support and maintenance of a full time health department,<sup>145</sup> establish and maintain county health departments,<sup>146</sup> establish, own and operate community hospitals,<sup>147</sup> provide financial support for mental illness and mental retardation services,<sup>148</sup> own, operate and maintain a public ambulance service,<sup>149</sup> and establish emergency medical service districts.<sup>150</sup> The board is required to publicize the availability of confidential testing and treatment of venereal disease at the county health department.<sup>151</sup>

## **Public Welfare**

Every county is required to provide office space for the county department of public welfare<sup>152</sup> and has the discretionary authority to provide funds for maintenance of the department.<sup>153</sup> County boards of supervisors have a variety of discretionary authority available to them with respect to providing assistance and support to the poor of the county.<sup>154</sup>

## **POWERS REGARDING TAXATION AND FINANCE**

Perhaps the most critical responsibility of the board of supervisors falls in the realm of taxation and finance. Once the board of supervisors has determined what public services and facilities are needed, it must examine the sources of revenue available to it, accurately estimate the amount of revenue that can be generated from those sources, devise a budget<sup>155</sup> and impose an ad valorem tax levy<sup>156</sup> designed to support that budget thereby meeting the public service and facility priorities of the county. Another fundamental element which is critical to the accomplishment of the board's priorities, is to see to the proper safekeeping, investment, and expenditure of the public funds which it holds in trust for and on behalf of the public. Among other things, state law requires the public funds of the county be deposited in an approved county depository<sup>157</sup> and be accounted for via maintenance of a uniform system of accounts.<sup>158</sup> Furthermore, deficit spending is prohibited,<sup>159</sup> as are certain expenditures during the board's last year of the term of office.<sup>160</sup>

The most common sources of revenue available to counties are ad valorem taxes levied against all taxable real and personal property in the county, and fees from the issuance of permits and/or paid to support certain services such as garbage collection and disposal. Another typical source of funds is from the issuance of general obligation or revenue notes or bonds which, generally, are reserved for significant capital expenditures. State assistance may also be available in the form of grants or loans. A more comprehensive discussion of the duties, authority, and responsibilities of boards of supervisors with respect to financial administration, taxes, purchasing, and public borrowing is found in subsequent chapters of this book.

## **POWERS REGARDING ARTS, RECREATION, CONSERVATION, AND CHARITABLE ACTIVITIES**

Counties have the express discretionary authority to provide for and support the arts<sup>161</sup> and establish public libraries.<sup>162</sup> The boards have the discretion to establish, own and operate public parks and playgrounds<sup>163</sup> and provide financial assistance in aid of fairs and fair associations.<sup>164</sup> With respect to conservation, the board of supervisors has discretionary authority to appropriate funds in support of the counties' soil and water conservation district,<sup>165</sup> establish water management districts,<sup>166</sup> accept flood control agreements for rights-of-way and maintenance,<sup>167</sup> purchase or condemn lands for state parks or forest,<sup>168</sup> and contribute to soil conservation districts.<sup>169</sup> With respect to recreation, the county board of supervisors also has discretionary authority to issue bonds to establish lands for recreational facilities,<sup>170</sup> appoint a county recreational commission,<sup>171</sup> and create a county park commission.<sup>172</sup> Unless express statutory authority is granted, the board may not make donations for any private purpose. Where express authority to make donations is provided, it generally is for certain limited patriotic and charitable uses.<sup>173</sup>

## **POWERS REGARDING PUBLIC WORKS AND INFRASTRUCTURE**

The board of supervisors exercises tremendous responsibility with regard to the public works of the county. For purposes of this survey, public works can be defined as the construction, acquisition, and maintenance of the capital assets the county needs to support and promote its business. The most obvious and visible of the county's many public works responsibilities is the county road and bridge system. Public works also include the county courthouse and other county buildings that are essential for housing the various offices of the county, county officers and other offices which the board of supervisors is required or has discretionary authority to provide.

### **General Provisions**

By statute, the county board of supervisors has the authority to acquire by donation, gift or negotiated purchase the necessary land needed to provide the public facilities required of the county.<sup>174</sup> If necessary, the board of supervisors may exercise the power of eminent domain to acquire property necessary for letting out new public roads or improving existing public roads<sup>175</sup> and with respect to certain industrial development activities.<sup>176</sup> The board's authority to exercise eminent domain includes the power of immediate possession in certain cases relating to public roads and utilities.<sup>177</sup> The county board of supervisors is delegated express authority to entertain contracts for public works in the manner prescribed by law.<sup>178</sup>

### **Roads and Bridges**

The county board of supervisors is delegated the monumental task of constructing and maintaining the vast majority of the tens of thousands of road miles in the state. As previously stated, the board of supervisors' jurisdiction over county roads is delegated by the *Constitution*.<sup>179</sup> In order to properly establish and document the county's public road system, the board must adopt and maintain an official county road map and road register which must be

updated at least annually.<sup>180</sup> The board is required to annually inspect and report on the condition of the county road and bridge system and, if operating under the countywide system of road administration, must adopt a four-year plan for construction and maintenance.<sup>181</sup> The public roads of the county cannot be changed or altered except by order of the board of supervisors.<sup>182</sup> It is within the exclusive jurisdiction of the board to determine when and where a public road should be laid out and/or changed when public necessity demands.<sup>183</sup> It is left to the exclusive discretion of the board to take action to abandon and close public roads of the county when appropriate.<sup>184</sup>

The board of supervisors is empowered to adopt and enforce regulations with respect to use of the public roads and bridges including, regulating what type of wheels may be used on vehicles on the public roads,<sup>185</sup> and establishing maximum load limits on roads and bridges.<sup>186</sup> Suffice it to say, the board of supervisors possess a great deal of discretionary power in setting the priorities, funding and regulation of the public roads of the county. However, these powers are not without limits. The *Constitution* requires that the board's jurisdiction with respect to county roads and bridges be exercised in accordance with such regulations as may be prescribed by the legislature. As such, the board must exercise its discretion over roads and bridges in a manner consistent with certain statutory standards as those found in *Code*, § 65-7-1 *et seq.* and other related statutory provisions. The State Aid Road Division of the Mississippi Department of Transportation prescribes, from time to time, certain minimum standards of construction and maintenance with respect to state aid roads and other road and bridge programs which offer state funding and technical assistance to counties.<sup>187</sup> In addition, the specific method and procedure by which the board of supervisors administer the county road and bridge system depends upon whether the county operates under the beat system or the countywide (unit) system of road administration. The specifics of these two methods of road and bridge administration are discussed in some detail in Chapter 4 of this book.

### **Other Public Works**

The board of supervisors is authorized to acquire, construct and maintain a courthouse, jail and such other public offices, as the county may be required to maintain, or which the board has the discretion to provide. These public facilities are those that are reasonable and necessary to support the various enterprises in which the county offices and other public offices within the county may be engaged. In addition to the courthouse and jail, there is the requirement for housing the offices of the sheriff, circuit and chancery clerks, tax assessor and tax collector, court and court officials, and the various county departments and other public offices supported by the county. Acquisition, construction, and maintenance of public facilities such as parks and recreational facilities fall into the public works category. There are also infrastructure facilities and equipment which the county board of supervisors has the authority to establish and maintain. For example, public works facilities such as landfills may be necessary to support the board's mandate to provide garbage collection and disposal facilities, and water sewage treatment facilities may be provided by the county to support the county industrial park.

## **POWERS REGARDING INDUSTRIAL DEVELOPMENT**

The role of county boards of supervisors with respect to industrial development has increased significantly in recent years. The board of supervisors has the opportunity and resources to serve as a major player in attracting commercial and industrial development into the county.

To begin with, counties have the discretionary authority to engage in the advertisement of the county's resources.<sup>188</sup> To assist the board and other development organizations with industrial development responsibility, the board of supervisors may establish economic development districts<sup>189</sup> and levy taxes for the purpose of financing and supporting economic development districts.<sup>190</sup> Counties may establish airport authorities<sup>191</sup> and industrial parks.<sup>192</sup> For those counties along the navigable waterways of the state, there is the discretionary authority to form port authorities to assist in economic development activities.<sup>193</sup>

Under the "Regional Economic Development Act"<sup>194</sup> counties may now expand their authority and reach by participating with cities and other counties through the formation of regional economic development alliances to share costs and revenues of certain industrial projects, and to pledge revenue derived from a project to secure payment of bonds.

Mississippi law also offers a wide variety of state grants, public financing, development tools, and tax incentives that are available to the board of supervisors in its industrial development efforts. These include, but not necessarily limited to, the authority to acquire or construct projects and issue general obligation or revenue bonds therefore,<sup>195</sup> negotiate fee-in-lieu of taxes agreements with qualifying industries,<sup>196</sup> and participate in opportunities offered under such programs as the Mississippi Business Finance Corporation,<sup>197</sup> Mississippi Business Investment Act,<sup>198</sup> Tax Increment Financing Act,<sup>199</sup> Growth and Prosperity Program,<sup>200</sup> Major Economic Impact Authority,<sup>201</sup> Small Municipalities and Limited Population Counties Program,<sup>202</sup> and others.

## **POWERS REGARDING INTER-GOVERNMENTAL COOPERATION**

The *Code* provides a variety of opportunities that empower the board of supervisors to entertain inter-governmental agreements to share the cost and responsibility of providing public services and facilities. The most widely used authority is the Interlocal Cooperation Act of 1974<sup>203</sup> which authorizes the board of supervisors to enter into cooperative agreements with other local governments to provide public services, facilities, and to otherwise jointly exercise their respective powers more efficiently. Another source of authority for interlocal cooperation, though rarely used, is the authority to create multi-jurisdictional cooperative service districts for the purposes of jointly providing public services and facilities.<sup>204</sup>

In addition to the broad authority offered by the Interlocal Cooperation Act of 1974 and the Cooperative Service District Act, the *Code* offers a number of other opportunities to engage in inter-governmental cooperation with regard to a number of specific activities. A few examples include: authority to construct, remodel, and to maintain a joint city and county jail;<sup>205</sup> agreements whereby municipalities will provide fire protection in unincorporated areas of the

county;<sup>206</sup> agreements with the United States regarding navigation projects;<sup>207</sup> and cooperation with respect to the construction and maintenance of public roads.<sup>208</sup>

The “Regional Economic Development Act”<sup>209</sup> provides another tool for multi-jurisdictional cooperation. As stated in the preceding section on industrial development, the provisions of the Act empower counties and cities to form regional alliances to coordinate economic development efforts.

These examples illustrate the fact that many of the duties and responsibilities of the board of supervisors may be accomplished in cooperation with other political subdivisions on the basis of mutual advantage and increased efficiency.

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<sup>1</sup> *Const.*, § 170 and *Code*, §§ 19-3-40 and 19-3-41.

<sup>2</sup> *Const.*, § 170 and *Code*, § 19-3-1.

<sup>3</sup> *Code*, § 19-3-1.

<sup>4</sup> *See, e.g.*, *Code*, § 23-15-283, 23-15-285 and the Voting Rights Act of 1965, as amended and extended (42 USC § 1973).

<sup>5</sup> *Code*, §§ 23-15-191 and 23-15-291 *et seq.*

<sup>6</sup> *Code*, § 23-15-359.

<sup>7</sup> *Const.*, §102.

<sup>8</sup> *Code*, §§ 19-3-1 and 23-15-193.

<sup>9</sup> *Code*, § 25-1-5.

<sup>10</sup> *Const.*, §176.

<sup>11</sup> *Code*, §19-3-3

<sup>12</sup> *Const.*, §250.

<sup>13</sup> *Const.*, §43.

<sup>14</sup> *Const.*, § 44(1).

<sup>15</sup> *Const.*, § 266.

<sup>16</sup> *Const.*, § 44(2).

<sup>17</sup> *Const.*, § 44(3).

<sup>18</sup> *Code*, § 25-1-35.

<sup>19</sup> *Code*, § 97-11-41.

<sup>20</sup> *Code*, §§ 19-3-5 and 25-1-17.

<sup>21</sup> *Code*, § 25-1-19(1).

<sup>22</sup> *Code*, §§ 25-1-33 and 25-7-43.

<sup>23</sup> *Code*, § 25-1-31.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Code*, § 25-1-45.

<sup>26</sup> *Code*, § 25-1-25.

<sup>27</sup> *Code*, § 11-1-1.

<sup>28</sup> *Code*, § 25-1-11.

<sup>29</sup> *Const.*, § 103.

<sup>30</sup> *See Code*, §§ 23-15-833, 23-15-835, 23-15-839, and 23-15-841.

<sup>31</sup> *Const.*, §§ 49, 50, 51 and 52.

<sup>32</sup> *Const.*, § 175.

<sup>33</sup> *Code*, §§ 25-5-1 and 97-33-3.

<sup>34</sup> *Code*, § 25-5-1.

<sup>35</sup> *Code*, § 97-11-23.

<sup>36</sup> *Code*, § 31-7-55.

<sup>37</sup> *Code*, § 97-11-35.

<sup>38</sup> *Code*, § 97-11-13.

<sup>39</sup> *Code*, §§ 25-5-3 through 25-5-37. *See also Const.*, § 139.

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- <sup>40</sup> *Code*, § 25-3-13.
- <sup>41</sup> *Code*, § 25-3-15.
- <sup>42</sup> *Code*, § 19-3-37.
- <sup>43</sup> *Const.*, § 170 and *Code*, §§ 19-3-40 and 19-3-41.
- <sup>44</sup> *Thompson v. Jones County Cmty. Hosp.*, 352 So.2d 785, 796 (Miss.1977) (holding a “board of supervisors can act only as a body, and its act must be evidenced by an entry on its minutes.”)
- <sup>45</sup> *Code*, § 19-3-7.
- <sup>46</sup> *Code*, § 19-3-9.
- <sup>47</sup> *Code*, § 19-3-21.
- <sup>48</sup> *Code*, § 19-3-23.
- <sup>49</sup> *Code*, § 19-3-25.
- <sup>50</sup> Op.Atty.Gen. No. 94-0129, Pickett, March 9, 1994.
- <sup>51</sup> *Code*, § 19-3-29.
- <sup>52</sup> *Code*, § 19-3-27.
- <sup>53</sup> *Code*, § 19-3-11 and 19-3-13.
- <sup>54</sup> *Code*, § 19-3-11.
- <sup>55</sup> *Code*, § 19-3-13. It should be noted that § 19-3-13 of the *Code* also specifies that if the act creating two judicial districts in a county directs otherwise with respect to the holding of regular meetings, the board of supervisors may continue to hold regular meetings as required by the act. Further, § 19-3-15 of the *Code* has specific requirements relative to the holding of meetings of the board of supervisors in Harrison County.
- <sup>56</sup> *Code*, § 19-3-9.
- <sup>57</sup> Op.Atty.Gen. No. 95-0119, Ellis, March 1, 1995.
- <sup>58</sup> *Code*, § 19-3-19.
- <sup>59</sup> *Code*, § 19-3-17.
- <sup>60</sup> *Code*, § 19-3-19.
- <sup>61</sup> *Code*, § 25-41-1 *et seq.*
- <sup>62</sup> *Code*, § 25-41-13(1), emphasis added.
- <sup>63</sup> *Code*, § 19-3-51.
- <sup>64</sup> *Code*, §§ 19-3-27, 19-3-33, 19-3-35 and 25-41-11.
- <sup>65</sup> *See supra* note 43.
- <sup>66</sup> *Code*, § 19-3-27.
- <sup>67</sup> *Code*, § 25-41-11.
- <sup>68</sup> *Const.*, § 268 .
- <sup>69</sup> *Code*, § 19-3-40.
- <sup>70</sup> *Code*, § 19-3-47. See also *Code* § 19-3-69.
- <sup>71</sup> *Code*, § 19-7-23.
- <sup>72</sup> *Code*, § 19-7-1.
- <sup>73</sup> *Code*, § 19-7-3.
- <sup>74</sup> *Code*, § 19-7-5.
- <sup>75</sup> *Code*, § 19-7-7.
- <sup>76</sup> *Code*, § 19-7-15.
- <sup>77</sup> *Code*, § 31-7-107.
- <sup>78</sup> *Code*, § 19-11-1 *et seq.*
- <sup>79</sup> *Code*, § 19-3-59.
- <sup>80</sup> *Code*, § 25-1-19.
- <sup>81</sup> *Code*, §§ 19-3-63 and 19-2-9. For detailed treatment with respect to county-wide personnel administration, see Chapter 11 of this book.
- <sup>82</sup> *Code*, § 19-3-69.
- <sup>83</sup> *Code*, § 19-3-77.
- <sup>84</sup> *Code*, § 11-46-17.
- <sup>85</sup> *Code*, § 71-3-5.
- <sup>86</sup> *Code*, § 71-5-11.
- <sup>87</sup> *Code*, § 19-3-81.
- <sup>88</sup> *Code*, § 19-4-1.
- <sup>89</sup> *Code*, § 19-15-1 *et seq.* and § 25-60-1 *et seq.*

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- <sup>90</sup> *Code*, §19-15-5.
- <sup>91</sup> *Code*, § 19-15-11.
- <sup>92</sup> *Code*, § 19-3-1.
- <sup>93</sup> *Code*, §23-15-281 and §23-15-283.
- <sup>94</sup> *Code*, § 23-15-403.
- <sup>95</sup> *Code*, § 23-15-839.
- <sup>96</sup> *Code*, § 19-3-39. See also *Const.*, § 167 and *Code*, § 9-11-1 *et seq.*, § 99-3-1, and §§ 99-15-1 through 99-15-11.
- <sup>97</sup> *Code*, § 19-25-13.
- <sup>98</sup> *Code*, § 19-7-23.
- <sup>99</sup> *Code*, §§ 19-25-13 (motor vehicles and equipment); 19-5-5 (radio equipment); and 19-5-3 (law enforcement dogs).
- <sup>100</sup> *Code*, § 19-25-15.
- <sup>101</sup> *Code*, § 19-5-3.
- <sup>102</sup> *Code*, § 19-5-5.
- <sup>103</sup> *Code*, § 45-7-1. See also *Code* §§ 45-7-21 *et seq.* and 45-7-41 *et seq.* which provide additional authority relating to county patrol officers in certain counties.
- <sup>104</sup> *Code*, § 19-19-1.
- <sup>105</sup> *Code*, § 19-3-41.
- <sup>106</sup> *Code*, § 19-5-1.
- <sup>107</sup> *Code*, § 47-1-3 *et seq.*
- <sup>108</sup> *Code*, § 47-5-401, *et seq.*
- <sup>109</sup> *Code*, § 47-5-451, *et seq.*
- <sup>110</sup> *Code*, § 19-3-81.
- <sup>111</sup> *Code*, § 19-3-41.
- <sup>112</sup> *Code*, §§ 19-3-43 and 19-3-44.
- <sup>113</sup> *Code*, § 19-7-23.
- <sup>114</sup> *Code*, § 19-7-31
- <sup>115</sup> *Const.*, § 261.
- <sup>116</sup> *Code*, § 13-5-6.
- <sup>117</sup> *Code*, §§ 19-23-19 and 25-3-9.
- <sup>118</sup> *Code*, §§ 25-31-5, 25-31-8, and 25-31-33.
- <sup>119</sup> *Code*, § 9-13-19.
- <sup>120</sup> *Code*, § 9-5-255.
- <sup>121</sup> *Code*, § 9-17-5.
- <sup>122</sup> *Code*, § 19-15-7.
- <sup>123</sup> *Code*, § 9-9-11.
- <sup>124</sup> *Code*, §§ 19-9-96 and 43-21-123.
- <sup>125</sup> *Code*, § 9-11-27.
- <sup>126</sup> *Code*, § 9-11-5.
- <sup>127</sup> *Code*, §§ 17-1-1 *et seq.* and 19-5-9.
- <sup>128</sup> *Code*, § 19-5-105.
- <sup>129</sup> *Code*, § 43-35-1 *et seq.*
- <sup>130</sup> *Code*, § 17-17-1 *et seq.*
- <sup>131</sup> *Code*, § 19-5-17 *et seq.*
- <sup>132</sup> *Code*, § 17-17-307.
- <sup>133</sup> *Code*, § 19-5-151 *et seq.*
- <sup>134</sup> *Code*, § 19-3-71.
- <sup>135</sup> *Code*, § 19-5-97.
- <sup>136</sup> *Code*, § 19-5-151.
- <sup>137</sup> *Code*, § 19-5-215.
- <sup>138</sup> *Code*, § 19-5-305.
- <sup>139</sup> *Code*, § 41-27-1.
- <sup>140</sup> *Code*, § 17-15-1 *et seq.*
- <sup>141</sup> *Code*, § 19-5-31.
- <sup>142</sup> *Code*, § 19-5-35.



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- <sup>143</sup> *Code*, § 19-5-43.
- <sup>144</sup> *Code*, § 19-5-47.
- <sup>145</sup> *Ibid*.
- <sup>146</sup> *Code*, § 41-3-43.
- <sup>147</sup> *Code*, § 41-13-10.
- <sup>148</sup> *Code*, § 41-19-39.
- <sup>149</sup> *Code*, § 41-55-1.
- <sup>150</sup> *Code*, § 41-59-51.
- <sup>151</sup> *Code*, § 41-23-30.
- <sup>152</sup> *Code*, § 43-1-9.
- <sup>153</sup> *Code*, § 43-1-11.
- <sup>154</sup> *Code*, §§ 43-31-1 *et seq.* and 43-33-1 *et seq.*
- <sup>155</sup> *Code*, § 19-11-1 *et seq.*
- <sup>156</sup> *Code*, § 19-3-41.
- <sup>157</sup> *Code*, §§ 25-1-72 and 27-105-303 *et seq.*
- <sup>158</sup> *Code*, § 19-11-13.
- <sup>159</sup> *Code*, § 19-11-15.
- <sup>160</sup> *Code*, §§ 19-11-27, 19-13-17, 19-13-21, 23-15-881, 23-15-883, 65-7-95, and 65-9-19.
- <sup>161</sup> *Code*, § 39-15-1.
- <sup>162</sup> *Code*, § 39-3-1.
- <sup>163</sup> *Code*, § 17-1-3.
- <sup>164</sup> *Code*, §§ 17-3-7 and 19-9-101.
- <sup>165</sup> *Code*, § 19-9-113.
- <sup>166</sup> *Code*, § 51-8-1.
- <sup>167</sup> *Code*, § 51-35-15.
- <sup>168</sup> *Code*, § 55-3-13.
- <sup>169</sup> *Code*, § 69-27-67.
- <sup>170</sup> *Code*, § 55-9-1.
- <sup>171</sup> *Code*, § 55-9-53.
- <sup>172</sup> *Code*, § 55-9-81.
- <sup>173</sup> *Code*, §§ 19-5-93, 35-3-5, and 39-15-1.
- <sup>174</sup> *Code*, § 19-7-1.
- <sup>175</sup> *Code*, § 65-7-89.
- <sup>176</sup> *Code*, §§ 57-5-21, 57-5-23, and 59-9-1 *et seq.*
- <sup>177</sup> *Code*, § 11-27-81.
- <sup>178</sup> *Code*, §§ 31-7-13, and 31-5-3 *et seq.*
- <sup>179</sup> *Const.*, § 170. See also *Code*, § 19-3-41.
- <sup>180</sup> *Code*, § 65-7-4.
- <sup>181</sup> *Code*, § 65-7-117.
- <sup>182</sup> *Code*, § 65-7-5.
- <sup>183</sup> *Code*, § 65-7-1.
- <sup>184</sup> *Code*, § 65-7-121.
- <sup>185</sup> *Code*, § 65-7-37.
- <sup>186</sup> *Code*, §§ 65-7-43 through 65-7-49, and § 63-5-27.
- <sup>187</sup> *Code*, §§ 65-9-1 *et seq.* (state aid roads and bridges); and 65-11-1 *et seq.* (county highway aid).
- <sup>188</sup> *Code*, § 17-3-1.
- <sup>189</sup> *Code*, § 19-5-99.
- <sup>190</sup> *Code*, § 19-9-111.
- <sup>191</sup> *Code*, §§ 61-33-5 and 61-5-5.
- <sup>192</sup> *Code*, § 57-5-21.
- <sup>193</sup> *Code*, §§ 59-7-7 *et seq.* and 59-9-1 *et seq.*
- <sup>194</sup> *Code*, §§ 57-64-1 *et seq.*
- <sup>195</sup> *Code*, §§ 19-5-99, 57-1-1 *et seq.*, and 57-3-1 *et seq.*
- <sup>196</sup> *Code*, § 27-31-104.
- <sup>197</sup> *Code*, § 57-10-1 *et seq.*

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- <sup>198</sup> *Code*, § 57-61-1 *et seq.*  
<sup>199</sup> *Code*, § 21-45-1 *et seq.*  
<sup>200</sup> *Code*, §§ 57-80-1 *et seq.*  
<sup>201</sup> *Code*, §§ 57-75-1 *et seq.*  
<sup>202</sup> *Code*, § 57-1-18 *et seq.*  
<sup>203</sup> *Code*, § 17-13-1 *et seq.*  
<sup>204</sup> *Code*, § 19-3-101.  
<sup>205</sup> *Code*, § 17-5-1.  
<sup>206</sup> *Code*, § 83-1-39.  
<sup>207</sup> *Code*, § 19-5-91.  
<sup>208</sup> *Code*, §§ 65-7-77 and 65-7-79.  
<sup>209</sup> *See supra* note 194.

## CHAPTER 4

### THE DISTRICT AND UNIT SYSTEMS OF ORGANIZATION

#### Michael Keys

In the First Extraordinary Session of 1988, House Bill 4, commonly referred to as the “County Government Reorganization Act of 1988,” was passed by the Legislature and approved by the Governor. This act required each county in the state of Mississippi to construct and maintain roads and bridges on a countywide basis unless exempted by a majority of the qualified electors of the county. From and after October 1, 1989, each county not exempted was required to operate as a countywide (unit) system of road administration. Presently, forty-four (44) counties operate under a unit system of road administration and thirty-eight (38) counties operate a beat or district system.

#### THE UNIT SYSTEM OF ROAD ADMINISTRATION

In a unit system of road administration there shall be no road districts, separate road districts, or special road districts in any county; *supervisors’ districts shall not serve as road districts*; and the construction and maintenance of roads and bridges shall be on a countywide basis. The distribution and use of all road and bridge funds; the planning, construction and maintenance of county roads and bridges; the purchase, ownership, and use of all road and bridge equipment, materials, and supplies; the employment and use of the road and bridge labor force; and the administration of the county road department shall be on the basis of the needs of the county as a whole, as determined by the board of supervisors, without regard to any district boundaries. Any real and personal property of any road district becomes the property of the countywide system of road administration in a unit system.

#### County Administrator<sup>1</sup>

The board of supervisors must appoint some person other than a member of the board to serve as county administrator. The board may appoint the chancery clerk of the county as county administrator if the chancery clerk agrees to serve as county administrator, or the board may appoint some other person who has knowledgeable experience in any of the following fields: work projection, budget planning, accounting, purchasing, cost control, or personnel management.

The county administrator, under the policies determined by the board of supervisors and subject to the board’s general supervision and control, shall administer all county affairs falling under the control of the board and carry out the general policies of the board. The board of supervisors may delegate and assign to the county administrator the duties and responsibilities as the board may determine, not contrary to the laws of the State of Mississippi or the Constitution and not assigned by law to other offices.

## **Road Manager<sup>2</sup>**

The board of supervisors shall establish a county road department. The board of supervisors must adopt the *general policies* to be followed in the administration of the county road department and appoint, as administrative head of the county road department, a county road manager who shall be educated or experienced in the construction and maintenance of highways, bridges and other facets of county highway responsibilities. The county road manager, under the policies determined by the board of supervisors and subject to the board's *general* supervision and control, administers the county road department, superintends the working, construction and maintenance of the public roads and the building of bridges, and carries out the general policies of the board.

The county road manager employs, subject to the approval of the board of supervisors, all assistants and employees as may be necessary. He has jurisdiction over personnel and assignments of all personnel in the road department. He is responsible for purchasing all equipment, supplies, and materials for the road department. The county road manager also has jurisdiction over the assignment of all equipment used in the road department. The board of supervisors may, by a majority vote of the entire board, supersede any act of the road manager, or change, modify, or revoke any act which has been completed by the road manager, provided such action does not constitute a breach of contract.

### **Road Department Management Materials (Forms)**

The Office of the State Auditor has developed a package of materials to assist the county road manager in carrying out the various duties and responsibilities of the county road department. These materials include report forms to keep the board of supervisors informed about road department work and to help the road manager better manage work requests, equipment, and personnel under his authority. These materials are available upon request. To obtain these materials or assistance concerning them, one may contact the Department of Technical Assistance, Office of the State Auditor, telephone number 1-800-321-1275. Audit department staff will look for documentation from these reports as well as the four-year road plan, to determine if a countywide system of road administration is in place.

A brief listing and explanation of the organization chart and prescribed forms follow. The organization chart, Form RD #2 and Form RD #4 are required. Other listed forms are suggested, but are optional.

### **Organization Chart**

The road manager shall prepare an organization chart of his department. The organization chart shows the functional and procedural relationships and the lines of authority and responsibility within the department.

## **Job Descriptions**

Written job descriptions for every position in the road department shall be prepared. The job descriptions may be prepared by the personnel department, the road department, or jointly. Each job description must include authority, responsibility, and minimum qualifications.

### **Form RD #1, “Work Schedule”**

The work schedule shows what work will be done in the coming month. The schedule should be prepared at the end of the month preceding the month the schedule covers. For example, toward the end of April, the May schedule of work should be prepared. The schedule can be used to inform the board of supervisors at their monthly meeting about the proposed work for the new month.

### **Form RD #2, “Report to Board of Supervisors”**

The report to the board of supervisors should summarize what work was planned for the preceding month. It should show how much work was accomplished during the month. The report should explain why work planned was not completed or why more was accomplished than planned. The report should be presented to the board at their monthly board meeting. Additional reports in other forms may be prepared for the board.

### **Form RD #3, “Equipment Use Report”**

The equipment use report shall be prepared each month. A separate report will be kept for each major piece of equipment such as truck, tractor, grader, etc.

### **Form RD #4, “Work Order”**

A work order shall be completed for each assignment of work each day. Each work order should originate in the road manager’s office. Control of work orders may be strengthened by pre-numbering the documents or maintaining a log.

### **Form RD #5, “Personnel Report”**

The personnel report shall be used to provide employee change of status data to the payroll department of the county.

### **Form RD #6, “Equipment Service Record”**

An equipment service record shall be maintained on each serviceable piece of equipment of the road department.

### **Form RD #7, “Daily Work Sheet”**

The road manager or the crew leaders shall complete a daily work sheet for personnel, equipment, and materials used.

### **Form RD #8, “Daily Time Sheet”**

The road department shall maintain a daily time sheet covering all departmental employees.

### **Form RD #9, “T-A Report”**

A time and attendance report shall be completed each month by the road department and provided to the payroll department for preparation of the payroll.

### **Form RD # 10, “Automotive and Equipment Consumption Report”**

A daily report of fuel and oil consumption shall be maintained by the road department.

### **County Engineer<sup>3</sup>**

The board of supervisors is authorized and empowered at their discretion to employ, as county engineer, a civil engineer or person qualified to perform the duties of a county engineer, and such assistants as the board deems necessary. On all projects for the construction or reconstruction of a bridge which will cost more than twenty-five thousand dollars (\$25,000.00), or for the construction or reconstruction of roads which will cost more than twenty-five thousand dollars (\$25,000.00) per mile, the employment of a qualified engineer is required, whether the work is done by contract or otherwise. Where an engineer is required, the employment may be for the particular work rather than for a term.

### **Road Maintenance Facilities<sup>4</sup>**

The board of supervisors shall establish and maintain one (1) central road repair and maintenance facility for the county. Additional road repair and maintenance facilities may be established if the board of supervisors, by resolution duly adopted and entered on its minutes, determines the establishment of any such facilities to be *essential* for the effective and efficient management of the county road and bridge programs. The board of supervisors may buy or lease real property for the establishment of these facilities; however, any lease must be for a term of not less than twenty-five (25) years.

The Attorney General has ruled that individual supervisors in a unit county have no authority over the everyday working of the roads, and have no authority to maintain an office in any maintenance facility. All supervisors’ offices should be located in the courthouse or another appropriate facility located at the county seat.

### **Four-Year Road Plan<sup>5</sup>**

Each member of the board of supervisors must inspect every road and bridge in the county under the jurisdiction of the county at least once each year. Each member must file with the clerk of the board a report, under oath, of the condition of the roads and bridges inspected by him with recommendations by him for a four-year plan for construction and major maintenance of roads and bridges. Based on these reports, the board of supervisors must, on or before the first day of February each year, adopt and spread upon its minutes a four-year plan for the construction and maintenance of county roads and bridges. The plan may be amended at any time by a vote of the majority of the members of the board of supervisors.

### **County Road System Map and Register<sup>6</sup>**

On or before July 1, 2000, the board of supervisors of each county must prepare and adopt an official map designating all public roads on the county road system. In addition, the board of supervisors of each county shall prepare and adopt a county road system register in which shall be entered: (a) the number and name of each public road on the county road system. (b) a general reference to the terminal points and course of each such road. (c) a memorandum of every proceeding in reference to each such road, with the date of such proceeding, and the page and volume of the minute book of the board of supervisors where it is recorded; however, reference to proceedings before July 1, 2000, shall not be required. A public hearing is required before adoption of the map and register. The initial official record of the county road system shall include all public roads that the board of supervisors determines, as of July 1, 2000, or such date the initial official record is adopted, are laid out and open according to law. From and after July 1, 2000, no road shall be added or deleted from the county road system or otherwise changed except by order or other appropriate action of the board of supervisors and such action shall be recorded in the minutes of the board. All additions, deletions or changes to the county road system shall be recorded in the official record of the county road system as provided. The proceedings and public hearing required for initial adoption of the official map and county road system register are not intended to lay out, open, designate or otherwise establish new public roads, but to document and record existing roads which are, at the time of the initial adoption of said map and register, adjudicated by the board to be public roads by dedication or by prescription and required by public convenience and necessity.

### **County-Wide Personnel System<sup>7</sup>**

The board of supervisors must adopt and maintain a countywide system of personnel administration for all county employees. The personnel system is administered by the county administrator. The personnel system may include, but is not limited to policies which address hiring and terminating employees, appeal and grievance procedures, leave and holidays, compensation, job classification, training, performance evaluation, and maintenance of records. All employees of the county are employees of the county as a whole, and not of any particular supervisor district.

The elected officials of the county, other than members of the board of supervisors, must adopt and maintain a system of personnel administration for their respective employees or adopt the system of personnel administration adopted by the board of supervisors.

### **Transportation for Board Members<sup>8</sup>**

The board of supervisors must exercise jurisdiction over the public highways of the county. The board may by order duly adopted and entered on its minutes, provide for transportation of individual members of the board as is necessary and essential in the performance of their official duties.

### **Enforcement<sup>9</sup>**

*Code*, § 19-2-11 requires the State Auditor to determine if the county has actually adopted and put into operation the practice of constructing and maintaining all of the roads and bridges of the county as a unit, with all of the construction and maintenance machinery and other equipment, construction and maintenance funds and other construction and maintenance facilities available to the county for highway use placed under the administration of the county road manager for use in any part of the county regardless of beat lines and to the best interest of the county as a whole; if the county has established and implemented, and is maintaining a central purchasing system for all equipment, heavy equipment, machinery, supplies, commodities, materials and service as required by *Code*, § 31-7-101; if the county has established and implemented, and is maintaining, the inventory control system required by *Code*, § 31-7-107; and if the county has adopted and implemented a system of countywide personnel administration as required by *Code*, § 19-2-9.

If the Auditor determines that a county is not in substantial compliance with any of these requirements, he must file a certified written notice with the clerk of the board of supervisors of his intention to issue a certificate of noncompliance. If after thirty (30) days from the giving of the notice the county has not substantially complied, the Auditor must issue a certificate of noncompliance. Thereafter, the State Tax Commission shall withhold all payments of state aid road construction funds, fuel tax reimbursements and motor vehicle license seawall taxes to the county. If the county comes into compliance within ninety (90) days those funds withheld will be subsequently paid to the county.

If the county does not come into compliance within ninety (90) days the funds withheld shall be forfeited and reallocated to the other counties in the state. Those funds will continue to be forfeited until the county comes into compliance.

*Code*, § 19-2-12 provides that if the State Auditor determines that an individual member of the board of supervisors is not in substantial compliance with the countywide system of road administration as described in *Code*, § 19-2-3, the State Auditor shall give written notification to the supervisor of such noncompliance. If within thirty days after receipt of notice, the supervisor remains in noncompliance, the Auditor may institute civil proceedings in the chancery court of the county in which the supervisor serves. If the court determines the supervisor is not in substantial compliance, the court shall order the supervisor to immediately and thereafter



comply. Violations of any order of the court shall be punishable as for contempt. In addition the court may impose a civil penalty not to exceed five thousand dollars upon the supervisor.

## **THE BEAT SYSTEM**

All those counties not required to operate as a countywide system of road administration under “The County Reorganization Act of 1988” may continue to operate as a beat system, the traditional system of road and bridge management used by county supervisors in Mississippi. Under the beat system, supervisors elected from their five (5) respective districts of each county, independently manage roads and bridges in their beats. County revenues for roads and bridges are usually divided equally (or as determined by the board) and distributed to each supervisor’s road and bridge funds. The supervisor then spends these funds as he sees fit, within the limitations of the Mississippi Code and with approval of the entire board. Each supervisor usually maintains a barn or storage facility where his beat’s road equipment can be stored. In addition, each supervisor maintains a road crew and may hire a foreman to oversee the work of the road crew.

### **County Administrator<sup>10</sup>**

The board of supervisors is authorized, in its discretion, to employ a county administrator. The person employed as county administrator must hold at least a bachelor’s degree from an accredited university and must have knowledgeable experience in any of the following fields: work projection, budget planning, accounting, purchasing, cost control, personnel management and road construction procedures. The administrator, under the policies determined by the board of supervisors and subject to the board’s general supervision and control, administers county affairs falling under the control of the board and carries out the general policies of the board.

### **County Engineer<sup>11</sup>**

The board of supervisors is authorized and empowered at their discretion to employ, as county engineer, a civil engineer or person qualified to perform the duties of a county engineer, and such assistant engineers as may be necessary. On all projects for the construction or reconstruction of a bridge which will cost more than five thousand dollars (\$5,000.00), or for the construction or reconstruction of roads which will cost more than five thousand dollars (\$5,000.00) per mile, the employment of an engineer is required, whether the work is being done by the county or by contract; however, in required cases the employment may be for the particular work, rather than for a term.

### **Road Maintenance Facilities<sup>12</sup>**

The board of supervisors may buy or rent land upon which to establish stations for the working of the public roads, and may erect barns, sheds, and other necessary buildings thereon; but in no case shall said board buy over two (2) acres of land for any one station.

## **County Road System Map and Register<sup>13</sup>**

On or before July 1, 2000, the board of supervisors of each county must prepare and adopt an official map designating all public roads on the county road system. In addition, the board of supervisors of each county shall prepare and adopt a county road system register in which shall be entered: (a) the number and name of each public road on the county road system. (b) a general reference to the terminal points and course of each such road. (c) a memorandum of every proceeding in reference to each such road, with the date of such proceeding, and the page and volume of the minute book of the board of supervisors where it is recorded; however, reference to proceedings before July 1, 2000, shall not be required. A public hearing is required before adoption of the map and register. The initial official record of the county road system shall include all public roads that the board of supervisors determines, as of July 1, 2000, or such date the initial official record is adopted, are laid out and open according to law. From and after July 1, 2000, no road shall be added or deleted from the county road system or otherwise changed except by order or other appropriate action of the board of supervisors and such action shall be recorded in the minutes of the board. All additions, deletions or changes to the county road system shall be recorded in the official record of the county road system as provided. The proceedings and public hearing required for initial adoption of the official map and county road system register are not intended to lay out, open, designate or otherwise establish new public roads, but to document and record existing roads which are, at the time of the initial adoption of said map and register, adjudicated by the board to be public roads by dedication or by prescription and required by public convenience and necessity.

## **Road Inspection<sup>14</sup>**

Each member of the board of supervisors must inspect every road, bridge and ferry in each district at least annually, at times to be fixed by the board, and must file with the clerk of the board a report, under oath, of the condition of the several roads, bridges and ferries inspected by him, with recommendations as are needful. Such reports must be presented to the board of supervisors and kept on file for three years.

## **Personnel System**

The board of supervisors may adopt and maintain a system of personnel administration for county employees. The personnel system may include but is not limited to policies which address hiring and terminating employees, appeal and grievance procedures, leave and holidays, compensation, job classification, training, performance evaluation, and maintenance of records. Chapter 11 of this book discusses personnel administration in a county.

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<sup>1</sup> Code, § 19-4-1.

<sup>2</sup> Code, § 65-17-1.

<sup>3</sup> Code, § 65-17-201.

<sup>4</sup> Code, § 65-7-91.

<sup>5</sup> Code, § 65-7-117.

<sup>6</sup> Code, § 65-7-4, 65-7-4.1.

<sup>7</sup> Code, § 19-2-9

<sup>8</sup> Code, § 65-7-115.

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<sup>9</sup> *Code*, §§ 19-2-11 and 19-2-12.

<sup>10</sup> *Code*, § 19-4-1.

<sup>11</sup> *Code*, § 65-17-201.

<sup>12</sup> *Code*, § 65-7-91.

<sup>13</sup> *Code*, § 65-7-4, 65-7-4.1.

<sup>14</sup> *Code*, § 65-7-117.

## CHAPTER 5

### OPEN MEETINGS, PUBLIC RECORDS, CONFLICTS OF INTEREST

**Tom Hood**

The Mississippi Ethics Commission has the following duties under the Ethics in Government Law:

- Provide forms for the filing of financial disclosures by public officials and candidates and make the completed forms available for public inspection upon request;
- Receive sworn complaints and subsequently investigate alleged violations of the law by public servants; and
- Issue written advisory opinions to public servants with regard to any standards of conduct set forth in the conflict of interest laws.
- Enforce the Open Meetings Act and issue decisions on the Public Records Act.

#### OPEN MEETINGS ACT

The Mississippi Open Meetings Act was adopted in 1975 and is recorded in Chapter 41, Title 25 of the Mississippi Code of 1972, Annotated. *Code*, § 25-41-1 states “It being essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into the making of public policy, it is hereby declared to be the policy of the State of Mississippi that the formation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided herein.”

#### The Basics

- Public meetings must be open to the public.
- Executive session must follow specific procedure and only for 12 reasons.
- Notice of meeting must be given, and minutes must be kept.
- Social gatherings are not “meetings” unless official business is discussed.
- Act never requires executive session.

#### Definitions

- “Public body” is any board, commission, authority, council, departmental agency, bureau or other entity or committee of the state, political subdivision or municipality.

- “Meeting” is any gathering of a quorum of the public body, whether in person or by phone, to discuss a matter under the authority of the public body.

### **Notice**

- Regular meetings of some public bodies are set in statute.
- For recess, adjourned, interim or special meetings, notice must be posted in building where meeting is held within one hour of calling the meeting.
- Copy of the notice must be placed in the minutes.

### **Minutes**

- Minutes must be kept for all meetings, whether in open or executive session.
- Minutes must be recorded within 30 days after meeting.
- Minutes must be available for public inspection.
- Minutes must show:
  - Members present and absent;
  - Date, time and place of meeting;
  - Accurate recording of any final actions;
  - Record, by individual member, of all votes taken;
  - Any other information requested by the public body.

### **Telephonic Meetings**

- All members can participate by phone or video conference.
- They can be in different locations, so long as one location is open to the public.
- Notice of telephonic meetings must be given 5 days in advance, except in emergency, and must include the public location.
- Meeting must be suspended if phone service is interrupted.
- Roll call votes are required.
- Meeting must be recorded by audio (when using telephone) or video (when using video conference), and recording must be kept 3 years.

### **Executive Session Procedure**

- By majority vote, public body may enter closed session to discuss whether to declare executive session. A member must make a motion for a closed determination, but the motion does not require a second.
- A 3/5ths vote of the public body is required to declare executive session.
- Public body must return to open session and announce the reason for entering executive session. That reason and the vote must be recorded in minutes.

## **Executive Session Reasons**

Executive session may be held for 12 reasons only:

- Personnel matters relating to job performance, character, professional competence, or physical or mental health of a person holding a specific position - The Mississippi Supreme Court has held that personnel matters are restricted to employees hired by the board and not the officials themselves. *Hinds County Board of Supervisors v. Common Cause*, op. cit.
- Litigation, prospective litigation or issuance of an appealable order
- Security personnel, plans or devices
- Investigations
- The Legislature may enter executive session for any reason.
- Cases of extraordinary emergency
- Prospective purchase, sale or leasing of lands
- Discussions between a school board and individual students who attend a school within the jurisdiction of such school board or the parents or teachers of such students regarding problems of such students or their parents or teachers.
- Preparation of professional licensing exams
- Location, relocation or expansion of a business
- Budget matter which may lead to termination of employee
- Certain PERS board investments

## **Enforcement Procedure for Open Meetings Act**

*Code*, § 25-41-15 empowers the Ethics Commission to enforce the Open Meetings Act as follows:

- Complaint is filed with Commission. Complaint is sent to public body, which shall respond. Commission can dismiss complaint or hold a hearing.
- Ethics Commission may order public body to comply with law.
- Ethics Commission may impose a civil penalty upon the individual members of the public body found to be in violation of the “Open Meetings Act” in a sum not to exceed \$500.00 for a first offense and \$1,000.00 for a second or subsequent offense.
- Ethics Commission can mediate Open Meetings disputes.
- Either party may appeal *de novo* or enforce Ethics Commission order in local chancery court.

## **Open Meetings Cases**

### Case No. M-15-001

#### Noonan vs. Bay St. Louis-Waveland Sch. Bd.

- Entering into an executive session to “interview potential architects in response to the solicitation by the Board of Trustees” is not a valid reason to enter into executive session.
- The Board of Trustees did not approve the contract in executive session.
- The reason provided by a public body to the public must be “meaningful” and stated with “sufficient specificity.”
- The board could have considered delegating the face-to-face interview process to the school district’s Superintendent or to another member of the board’s staff, who would not be required to deliberate or meet in an open forum pursuant to the Open Meetings Act.

### Case No. M-14-001

#### Williams vs. Lauderdale Co. Bd. of Supv

- When a board holds separate gatherings with the same consultant and discusses the same matter with each group a “meeting” has taken place.
- Must provide notice and take minutes.

### Case No. M-12-001

#### Hood vs. Humphreys Co. Bd. of Supv.

- Board must make “closed determination” before voting on executive session.
- Board must provide a meaningful and specific reason for entering executive session.
- Minutes must record votes by “individual member.”

### Case No. M-10-007

#### Townes vs. Leflore Co. Sch. Bd.

- Public body may make and enforce reasonable rules for conduct of persons attending meetings.
- Public body is not required to allow members of the public to speak at meetings.

### Case No. M-10-002

#### Gates vs. New Augusta Bd. Of Ald.

- Board must make “closed determination” before voting on executive session.
- Minutes must record votes by “individual member.”
- When vote is not unanimous, minutes must name each individual member and list how each voted.

### Case No. M-09-005

#### Cooper vs. Adams Co. Bd. Of Supv.

- “Personnel matters” exception does not apply to issue of funding agency simply because board members disapprove of agency employees.
- Board may not simply announce “personnel” as reason for entering executive session.
- Board must announce which exception applies to each individual matter discussed in executive session.

## **PUBLIC RECORDS ACT**

The Mississippi Public Records Act was adopted in 1983 and is recorded in Chapter 61, Title 25 of the Mississippi Code of 1972, Annotated. *Code* § 25-61-1 states “It is the policy of the Legislature that public records must be available for inspection by any person unless otherwise provided by this act. Furthermore, providing access to public records is a duty of each public body and automation of public records must not erode the right to access to those records. As each agency increases its use of and dependence on electronic record keeping, each agency must ensure reasonable access to records electronically maintained, subject to the rules of records retention.”

### **The Basics**

- All documents and other records, including electronic records, related to government business are public records.
- Everyone has the right to inspect or copy.
- Government can recoup actual cost of retrieving and/or copying public records.
- Many records are exempted.
- If record contains exempt material, government may have to redact and copy.

### **Procedure**

*Code*, § 25-61-13 sets forth procedure for resolving disputes arising under the Public Records Act.

- Any person may request an opinion from the Ethics Commission about whether a public body has violated the Public Records Act by denying a request for records.
- A copy of the opinion request will be sent to the public body, which can respond.
- The Commission can issue a nonbinding opinion.
- If the dispute is not resolved voluntarily, then the person requesting the opinion must file a lawsuit in chancery court to compel production of the public records.

### **Response and Costs**

- Public body must respond to public records request within 1 working day, if no policy is in place.
- Public body may adopt a policy allowing up to 7 working days to respond.
- Denial of request must be in writing.
- Public body may require prepayment of reasonably calculated actual costs of searching, reviewing, redacting, duplicating and mailing public records.

### **Confidential Business Information**

- Public records furnished by third parties which contain trade secrets or confidential commercial or financial information are exempt from disclosure.



- Public body must give notice to third party which must have reasonable time to obtain protective order.
- If protective order is not obtained by third party, then public body must produce.

### **Other Exemptions**

- Academic records exempt from public access, see *Code*, § 37-11-51.
- Appraisal records exempt from access, see *Code*, § 31-1-27.
- Archaeological records exempt from public access, see *Code*, §39-7-41.
- Attorney work product exemption, see *Code*, §25-1-102.
- Birth Defects Registry, see *Code*, §41-21-205.
- Bureau of vital statistics, access to records, see *Code*, §41-57-2.
- Charitable organizations, registration information, exemption from public access, see *Code*, §79-11-527.
- Concealed pistols or revolvers, licenses to carry, records, exemption, see *Code*, §45-9-101
- Confidentiality, ambulatory surgical facilities, see *Code*, §41-75-19.
- Defendants likely to flee or physically harm themselves or others, see *Code*, §41-32-7.
- Environmental self-evaluation reports, public records act, exemption, see *Code*, § 49-2-71.
- Hospital records, Mississippi Public Records Act exemption, see *Code*, §41-9-68.
- Individual tax records in possession of public body, exemption from public access requirements, see *Code*, §27-3-77.
- Insurance and insurance companies, risk based capital level requirements, reports, see *Code*, §83-5-415.
- Judicial records, public access, exemption, see *Code*, §9-1-38.
- Jury records, exempt from public records provisions, see *Code*, §13-5-97.
- Licensure application and examination records, exemption from Public Records Act, see *Code*, §73-52-1.
- Medical examiner, records and reports, see *Code*, §41-61-63.
- Personnel files exempt from examination, see *Code*, §25-1-100.
- Public records and trade secrets, proprietary commercial and financial information, exemption from public access, see *Code*, §79-23-1.
- Workers' compensation, access to records, see *Code*, §71-3-66.

### **Model Public Records Rules And Comments**

- Nonbinding unless you adopt them
- Designed for use by all state and local agencies
- Can be modified to suit your needs
- Provide guidance on questions which are not answered in the law and have not been addressed by courts
- Posted on Ethics Commission web site.

## **Enforcement Procedure in Public Records Act**

*Code*, §§ 25-61-13 and 25-61-15 provides the procedure for failure to comply with the Public Records Act.

- Person denied access may request an opinion by the Ethics Commission.
- Complaint is sent to public body, which shall respond. Commission can dismiss complaint or hold a hearing.
- Person denied access may file a complaint in Chancery Court of the county in which public body is located. The Court will then request an opinion by the Ethics Commission.
- A civil penalty of \$100.00 per violation shall be made upon the individual found to be in violation of the “Public Records Act”.

## **Public Records Opinions**

- R-14-030: McKinney vs. Carroll Co. Chancery Clerk  
No public body adopt procedures which will authorize the public body to produce or deny production of a public record later than seven (7) working days from the date of the receipt of the request for the production of the record. A public body may “establish and collect fees reasonably calculated to reimburse it for, and in no case to exceed, the actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records.” Any staff time or contractual services included in actual cost can be included in the cost, but must be billed at the pay scale of the lowest level employee or contractor competent to respond to the public records request. Any such fees shall be collected by the public body in advance of complying with the request.
- R-14-015: McKinney vs. Carroll Co. Sheriff  
A requestor must request an identifiable record or class of records before a public body can respond. An “identifiable record” is one that agency staff can reasonably locate. An “identifiable record” is not a request for “information” in general. When a public body receives a broad or vague request, it should seek clarification of the request from the requestor. The requestor should clarify the request in a good faith attempt to describe identifiable records. Both parties must work together to properly identify and produce responsive records. However, if a request is not for identifiable records, the request can be denied. See Mississippi Model Public Records Rule 4.2 (2) & (3).
- R-14-003: Stallworth vs. Harrison Co. Coroner  
The autopsy report and photographs sought from the office of coroner by Stallworth are investigative reports that fall within the general definition and several of the enumerated examples listed above. See Miss. A.G. Op. 2008-00142, 2008 WL 2687390 (June 6, 2008) (explaining autopsy report constitutes “investigative report” exempt from Public Records Act). A criminal defendant is, of course, provided access to additional law enforcement records under the rules of discovery in criminal cases. See Rule 9.04, Uniform Rules of Circuit and County Court. A criminal defendant may also be entitled to

certain discovery in the course of pursuing post-conviction relief. See, e.g., *Code*, § 99-39-15.

- R-13-005-010: MS Crime Crier vs. Various Sheriff Depts:  
The names of and charges against persons arrested by the sheriff's departments are part of their Jail Dockets and are public record. However, the mug shot, the picture of the arrested individual, is not listed as an item to be recorded in the Jail Docket. Additionally, a picture, by its very nature, cannot qualify as a "narrative description" that makes up an "incident report." Accordingly, to the extent that the public records requests seek information outside of what is required to be recorded in the Jail Docket and contained in an incident report, the sheriff's departments will need to, *in its discretion*, make an evaluation and determine on a case-by-case basis whether to release the mug shots, as provided in *Code*, § 25-61-12(2)(a).
- R-10-001: Webster vs. Southaven Police Dept.  
Police department policy and procedure manuals are generally not exempt "investigative reports." Internal affairs complaints may be exempted "personnel records."
- R-10-013: Thomas vs. City of Gulfport  
A requestor must request an "identifiable record" and not simply ask questions or request information. Moreover, a public body is not required to create a public record which does not exist in response to a request.
- R-09-007: Garner vs. Office of the State Treasurer  
State agency fulfilled its obligation to provide "reasonable access" to public records by posting a searchable electronic version of public records on the agency's web site.

## MISSISSIPPI ETHICS LAWS

The Mississippi Ethics Commission administers Title 25, Chapter 4, Mississippi Code of 1972, known as the Ethics in Government Law: Article 1, Mississippi Ethics Commission and Article 3, Conflict of Interest and Improper Use of Office. The Commission also enforces Section 109, Miss. Constitution of 1890, which forms the historic foundation of Mississippi's Ethics in Government Laws.

There are eight basic prohibitions contained in Mississippi's Ethics in Government Laws:

- Board Member Contracts (Section 109, Miss. Const. of 1890, and *Code*, § 25-4-105(2))
- Use of Office – *Code*, § 25-4-105(1)
- Contracting – *Code*, § 25-4-105(3)(a)
- Purchasing Goods and Services – *Code*, § 25-4-105(3)(b)
- Purchasing Securities – *Code*, § 25-4-105(3)(c)
- Insider Lobbying – *Code*, § 25-4-105(3)(d)
- Post Government Employment – *Code*, § 25-4-105(3)(e)
- Insider Information – *Code*, § 25-4-105(5)

### **Section 109, Miss. Constitution of 1890**

No public officer or member of the legislature shall be interested, directly or indirectly, in any:

- contract with the state, or any district, county, city, or town thereof,
- authorized by any law passed or order made by any board of which he may be or may have been a member,
- *during the term* for which he shall have been chosen, *or within one year* after the expiration of such term.

#### **Notes**

- Section 109 only applies to members of boards and the Legislature.
- Notice the prohibition is against an interest, not against an act.
- There must be some sort of contract. It need not be a written contract.
- The conflict arises when the board funds or otherwise authorizes the contract. Even if the individual member does not vote, he or she may be in violation.
- The prohibition continues until a former official has been out of office for one year.

### **Code, § 25-4-105(1)**

No public servant shall use his official position to obtain, or attempt to obtain, pecuniary benefit for himself other than that compensation provided for by law, or to obtain, or attempt to obtain, pecuniary benefit for any relative or any business with which he is associated.

#### **Notes**

- The statute does not require a public servant to misuse his or her position.
- To avoid a violation, a public servant must totally and completely *recuse* himself or herself from the matter giving rise to the conflict.
- A board member must leave the board meeting before the matter comes up for discussion, may only return after the matter is concluded, and must not discuss the matter with anyone.
- An abstention is considered a vote with the majority and is not a recusal. The minutes of the meeting should accurately reflect the recusal.
- Recusal *does not* prevent other violations.

“*Business with which he is associated*” means public servant or his relative is

- officer, director, owner, partner, employee or
- holder of more than ten percent (10%) of the fair market value or
- from which he or his relative derives more than \$2,500 in annual income or
- over which such public servant or his relative exercises control.

“Relative” is the public servant’s:

- spouse,
- child,
- parent,
- sibling (brothers and sisters) or
- spouse of a relative (in-laws).

**Subsection (3)(a) – The Contractor Prohibition**

No public servant shall: (a) Be a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent, other than in his contract of employment, or have a material financial interest in any business which is a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent.

- “The term contractor is generally used in the strict sense of one who contracts to perform a service for another and not in the broad sense of one who is a party to a contract.” Moore, ex rel. City of Aberdeen v. Byars, 757 So.2d 243, 248 (¶ 15) (Miss. 2000).

“Material financial interest” means a personal and pecuniary interest, direct or indirect, accruing to a public servant or spouse, either individually or in combination with each other.

Exceptions for “Material Financial Interest”:

- Ownership of less than 10% in a business with aggregate annual net income to the public servant less than \$1,000.00;
- Ownership of less than 2% in a business with aggregate annual net income to the public servant less than \$5,000.00;
- Income as an employee of a relative if neither the public servant or relative is an officer, director or partner and any ownership interest would not be material under subparagraph 1 or 2; or
- Income of the spouse of a public servant when the spouse is a contractor, subcontractor or vendor and the public servant exercises no control, direct or indirect, over the contract.

**Subsection (3)(b) – Purchasing Goods or Services**

No public servant shall: (b) Be a purchaser, direct or indirect, at any sale made by him in his official capacity or by the governmental entity of which he is an officer or employee, except in respect of the sale of goods or services when provided as public utilities or offered to the general public on a uniform price schedule.

- For example, this subsection prohibits a government employee or official from purchasing anything at an auction or other sale conducted on behalf of his or her governmental entity.

**Subsection (3)(c) – Purchasing Securities**

No public servant shall: (c) Be a purchaser, direct or indirect, of any claim, certificate, warrant or other security issued by or to be paid out of the treasury of the governmental entity of which he is an officer or employee.

**Subsection (3)(d) – Inside Lobbying**

No public servant shall: (d) Perform any service for any compensation during his term of office or employment by which he attempts to influence a decision of the authority of the governmental entity of which he is a member.

**Subsection (3)(e) – Post Government Employment**

No public servant shall: (e) Perform any service for any compensation for any person or business after termination of his office or employment in relation to any case, decision, proceeding or application with respect to which he was directly concerned or in which he personally participated during the period of his service or employment.

- Applies after someone leaves government.
- If you worked on a matter while you were in government, you cannot work on that same matter in the private sector.
- But a former government employee can work for a government contractor on other matters.

**Subsection 25-4-105(4) – Exceptions to Subsection (3)**

- These exceptions only apply to Subsection (3) and not to any other provisions of law.
- Can apply to a government employee but does not protect a board member from a violation of Section 109 or *Code*, §25-4-105(2). The employee would still have to recuse himself or herself from any action which might otherwise violate *Code*, §25-4-105(1).

**Subsection 25-4-105(5) – Insider Information**

No person may intentionally use or disclose information gained in the course of or by reason of his official position or employment as a public servant in any way that could result in pecuniary benefit for himself, any relative, or any other person, if the information has not been communicated to the public or is not public information.

- Comes up most often in connection with economic development.
- Nonpublic information may not be revealed if it might result in a monetary benefit to anyone.
- Could apply to a former public servant.

## **THE COMPLAINT PROCEDURE FOR THE MISSISSIPPI ETHICS IN GOVERNMENT LAW**

### **General**

The scope of the Commission's authority to conduct investigations is limited to:

- Violations of state law by public servants, including persons elected, appointed or employed by the State of Mississippi or local governments; and
- Failure to file or failure to file completely and accurately all financial disclosure information required in the Ethics in Government Laws.

### **Complaints**

Before the Ethics Commission can conduct an investigation, someone must file a sworn complaint with the Commission alleging a violation of law by a public official or public employee. All complaints, investigations and investigative records are confidential until and unless the Commission votes to remove confidentiality.

### **Investigations – Code, § 25-4-21**

If a complaint filed with the Ethics Commission alleges a violation of law by a public servant, the Commission will authorize a confidential investigation of the complaint. In the course of an investigation, the Commission is empowered to administer oaths upon witnesses and issue and serve subpoenas on witnesses or for the production of records. When a complaint does not allege a violation of law, the Commission may dismiss the complaint without conducting an investigation.

Once the investigation is complete, the Commission must confidentially send a copy of the complaint to the person against whom it was filed, the respondent. The Commission is not able to protect the identity of the person who filed the complaint. The Commission must also take the following actions when applicable:

- If the complaint concerns a public official in the legislative branch, the Commission must refer the complaint, confidentially, to the public official and to the appropriate committee of the House of Representatives or the Senate having jurisdiction over the ethical conduct of its members and employees.
- If the complaint concerns a public official in the judicial branch, the Commission must refer the complaint, confidentially, to the public official and to the Commission on Judicial Performance or the Chief Justice of the Supreme Court.
- If the complaint concerns a public official in the executive branch or persons not covered in the paragraphs above, then the Commission must refer the complaint, confidentially, to the public official and to the head of the department or agency, if the person is in the

executive branch, or, for other public officials, to the person about whom the complaint is filed.

Anyone receiving a complaint from the Ethics Commission has thirty (30) days within which to respond to the complaint. After receiving the response to the complaint or, if no response is received after thirty (30) days, the Commission may, in its discretion, terminate the matter or proceed as follows:

- The Commission may investigate the matter further.
- The Commission may enter a voluntary settlement agreement with the respondent in which the Commission determines an appropriate disposition has occurred and terminates the case.
- If the investigation produces probable cause to believe a violation of law has occurred, the Commission may set a hearing of the matter, after which the Commission may impose certain penalties.
- The Commission may also refer the complaint with any evidence gathered during the investigation to the Attorney General and to the district attorney having jurisdiction, with a recommendation that it be considered for presentation to the grand jury.

### **Ethics Hearings**

The Commission may enforce the Ethics in Government Laws through hearings held before the Commission or an independent hearing officer, to determine whether a respondent violated the law and, if so, what penalty or penalties should be imposed, if any. Hearings in ethics cases are conducted according to the Mississippi Rules of Civil Procedure and the Mississippi Rules of Evidence. A violation must be proven to the Commission by clear and convincing evidence.

### **Penalties**

An elected official can be censured by the Commission and fined up to \$10,000.00. The Commission may also recommend to the Circuit Court for Hinds County that the elected official be removed from office.

A nonelected public servant can also be censured by the Commission and fined up to \$10,000.00. The Commission may also recommend to the Circuit Court for Hinds County that the nonelected public servant be removed from office, suspended, or subjected to a demotion or reduction in pay.

The Commission may also order restitution or other equitable or legal remedies to recover public funds or property unlawfully taken, as well as unjust enrichment, although not public funds. Any pecuniary benefit received by a public servant in violation of the Ethics in Government Laws may be declared forfeited by the Commission for the benefit of the governmental entity injured.



In the event a public servant does not appeal the decision or recommendation of the Commission, the Commission may petition the Circuit Court for Hinds County for the removal, suspension, demotion or reduction of pay of the public servant as provided by law.

Any contract made in violation of the Ethics in Government Laws may be declared void by the governing body involved or by a court of competent jurisdiction, and the contractor or subcontractor will receive no profit.

The Attorney General, the Commission, or any governmental entity directly injured by a violation of the Ethics in Government Laws may bring a separate civil lawsuit against the public servant or other person or business violating the provisions of this article for recovery of damages suffered as a result of such violation. Further, any pecuniary benefit received by or given by a public servant in violation of the Ethics in Government Laws must be declared forfeited by a circuit court of competent jurisdiction for the benefit of the governmental entity injured. In the discretion of the court, any judgment for damages or forfeiture of pecuniary benefit may include costs of court and reasonable attorney's fees.

The Ethics in Government Laws do not preclude civil or criminal liability under other laws or causes of action.

### **Appeals**

Any person aggrieved by a decision of the Commission made pursuant to its hearing procedures may appeal to the Circuit Court for Hinds County, Mississippi, and execution of the Commission's decision is stayed upon the filing of a notice of appeal.

### **Other Penalties – Code, § 25-4-31**

Any person who violates the confidentiality of a Commission proceeding is guilty of a misdemeanor and may be fined up to \$1,000 and imprisoned for up to one year. Any person who willfully and knowingly files a false complaint with the Commission or who willfully and knowingly affirms, reports or swears falsely in regard to any material matter before the Commission is guilty of a felony and if convicted may be fined \$1,000 to \$10,000 and imprisoned for up to 5 years.

## **CONFIDENTIAL RECORDS**

The Ethics Law provides that “all commission proceedings relating to any investigation shall be kept confidential.” The complaint and investigation records are strictly confidential.

All advisory opinions are public except that the request for an advisory opinion shall be confidential as to the identity of the individual making the request. The Commission, before making an advisory opinion public, must make such deletions and changes thereto as may be necessary to ensure the anonymity of the public official and any other person named in the opinion.

## THE STATEMENT OF ECONOMIC INTEREST

The Statement of Economic Interest is a financial disclosure form filed annually by certain elected and appointed officials in state and local government. It is intended to disclose the sources of a public servant's income so that members of the public know where a public servant's personal financial interests lie. It does not disclose the amount of income a public servant receives. The Statement of Economic Interest promotes compliance with the Ethics in Government Law disclosing potential conflicts of interest. All information disclosed is for the previous calendar year. The form **must** be filed electronically at the Ethics Commission web site, [www.ethics.state.ms.us](http://www.ethics.state.ms.us).

### **Persons Required to File – Code, § 25-4-25**

- Persons elected by popular vote, excluding United States Senators and United States Representatives, to any office, whether it be legislative, executive, or judicial, and whether it be statewide, district, county, municipal, or any other political subdivision, with the exception of members of boards of levee commissioners and election commissioners;
- Members of local school boards that administer public funds, regardless of whether such members are elected or appointed;
- Persons who are candidates for public office or who are appointed to fill a vacancy in an office who, if elected, would be required to file a statement of economic interest;
- Executive directors or heads of state agencies, by whatever name they are designated, who are paid in part or in whole, directly or indirectly, from funds appropriated or authorized to be expended by the Legislature, and the presidents and trustees of all state-supported colleges, universities, and junior colleges; and
- Members of any state board, commission, or agency, including the Mississippi Ethics Commission, charged with the administration or expenditure of public funds, with the exception of advisory boards or commissions; provided, however, in order to fulfill the legislative purposes of the chapter, the commission may require, upon a majority vote, the filing of a statement of economic interest by members of an advisory board or commission.
- Executive directors or board members of certain economic development entities (EDDs, REDAs, CDCs, Industrial Council) and airport authorities

### **Filing Dates – Code, § 25-4-29**

- Incumbent office holders must file on or before May 1 of each year.
- Candidates for office in primary, special, or general elections must file within 15 days after deadline for qualification for that office.

- Appointees to offices required to file must submit a disclosure form within 30 days of their appointment.

### **Contents – Code, § 25-4-27**

The statement must include the following information for the preceding calendar year:

- The full name and mailing address of the filer;
- The filer’s title, position and offices in government;
- All other occupations of the filer, the filer’s spouse or any person over the age of twenty-one (21) who resided in the filer’s household during the entire preceding calendar year;
- The names and addresses of all businesses in which the filer, the filer’s spouse or any person over the age of twenty-one (21) who resided in the filer’s household during the entire preceding calendar year held a position, and the name of the position, if the person: (i) Receives more than Two Thousand Five Hundred Dollars (\$2,500.00) per year in income from the business; (ii) Owns ten percent (10%) or more of the fair market value in the business; (iii) Owns an ownership interest in the business, the fair market value of which exceeds Five Thousand Dollars (\$5,000.00); or (iv) Is an employee, director or officer of the business;
- The identity of the person represented and the nature of the business involved in any representation or intervention for compensation for any person or business before any authority of state or local government, excluding the courts, on any matter other than uncontested or routine matters. (Applies only to (1) an elected official, (2) an executive director or head of a state agency or (3) a president or trustee of a state-supported college, university or community or junior college, including members of the State Board for Community and Junior Colleges and the State Board of Institutions of Higher Learning.)
- All public bodies, whether federal, state or local government, from which the filer, the filer’s spouse or any person over the age of twenty-one (21) who resided in the filer’s household during the entire preceding calendar year received compensation in excess of One Thousand Dollars (\$1,000.00) during the preceding calendar year, whether the compensation was paid directly or indirectly through another person or business.

### **Required Filings**

No person by reason of successful candidacy or assuming additional offices shall be required to file more than one disclosure form in any calendar year, except such official shall notify the commission of such additional offices previously not reported.

### **Enforcement Procedures – Code, § 25-4-29(2)**

- Any person who fails to file a statement of economic interest within thirty (30) days of the date the statement is due shall be deemed delinquent by the commission.

- Commission shall give written notice to the person
- Person that is delinquent shall have 15 days of receiving the written notice to file the statement
- Fine of \$50.00 per day, not to exceed a total fine of \$1,000.00 shall be assessed for each day in which the statement of economic interest is not properly filed.

## **COUNTY OFFICERS AND EMPLOYEES ADVISORY OPINIONS**

The State conflict of interest laws apply to all county officers and employees. However, certain sections of the conflict of interest laws do not apply to all county public servants or do not apply to all county public servants in the same manner. For example, Section 109, Miss. Const. of 1890, and its statutory parallel, *Code*, § 25-4-105(2), Miss. Code of 1972, only apply to members of boards, commissions and the Legislature. Therefore, these prohibitions apply to county supervisors but do not apply to the chancery clerk or county administrator.

Prior advisory opinions issued by the Mississippi Ethics Commission are effective in assisting county officers and employees in understanding how the state conflict of interest laws will apply to them in certain situations.

A synopsis of each of the prior advisory opinions issued by the Mississippi Ethics Commission since 1987 is available on the commission's web site at <http://www.ethics.state.ms.us>. Also, the commission's web site has the full text of the commission's prior advisory opinions issued since May 1995.

The Ethics Commission's authority to issue advisory opinions is set forth in *Code*, § 25-4-17(i), which provides a public official limited protection from liability only if all facts are presented in writing to the Mississippi Ethics Commission by the public official, the Commission provides a written opinion to the public official referencing those particular facts, and the public official in good faith follows the Commission's written opinion.

Following are summaries of advisory opinions involving county government issued in recent years and grouped by subject category.

### **County Agency or Department**

- 15-058-E      A company which employs the fire chief's father may not serve as a contractor and vendor to the county fire department. Due to public policy concerns which arise under *Code*, § 25-4-101 and restrictions imposed by *Code*, § 25-4-105(1), the company should not serve as a contractor or vendor to the fire department.
- 15-051-E      A county may contract with the lowest and best bidder, who is also the spouse of a county employee, when the employee will exercise no control over the contract. When the income is that of the public servant's spouse, and the public servant exercises no control, direct or indirect, over the contract, the public servant has no

material financial interest in the business, and the contract will not violate *Code*, § 25-4-105(3)(a).

- 15-041-E A county may not purchase property from a company partially owned by a member of the county tourism commission if the commission approves the purchase. Section 109, Miss. Const. of 1890, and *Code*, § 25-4-105(2), prohibit a member of a public board from having a direct or indirect interest in any contract authorized by the board during the board member's term or for one year thereafter.
- 15-036-E A county fire coordinator cannot accept a stipend, paid by a town's volunteer fire department, which is funded by a contract between the county and the town. Due to the restrictions in *Code*, § 25-4-105(1), and public policy concerns under *Code*, § 25-4-101, the county fire coordinator should not accept the stipend.
- 15-020-E A county economic development authority may not lease property to a limited liability company partially owned by the authority's executive director due to the potential for violations of *Code*, § 25-4-105(1), and serious public policy concerns under *Code*, § 25-4-101.
- 14-032-E A child of a newly elected supervisor may remain employed by the county youth court. If the parent and child are financially independent, no violation of Section 109, Miss. Const. of 1890, or *Code*, § 25-4-105(2), will occur, and the parent's recusal will prevent a violation of *Code*, § 25-4-105(1).

### **County Coroner/Medical Examiner**

- 15-001-E A county coroner may also serve as director of the county emergency management organization. While *Code*, § 25-4-105(3)(a) generally prohibits a county official from also serving as a county employee, the exception in *Code*, § 25-4-104(4)(h) applies because the two offices are separate component units of county government.
- 13-096-E A deputy sheriff or the office manager for the County Coroner's Office may also serve as Deputy Coroner. The Coroner's Office is a separate "authority" of county government from the Sheriff's Office. Therefore, the exception codified in *Code*, § 25-4-105(4)(h) will apply, and the deputy sheriff may also serve as deputy coroner without violating *Code*, § 25-4-103(a). Also, the positions and duties of deputy coroner and office manager could be combined to avoid a violation of *Code*, § 25-4-105(3)(a).
- 11-025-E A deputy county coroner may also work for the county E-911 commission because the coroner's office and E-911 commission are separate authorities of county government, the exception codified in *Code*, § 25-4-105(4)(h) will apply.

- 11-004-E A state employee may recommend and the county board of supervisors may employ a relative of the county administrator to work for the county office of the state agency under the supervision of the state employee. One cannot hire, recommend or directly supervise one's relative without violating *Code*, § 25-4-105(1). However, in this case the county administrator will not be hiring, recommending or supervising his or her relative.
- 10-032-E A funeral home partly owned by a county supervisor may contract from time to time with the county coroner or county employees. Pursuant to Section 109, Miss. Const. of 1890, and *Code*, § 25-4-105(2) the funeral home is absolutely prohibited from transacting any business with the county during the supervisor's term or for one year thereafter. Therefore, no potential should exist for the coroner or county employees to violate *Code*, § 25-4-105(1) if they receive income from a funeral home which does no business with the county.

### **County Employees**

- 15-026-E A business owned by a public servant of several counties may serve as a contractor, subcontractor or vendor to a municipality, state agency or other counties. While *Code*, § 25-4-105(3)(a) prohibits a public servant of a county from having a material financial interest in a business which serves as a contractor, subcontractor, or vendor to his own county, a municipality, state agency, or another county is a separate governmental entity from each county which the public servant serves.
- 14-076-E The director of a city-county recreational authority may also serve on the municipal school board and the municipal housing authority. The municipal school district and the municipal housing authority are separate governmental entities from the county and the municipality, and no violation of *Code*, § 25-4-105(3)(a) will result. However, the requestor should fully recuse himself from all matters coming before the school board involving agreements or disputes between the school district and the recreational authority in compliance with *Code*, § 25-4-101.
- 14-074-E An attorney may serve as a youth court referee in two counties and as public defender in circuit court in another county. The three counties are separate governmental entities, and no violation of *Code*, § 25-4-105(3)(a) should result from the youth court referee in two counties also serving as public defender in another county.
- 14-047-E The county inventory control and insurance clerk may be appointed to the board of trustees of the county hospital. The inventory control and insurance clerk is employed by the board of supervisors, which is a separate authority of county government from the hospital board of trustees. Therefore, the inventory control and insurance clerk may be appointed to the hospital board of trustees without violating *Code*, § 25-4-105(3)(a).

14-036-E A towing service owned by a county supervisor and a dispatcher for the county's emergency communications district may not be placed on the wrecker rotation list maintained by the sheriff due to the potential for a violation of *Code*, § 25-4-105(1) and public policy concerns that arise under *Code*, § 25-4-101. Moreover, a towing service owned by a supervisor and county employee is strictly prohibited by Section 109, Miss. Constitution of 1890, *Code*, § 25-4-105(2), and *Code*, § 25-4-105(3)(a) from contracting with the county or having any interest in any contract for towing services which is in any way authorized or funded by the board of supervisors.

### **County Prosecuting Attorney**

15-008-E A county prosecutor may serve as the attorney for an economic development authority created by local and private legislation. This particular economic development authority is a separate "governmental entity" from the county, as that term is defined in *Code*, § 25-4-103(h). Thus, *Code*, § 25-4-105(3)(a) does not prohibit the county prosecutor from serving as the attorney for the economic development authority.

13-126-E A county supervisor and an unelected county prosecutor employed by the board of supervisors may not jointly own a business. A supervisor and employed county prosecutor's joint ownership of the business creates a common financial interest that could result in a violation of Section 109, Miss. Const. of 1890, and *Code*, § 25-4-105(2). Due to the potential for a violation of these sections, the Commission advises the supervisor and county prosecutor against entering the proposed business arrangement.

09-019-E A county prosecuting attorney may also serve as school board attorney. A county and a school district, whether a county or municipal school district, are separate governmental entities, and no violation of *Code*, § 25-4-105(3)(a) will result from serving both.

### **County Sheriff**

14-044-E A member of the board of directors of a recreational district may also serve as a volunteer to the sheriff's department and patrol the property owned and administered by the recreational district. There will be no contract with regard to the board member's volunteer service, and no violation of Section 109, Miss. Const. of 1890, or *Code*, § 25-4-105(2) should arise. Likewise, as a volunteer, the board member will not be a "contractor" to the district or the county, and no violation of *Code*, § 25-4-105(3)(a) should result.

14-036-E A towing service owned by a county supervisor and a dispatcher for the county's emergency communications district may not be placed on the wrecker rotation list

maintained by the sheriff due to the potential for a violation of *Code*, § 25-4-105(1) and public policy concerns that arise under *Code*, § 25-4-101. Moreover, a towing service owned by a supervisor and county employee is strictly prohibited by Section 109, Miss. Constitution of 1890, *Code*, § 25-4-105(2), and *Code*, § 25-4-105(3)(a) from contracting with the county or having any interest in any contract for towing services which is in any way authorized or funded by the board of supervisors.

- 13-096-E A deputy sheriff or the office manager for the County Coroner's Office may also serve as Deputy Coroner. The Coroner's Office is a separate "authority" of county government from the Sheriff's Office. Therefore, the exception codified in *Code*, § 25-4-105(4)(h) will apply, and the deputy sheriff may also serve as deputy coroner without violating *Code*, § 25-4-103(a). Also, the positions and duties of deputy coroner and office manager could be combined to avoid a violation of *Code*, § 25-4-105(3)(a).
- 13-080-E A newly elected mayor may not continue to work as a part-time deputy sheriff when the town pays the county for housing city arrestees. An interlocal agreement between the city and the county which funds the mayor's contract of employment with the county can give rise to a violation of Section 109, Miss. Const. of 1890, and *Code*, § 25-4-105(2).
- 13-027-E The sheriff may not hire the county's youth court referee/judge to represent his office and the regional correctional facility. This arrangement raises concerns that should be avoided pursuant to the public policy set forth in *Code*, § 25-4-101.

### **County Supervisors**

- 15-032-E A county may not continue to purchase merchandise at a retail store which employs a candidate for county supervisor and may not continue to purchase insurance from an agency which employs the candidate's spouse if the candidate is elected. If elected, the candidate will have a prohibited interest in transactions between the county and the store and agency, and those transactions will be authorized by the board of supervisors in violation of Section 109, Miss. Const. of 1890, and *Code*, § 25-4-105(2).
- 15-025-E A county supervisor may participate in deliberations and actions by the board which do not result in any pecuniary benefit to either of his financially independent brothers. When the supervisor and his brothers are financially independent, no violation of Section 109, Miss. Const. of 1890, or *Code*, § 25-4-105(2) will occur, and the supervisor must only recuse himself from matters which would result in a pecuniary benefit to either brother to comply with *Code*, § 25-4-105(1).
- 15-007-E A county supervisor may be an officer of a corporation which has a zero-sum lease with the county. If the corporation does not charge the county any lease



payments, and the corporation receives no other monetary benefit from the lease, then the supervisor will not have a prohibited interest in the zero-sum lease, and no violation of Section 109, Miss. Const. of 1890, or *Code*, § 25-4-105(2) will result from the lease. However, the supervisor should recuse himself from any approval of the lease to comply with *Code*, § 25-4-101, and he must recuse himself from any dispute which might arise under the lease in compliance with *Code*, § 25-4-105(1). A county supervisor may also be an officer of a corporation which has a lease with a nonprofit community action agency where the board of supervisors appoints one member of the agency's board of directors. If the county does not appropriate money to the nonprofit community action agency or take any other action which would have the effect of approving the contract between the agency and the corporation, then no violation of Section 109, Miss. Const. of 1890, or *Code*, § 25-4-105(2) will result from the lease. However, the supervisor should recuse himself from the board of supervisors' appointment to the agency's board of directors to comply with *Code*, § 25-4-101.

- 14-068-E A county supervisor's spouse may not perform services for a company under a contract which is funded by the county-owned hospital, pursuant to Section 109, Miss. Const. of 1890, and *Code*, § 25-4-105(2).
- 14-057-E A supervisor be may not be employed by a community mental health center which is partially funded by the board of supervisors, pursuant to Section 109, Miss. Const. of 1890, and *Code*, § 25-4-105(2).
- 14-040-E A county employee may not continue to work for the county if his or her spouse is elected supervisor. The supervisor will have a prohibited interest in his or her spouse's employment contract which will be authorized by the board of supervisors in violation of Section 109, Miss. Const. of 1890, and *Code*, § 25-4-105(2).
- 14-031-E A county supervisor may be employed by a school district. While the board of supervisors does approve the ad valorem tax levy for the county school district, the board of supervisors would not in any way be authorizing any contract between the school board and the supervisor, as proscribed in Section 109, Miss. Const. of 1890, and *Code*, § 25-4-105(2). Moreover, the county and the school district are separate governmental entities, and no violation of *Code*, § 25-4-105(3)(a) will result from holding both positions.

### **County Tax Assessor and/or Collector**

- 15-023-E A county tax assessor may participate in the tax sale of a separate county. While public servants of the county are prohibited from participating in a tax sale conducted by that same county, pursuant to *Code*, § 25-4-105(3)(b) they are not prohibited from participating in a tax sale conducted by a separate county.

- 14-070-E The county tax assessor may accept compensation from the circuit clerk for assisting with the electronic voting system on election night. The office of the tax assessor and office of the circuit clerk are separate authorities of county government, and the exception codified in *Code*, § 25-4-105(4)(h) applies.
- 14-027-E An LLC owned by the county tax assessor may not purchase surplus real property at a sale conducted by his or her own county. *Code*, § 25-4-105(3)(b) prohibits an LLC owned by the county tax assessor from purchasing land at a sale conducted by or on behalf of the county. This transaction also presents the potential for a violation of *Code*, § 25-4-105(5) and public policy concerns under Section 25-4-101.
- 12-029-E A bank may continue to serve as a county depository if a bank employee marries the county tax collector/assessor. Under these particular facts, the tax collector/assessor will not acquire a material financial interest in the bank, and no violation of *Code*, § 25-4-105(1) or (3)(a) will result.
- 11-032-E A county tax collector may not purchase real property from an owner who purchased the property at a county tax sale. If the tax collector were to purchase the property from the current owner, the tax collector would be purchasing the property indirectly from the county. Such an indirect purchase is prohibited in *Code*, § 25-4-105(3)(b).

### **County Constables**

- 15-030-D A county constable may also be employed as the county Emergency Manager and E-911 Director. The exception codified in *Code*, § 25-4-105(4)(j) allows a constable to be simultaneously employed by the county in another position.
- 15-002-E A state employee may simultaneously serve as a county constable. The state and the county are separate governmental entities, and no violation of *Code*, § 25-4-105(3)(a) should result from service with both.
- 14-075-E A municipal employee may simultaneously serve as a county constable. The municipality and the county are separate governmental entities, and no violation of *Code*, § 25-4-105(3)(a) should result from service with both. However, *Code*, § 25-4-105(1) prohibits the municipal employee from using municipal resources, equipment or work time in furtherance his or her duties as constable.
- 12-067-E A county emergency management director may also serve as a city alderman, and a municipal police officer may also serve as county constable. A county and a municipality are separate governmental entities, and a county emergency management director is not prohibited from serving as a municipal alderman, nor is a municipal police officer prohibited from serving simultaneously as a county constable, pursuant to *Code*, § 25-4-105(3)(a). Moreover, a county emergency management director is not prohibited by *Code*, § 25-4-105(1) from using his or

her position to benefit a municipality which he or she serves as alderman when the individual will not receive any benefit.

### **Circuit Clerks**

- 14-070-E The county tax assessor may accept compensation from the circuit clerk for assisting with the electronic voting system on election night. The office of the tax assessor and office of the circuit clerk are separate authorities of county government, and the exception codified in *Code*, § 25-4-105(4)(h) applies.
- 11-078-E A circuit clerk may serve on the board of directors of a nonprofit corporation which is unlikely to have any interaction with the office of circuit clerk. While the nonprofit corporation is a “business with which [the circuit clerk] is associated,” the clerk is unlikely to have any opportunity to use his or her position to obtain or attempt to obtain any pecuniary benefit for the corporation, as proscribed in *Code*, § 25-4-105(1).

### **Chancery Clerks**

- 15-049-E A candidate for chancery clerk, if elected, may be a part owner of a limited liability company which provides abstracting services to private clients. However, if elected, the candidate for chancery clerk must completely refrain from taking any actions which would benefit the limited liability company or harm its competitors to ensure no violation of *Code*, § 25-4-105(1) occurs. The Commission cautions the requestor against using or disclosing non-public information to comply with *Code*, § 25-4-105(5). No violation of *Code*, § 25-4-105(3)(a) will occur under these facts if the limited liability company does not serve as a contractor, subcontractor, or vendor to the county.
- 13-060-E A former chancery clerk may bid on and purchase land at a tax sale conducted by the county which he or she previously served. While *Code*, § 25-4-105(3)(b) prohibits public servants of the county from bidding on or purchasing land at the county tax sale, this section does not prohibit a retired chancery clerk from bidding on and purchasing land at that sale.
- 13-021-E The son of the chancery clerk/county administrator may not serve as a vendor to the county. When claims submitted by the chancery clerk’s son must be processed, reviewed and approved by the purchase clerk, who is appointed and supervised by the chancery clerk/county administrator, an appearance of impropriety will arise under *Code*, § 25-4-101.
- 12-101-E A county election commissioner may also be employed by the chancery clerk. Pursuant to the exception found in *Code*, § 25-4-105(4)(h) the county election commission and the chancery clerk’s office are separate authorities of county government. However, the public servant cannot use his official position as

election commissioner or employee of the chancery clerk to obtain a pecuniary benefit for himself in violation of *Code*, § 25-4-105(1).

**MISSISSIPPI ETHICS COMMISSION**

Established: November 15, 1979.

Composition: Eight (8) members.

Term: Members are appointed to serve a four (4) year term and upon expiration of that term a member may be reappointed to serve.

Method of Selection: Two (2) members of the Commission shall be appointed by each of the following officers: Governor, Lieutenant Governor, Speaker of the House of Representatives, and Chief Justice of the State Supreme Court.

Qualifications: The member must be a qualified elector of the State of Mississippi of good moral character and integrity. Not more than one (1) person appointed by each appointing authority shall be an elected official.

Responsibility: To see that the legislative purpose is satisfied by exercising all duties and powers contained in the enabling legislation.

Staff: The Commission employs a full time staff supervised by an executive director who serves at the Commission’s will and pleasure.

Office/Address:	660 North St., Suite 100-C Jackson, Mississippi 39202	P.O. Box 22746 Jackson, MS 39225-2746
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## CHAPTER 6

### OTHER MAJOR COUNTY OFFICIALS

#### Sumner Davis and David Brinton

This chapter contains concise descriptions of the duties and responsibilities of other elected and appointed county officials. This is not meant to be an exhaustive list of all duties, as each official's duties are numerous. This chapter will, however, provide a general overview of the major responsibilities for each of the offices.

The chapter is divided into two sections – elected officials and appointed officials. The officials are listed alphabetically in each section.

#### ELECTED OFFICIALS

##### Chancery Clerk

The chancery clerk's primary duties lie within the chancery court. Elected at large for a four year term, the chancery clerk is responsible for attending all sessions of chancery court and keeping all minute books in which records and directions of the chancellor and proceedings of the court are kept. The minutes of the court are read by the chancery clerk in open court before adjournment and must be signed by the chancellor.<sup>1</sup> However, the chancery clerk's responsibilities go well above and beyond those within the chancery court.

State law prescribes that the chancery clerk record and preserve all land records recordable in the county. Such records include deeds of trusts, mortgages, mineral leases, and plats of land surveys. The instruments and records filed within the clerk's office must include a detailed fee bill of all charges due or paid for filing and recording.<sup>2</sup> The clerk or deputy clerk is required to give a receipt for every written instrument filed within the office of the chancery clerk.<sup>3</sup> The clerk or deputy clerk also receives all bills, petitions, motions, accounts, inventories, and other papers and reports on behalf of the county.<sup>4</sup> All records and papers of the chancery clerk's office are subject to inspection and examination by citizens. The clerk or deputy should show any person inquiring about records where they are located, allow access, or make a copy if requested.<sup>5</sup>

Article 6, § 170 of the *Mississippi Constitution* requires that the clerk of the chancery court also serve as clerk for the board of supervisors. The clerk of the board of supervisors has several duties prescribed by law. The clerk or the deputy clerk is responsible for attending all meetings of the board of supervisors and recording the minutes of the board.<sup>6</sup> This is an important responsibility because the board may act only through the recorded minutes. The clerk is also responsible for preparing the "docket of claims." The claims docket is a list of all claims or financial demands against the county in the order in which they are received.<sup>7</sup>

The chancery clerk is responsible for keeping a set of books known as the uniform system of accounts for the county which are prescribed by the state auditor. These books contain all

accounts under headings, so the expenditures under each heading can be known. The chancery clerk is responsible for entering all receipts and expenditures into the system of accounts and balancing the ledgers monthly. This ensures that all information needed for budget review is easily accessible.<sup>8</sup> The clerk submits to the board each month a report showing all expenditures and liabilities incurred against each separate budget item during the month and, cumulatively, the fiscal year to date.<sup>9</sup>

The chancery clerk is also responsible for submitting a certified-copy of the tax levy for the upcoming year. This is to show the purpose of the taxes levied and the total tax levy for each separate taxing area in the county, including the state ad valorem tax levy.<sup>10</sup>

Before entering office, the chancery clerk is required to take the oath of office and give bond. Bond is payable in an amount equal to five percent (5%) of the sum of all state and county taxes shown by the assessment rolls for the year immediately preceding the commencement of the term of office. However, the bond should not exceed one hundred thousand dollars (\$100,000.00.) The chancery clerk may be required to give additional bond for faithful application of moneys coming into his hands by order of the chancellor. The original bond is held to cover all official acts of the chancery clerk.<sup>11</sup>

Compensation for the chancery clerk is determined by various filing fees collected for services provided by the chancery clerk's office. Total compensation for the chancery clerk cannot exceed \$90,000.00.<sup>12</sup>

### **Circuit Clerk**

The circuit court clerk, elected at large to a four year term, has primary duties which lie within the circuit court. The circuit clerk keeps a general court docket in which all names and parties in each case, plea, indictment, record from inferior courts on appeal, and other papers are entered and referenced to the minute book and page. The clerk also keeps an appearance docket. It contains all civil cases not triable in the first term of court, after they have begun, in the order in which they are commenced. The circuit clerk is also responsible for keeping the subpoena docket and the execution docket.<sup>13</sup>

Within ten (10) days after the end of any term of the court, the circuit clerk furnishes the clerk of the board of supervisors a list of all judgements rendered and suits disposed of during the term.<sup>14</sup> The circuit clerk also furnishes a certified list of allowances made by the court in such term, payable out of the county treasury. It specifies the amount, to whom allowed, and on what account.<sup>15</sup> Within three (3) months of the final outcome of any suit, the clerk enters into a well-bound book, a full and complete record of the proceedings of the suit. The clerk may be charged with contempt and fined for failure to record and submit any of this information.<sup>16</sup>

The circuit clerk also has administrative duties in the election process. The circuit clerk serves as a registrar for voters in the county. Candidates pursuing a county office or seat in the state legislature must pay a filing fee to the circuit clerk of the candidate's county of residence by 5:00 p.m. on March 1 of the year in which the primary election for the office is held or on the date of the qualifying deadline provided by statute for the office, whichever is earlier. The circuit clerk

shall forward the fee and all necessary information to the secretary of the proper county executive committee within two (2) business days.<sup>17</sup>

For each marriage performed in the state, a Statistical Record of Marriage is filed with the office of vital records with the state board of health by the circuit clerk. The circuit clerk, who issues the marriage license, completes the statistical record on the form designated by the state board of health. Before the tenth day of each month, all forms returned to the circuit clerk in the preceding month are to be forwarded to the board of health. A filing fee of one dollar (\$1.00) is paid to the clerk for each marriage record prepared and sent to the board of health. The fee is collected from the applicants for the marriage license along with other filing fees and deposited into the county treasury. The fees are paid to the clerk every six months by the board of supervisors upon notification by the office of vital records of how many marriage records were filed.<sup>18</sup>

Before entering office, the circuit clerk is required to take the oath of office and give bond payable in an amount equal to three percent (3%) of all the state and county taxes shown by the assessment rolls for the year preceding the commencement of the term of office. However, the bond should not exceed one hundred thousand dollars (\$100,000.00). The circuit clerk may be required to give additional bond from time to time for the faithful application of all money coming into his hands by law or order from the circuit court.<sup>19</sup>

Compensation for the circuit clerk is determined by various filing fees collected for services provided by the circuit clerk's office. Total compensation for the circuit clerk cannot exceed \$90,000.00.<sup>20</sup>

## **Constable**

The office of constable, established in Article 6, § 171 of the *Mississippi Constitution*, is filled through election by district for a four (4) year term. These districts are established as "single member election districts" by the board of supervisors. Each district will have the same boundaries as the districts established for justice court judges.<sup>21</sup>

Each elected constable is required to attend and participate in a two (2) week training session addressing the nature and scope of specific duties and responsibilities of a constable, specifically including firearm use and safety training. The course is designed by the Board on Law Enforcement Officers Standards and Training and offered at the Mississippi Law Enforcement Officers' Training Academy or other police academies approved by the Board on Law Enforcement Officers Standards and Training.<sup>22</sup>

A constable's general duties are "to keep and preserve the peace within his county, by faithfully aiding and assisting in executing the criminal laws of the state."<sup>23</sup> In addition the constable is required to attend the justice court of his district and execute all judgements in any criminal case before the court.<sup>24</sup>

Before taking office, constables are required to take the oath of office prescribed by the *Mississippi Constitution*. The constable is also required to post bond payable in an amount not

less than fifty thousand dollars (\$50,000.00). The bond premium for each constable is paid from the county general fund.<sup>25</sup>

Constables are compensated through a legislatively-determined fee system. This system provides payment of certain fees for provision of certain services.<sup>26</sup>

## **Coroner**

The office of coroner, established in Article 5, § 135 of the *Mississippi Constitution*, is filled through an at large election. A county coroner serves a four year term, with the office-holder eligible to immediately succeed themselves.<sup>27</sup> Each candidate for the office of coroner must, as a minimum, possess a high school diploma or its equivalent, be twenty-one (21) years of age or older, and be a qualified elector of the county in which elected.<sup>28</sup> Prior to taking the oath of office, each elected coroner must attend the Mississippi Forensics Laboratory and State Medical Examiner Death Investigation Training School, successfully completing all exams on the subject matter presented. Failure to do so prohibits the individual from taking the coroner's oath of office.<sup>29</sup>

Each coroner elected is recognized as a county medical examiner (CME) or county medical examiner investigator (CMEI). A CME is a doctor of medicine (M.D.) or osteopathic medicine (D.O.) licensed in the State of Mississippi, while a CMEI is a non-physician possessing, as a minimum, a high school diploma or its equivalent. The coroner is then designated the chief medical examiner or chief medical examiner investigator for the county following the completion of the Death Investigation Training School.<sup>30</sup>

In addition to the successful completion of the Death Investigation Training School, the CME/CMEI must successfully complete additional training on subject material presented by the State Medical Examiner at least once every four (4) years. Moreover, the CME/CMEI must also receive at least twenty-four (24) hours of continuing education annually. If the continuing education standards are not met, the CME/CMEI is disqualified and removed from office.<sup>31</sup>

The CME/CMEI, with the Board of Supervisors, may appoint deputy medical examiners or deputy medical examiner investigators as deemed necessary. However, any county with a population of twenty thousand (20,000) or greater is required to appoint one (1) or more deputies. All deputies possess the same authority and duties and are subject to the same qualifications, training, and certification requirements as any CME/CMEI.<sup>32</sup>

The CME/CMEI is responsible for assuring readily available death investigators for the county twenty-four (24) hour-a-day for the investigation of all deaths "affecting the public interest." As designated in *Code*, § 41-61-59(2):

A death affecting the public interest includes, but is not limited to, any of the following:

- (i) Violent death, including homicidal, suicidal or accidental death.
- (ii) Death caused by thermal, chemical, electrical or radiation injury.



- (iii) Death caused by criminal abortion, including self-induced abortion, or abortion related to sexual abuse.
- (iv) Death related to disease thought to be virulent or contagious which may constitute a public hazard.
- (v) Death that has occurred unexpectedly or from an unexplained cause.
- (vi) Death of a person confined in a prison, jail or correctional institution.
- (vii) Death of a person where a physician was not in attendance within thirty-six (36) hours preceding death, or in prediagnosed terminal or bedfast cases, within thirty (30) days preceding death.
- (viii) Death of a person where the body is not claimed by a relative or a friend.
- (ix) Death of a person where the identity of the deceased is unknown.
- (x) Death of a child under the age of two (2) years where death results from an unknown cause or where the circumstances surrounding the death indicate that sudden infant death syndrome may be the cause of death.
- (xi) Where a body is brought into this state for disposal and there is reason to believe either that the death was not investigated properly or that there is not an adequate certificate of death.
- (xii) Where a person is presented to a hospital emergency room unconscious and/or unresponsive, with cardiopulmonary resuscitative measures being performed, and dies within twenty-four (24) hours of admission without regaining consciousness or responsiveness, unless a physician was in attendance within thirty-six (36) hours preceding presentation to the hospital, or in cases in which the decedent had a prediagnosed terminal or bedfast condition, unless a physician was in attendance within thirty (30) days preceding presentation to the hospital.
- (xiii) Death that is caused by drug overdose or which is believed to be caused by drug overdose.
- (xiv) When a stillborn fetus is delivered and the cause of the demise is medically believed to be from the use by the mother of any controlled substance.

The CME/CMEI is also responsible for the maintenance of copies of all medical examiner death investigations for the county for the previous five (5) years, and the coordination and cooperation of his office and duties with the State Medical Examiner.<sup>33</sup>

## **Justice Court Judge**

The justice court judge, elected to a four year term, has jurisdiction over all civil actions for the recovery of debts or damages for personal property where the principle debt, amount of demand, or the value of the property to be recovered in court does not exceed \$3,500.00.<sup>34</sup> Justice court judges have jurisdiction over criminal violations in the county in the same manner as the circuit court. However, criminal proceedings only occur in the justice court where the punishment does not extend beyond a fine and imprisonment in the county jail.<sup>35</sup> No justice court judge may preside over a trial in any situation where there is personal interest.<sup>36</sup>

Each justice court judge is required to reside in the county which they serve for two years prior to the election. A candidate for the position of justice court judge is also required to be a high school graduate or have a general equivalency diploma unless he served as a justice of the peace prior to January 1, 1976.<sup>37</sup>

The number of justice court judges for each county is determined by population within the county. Counties with a population of less than 35,000 there shall be two (2) justice court judges. Counties that have a population between 35,000 and 70,000 shall have three (3) justice court judges. Counties that have a population between 70,000 and 150,000 shall have four (4) justice court judges. Counties with a population exceeding 150,000 shall have five (5) justice court judges. The board of supervisors is required to create single member election districts in the county for the election of each justice court judge.<sup>38</sup>

Justice court judges are required to hold regular terms of court at times subject to their discretion. Judges are required to hold at least one (1) session of court per month, but not more than (2) two, at a reasonable time in a courtroom established by the board of supervisors.<sup>39</sup>

All justice court judges are required to complete the “Justice Court Judge Training Course” and a minimum competency examination provided by the Mississippi Judicial College of the University of Mississippi Law Center within six (6) months of the beginning of the term of office. Justice court judges are also required to complete the “Continuing Education Course for Justice Court Judges” conducted by the Judicial College.<sup>40</sup> Once the training course and minimum competency examination are complete, certificates of completion are filed with the office of the chancery clerk. Failure to meet education, examination, and training requirements within six (6) months of the inception of the term of office will result in lost compensation. Failure to file the required certifications within eight (8) months will result in the removal of the justice court judge from office. A certificate of completion is also filed annually once continuing education requirements are satisfied.<sup>41</sup>

The board of supervisors shall appoint a clerk of the justice court system and may appoint any deputy justice court clerks. The justice court clerks and deputy justice court clerks are empowered to file and record actions and pleadings, issue warrants, and acknowledge affidavits for the justice court. They also have the authority to collect filing fees and fines on behalf of the justice court. By August 1, 2015, and each year thereafter, the Administrative Office of Courts shall report the names of all justice court clerks who have failed to comply with the reporting requirements of Section 9-1-46 to the boards of supervisors that selected them. Each clerk shall

be given three (3) months from the date on which the board was given notice to come into compliance with the requirements of Section 9-1-46. The Administrative Office of Courts shall notify the board of supervisors of any justice court clerk who fails to come into compliance after the three-month notice required in this subsection. Any noncompliant clerks shall be terminated for failure to comply with Section 9-1-46 reporting requirement.<sup>42</sup>

Every justice court judge is required to take the oath of office prescribed by Article 6, § 155 of the *Mississippi Constitution*. Justice court judges are also required to post a bond in the same manner as other county officers. Justice court judges are required to give bond payable in a penalty not less than fifty thousand dollars (\$50,000).<sup>43</sup>

If the justice court judge resigns from office or the term of office expires he is required to deliver within ten (10) days of vacating the office, the case record with all papers and books of statutes relating to the office of justice court judge, to the clerk of the justice court.<sup>44</sup>

## **Sheriff**

The office of sheriff, established in Article 5, § 135 of the *Mississippi Constitution*, is filled through an at-large election. A sheriff serves a four (4) year term or until his successor shall be qualified.<sup>45</sup> A sheriff is eligible to immediately succeed himself in office.<sup>46</sup>

Before taking office, if the sheriff-elect has not previously served as sheriff or had at least five (5) years of experience as a full-time enforcement officer within the previous ten (10) years, or has not previously completed an applicable training course at the Mississippi Law Enforcement Officers' Academy or the Jackson Police Academy within the previous five (5) years, he is required to attend and complete an appropriate curriculum at the Mississippi Law Enforcement Officers' Academy.<sup>47</sup>

The sheriff's duties are wide-spread and far-reaching, but they generally fall into two broad categories: law enforcement and administrative. The law enforcement duties are the duties typically associated with the sheriff's office. These duties are specifically "to keep the peace within in the county, by causing all offenders in his view to enter into bonds, with sureties, for keeping the peace and for appearing at the next circuit court, and by committing such offenders in case of refusal."<sup>48</sup> The sheriff is also charged with the duty to "quell riots, routs, affrays and unlawful assemblages, and to prevent lynchings and mob violence."<sup>49</sup>

The administrative duties for the sheriff are numerous. One of the most recognizable administrative duties of the sheriff is to serve as the county's jailor, except in any county in which there is a jointly owned jail.<sup>50</sup> (In that case, the municipality will appoint a jailer who shall be responsible for all municipal prisoners in the jail in the same manner in which the sheriff is responsible for state prisoners, and have the same right of access to the jail as the sheriff. *Code*, § 47-1-49.) The sheriff is required to keep separate rooms for the sexes, not permitting communication between male and female prisoners, unless they are married.<sup>51</sup> He shall also provide fire and lights when necessary and proper; sufficient and clean bedding; and daily wholesome and adequate food and drink.<sup>52</sup>

Another duty of the sheriff is to “have charge of the courthouse and jail of his county, of the premises belonging thereto, and of the prisoners in said jail.” This includes the protection of the court and prisoners from mob violence, injuries or attacks by mobs, and from trespasses and intruders.<sup>53</sup>

The sheriff is also required to submit a budget of his office’s estimated expenses for the next fiscal year at the July meeting of the board of supervisors. This budget includes amounts for the compensation of deputies and other employees of the sheriff’s office, disability insurance for the sheriff and deputies, feeding prisoners and inmates in the county jail, travel and transportation expenses of the sheriff and deputies, and for other expenses that may be incurred in the performance of the duties of the office of sheriff. In addition, the budget also includes amounts for the payment of premiums on the bonds and insurance for the sheriff and deputies that are considered necessary to protect the interests of the county by the board of supervisors. These amounts may include, but are not limited to: bonds for liability insurance; insurance against false arrest charges; insurance against false imprisonment charges; theft, fire, and other hazards insurance; and hospitalization insurance.<sup>54</sup>

At the first meeting of every quarter, the board of supervisors is to appropriate a lump sum to the sheriff for the expenses of his office during the current quarter. This appropriation should be one-fourth ( $\frac{1}{4}$ ) of the amount approved in the annual budget unless the sheriff requests a different amount. Except in the case of emergency, the appropriation for the quarter beginning October 1<sup>st</sup> of the last year of the sheriff’s term cannot exceed one-fourth ( $\frac{1}{4}$ ) of the annual budget.<sup>55</sup>

The sheriff must file a report of all expenses for his office during the preceding month with the board of supervisors for approval at its regular monthly meeting. The budget for the sheriff’s office may be revised at any regular meeting by the board of supervisors. The board may make supplemental appropriations to the sheriff’s office.<sup>56</sup>

The sheriff is also charged with several book and record-keeping duties. One such duty is to serve as the county librarian. This requires the sheriff to keep the Mississippi Department Reports, census reports, statutes of the state, the *Mississippi Reports*, digests, and legislative journals assigned to his county in the courtroom of the courthouse. The sheriff must also keep books of every kind, maps, charts, and other things that may be donated to the county by the state, the United States, individuals, or other sources. All of the resources mentioned are not to be taken from the courthouse.<sup>57</sup>

The sheriff must also keep a jail docket, “in which he shall note each warrant or mittimus by which any person shall be received into or placed in the jail of his county, entering the nature of the writ or warrant, by whom issued, the name of the prisoner, when received, the date of arrest and commitment, for what crime or other cause the party is imprisoned, and on what authority, how long the prisoner was so imprisoned, how released or discharged, and the warrant therefor or the receipt of the officer of the penitentiary when sent there.”<sup>58</sup> The sheriff is also required to keep an execution docket, in which “he shall note each execution received by him, specifying the names of all parties, the amount and date of the judgement, the court from which issued and when returnable, the amount of the costs, the date when the same was received, and all levies and other proceedings had thereon.”<sup>59</sup>

Another log that must be kept by the sheriff is a meal log. This log is given monthly to the board of supervisors by the sheriff for the meals served to prisoners. This log must include the name of each prisoner, the date and time of incarceration and release, to be posted daily, showing the number of meals served to prisoners at each mealtime, and the hours of the day served.<sup>60</sup>

Before taking office the sheriff is required to take the oath of office and give bond in the amount of one hundred thousand dollars (\$100,000.00). The premiums shall be paid by the county.<sup>61</sup> Sheriffs are compensated through a legislatively-determined salary scale. This salary scale provides payment based on county population.<sup>62</sup>

### **Tax Assessor/Collector**

The offices of tax assessor and tax collector are established in Article 5, § 135 of the *Mississippi Constitution*. Both offices are elected for four year terms by the county at large.<sup>63</sup> In counties with a total assessed valuation of sixty-five million dollars (\$65,000,000) or above, the board of supervisors may separate the office of tax collector from the office of assessor by resolution spread upon the minutes of the board, provided that the separation comes into effect with the succeeding term of office and does not affect any duly elected official during the performance of his term. Any such resolution to separate the offices must be adopted on or before February 1<sup>st</sup> of any year in which general county and statewide elections are held.<sup>64</sup> There are currently twenty-three (23) counties in Mississippi with separate tax assessors and collectors: Adams, Alcorn, Copiah, DeSoto, Forrest, Harrison, Hinds, Itawamba, Jackson, Lauderdale, Lee, Leflore, Madison, Marshall, Monroe, Prentiss, Pike, Rankin, Tate, Tishomingo, Warren, Washington, and Yazoo.<sup>65</sup>

After the offices have been separated, they must remain separate until consolidated by a similar resolution of the board of supervisors for the succeeding term; the resolution to consolidate the offices will become effective only after the affirmative vote of a majority of the qualified voters of the county participating in an election to be held in conformity, in all respects, with the applicable statutes governing special elections.<sup>66</sup>

The county assessor must, by personal inspection and examination, gather and record any and all available data and information bearing upon the location, number, amount, kind, and value of any and all property and persons which he is required by law to assess. The assessor must keep a list of all persons subject to assessment in his county. He must note all removals from the county or from one precinct to another within the county and add the names of all persons subject to assessment moving into his county. This information is filed and systematically indexed and remains a permanent part of the record of the assessor's office so that the records can be used by the board of supervisors and other officials of the county and state performing duties dealing with the assessment of property and the collection of taxes.<sup>67</sup>

These records may be generated, filed, stored, retained, copied, or reproduced by microfilm, microfiche, data processing, computers, magnetic tape, optical discs or any other electronic process which correctly and legibly stores and reproduces or which forms a medium for storing,

copying or reproducing documents, files, and records in addition to, or in lieu of, the paper documents, files, and records.<sup>68</sup>

Another duty of the assessor is to inquire into the purchase price paid for any property, real or personal, and to ascertain and acquaint himself with any sales or transfers of property of similar description or value made or effected in the vicinity, within the year or years next preceding the listing for assessment then being made. The price paid for property should be considered by the assessor in determining the value of property listed for assessment.<sup>69</sup>

The county tax assessor has the right, power, and authority to require an inspection of a property owner's books and accounts, papers, memoranda, and records, and from this inspection make an estimate of the value of property. The assessor may also question the owner, agent, or employees of the owner about the actual cash value of any property subject to assessment. The assessor has the right and power to inquire into and ascertain the insured value of any and all property, or into the value at which the property has been insured previously. This includes the amount of fire insurance carried on all stocks of merchandise or goods kept for use or sale, machinery, fixtures, and other property. If the assessor believes or has reason to believe that the list of taxable property furnished by any person is incomplete or incorrect, or if any property has been undervalued, they shall assess the same and add it to the assessment roll at its true value.<sup>70</sup>

In counties that have not separated the offices of assessor and collector, the assessor collects all taxes, including, but not limited to, ad valorem and privilege taxes, charges, and fees of every kind and by the twentieth day of the month following collection, pay same to the collecting political subdivision without retaining any portion for his services.<sup>71</sup>

In the twenty-three counties throughout the state which have separated the offices of tax assessor and tax collector, the tax collector is to collect all taxes previously collected by assessors including, but not limited to, ad valorem and privilege taxes, charges, and fees of every kind and nature. These tax collectors will have the full and complete authority and liabilities previously possessed by the tax assessor.<sup>72</sup>

The assessor and tax collector is required to submit a budget of his office's estimated expenses for the next fiscal year at the July meeting of the board of supervisors. This budget should include amounts for the compensation of deputies and other employees of the assessor and tax collector's office, travel and transportation expenses, theft insurance premiums, equipment and office supplies, and for other expenses that may be incurred in the performance of the duties of the office of assessor and tax collector. In addition, the budget should include amounts for the payment of premiums on the bonds and insurance for the assessors and deputies that are considered by the board of supervisors necessary to protect the interests of the county.<sup>73</sup>

At the first meeting of every quarter, the board of supervisors appropriates a lump sum to the assessor and tax collector for the expenses of his office during the current quarter. This appropriation should be one-fourth ( $\frac{1}{4}$ ) of the amount approved in the annual budget unless the assessor and tax collector requests a different amount. Except in the case of emergency, the appropriation for the quarter beginning October 1<sup>st</sup> of the last year of the assessor and tax collector's term cannot exceed one-fourth ( $\frac{1}{4}$ ) of the annual budget.<sup>74</sup>

The assessor and tax collector must file a report of all expenses for his office during the preceding month with the board of supervisors for approval at its regular monthly meeting. The budget for the assessor and tax collector's office may be revised at any regular meeting by the board of supervisors. The board may make supplemental appropriations to the assessor and tax collector's office.<sup>75</sup>

In counties where the offices of tax assessor and collector have been separated, the individual offices should follow the budget guidelines prescribed in the code for in the combined operation of the assessor and tax collector's office.<sup>76</sup>

Before entering office, the tax assessor and/or collector is required to take the oath of office and give bond payable in a penalty equal to five percent (5%) of the sum of all state and county taxes shown by the assessment rolls for the year immediately preceding the commencement of the term of office. However, the bond shall not exceed one hundred thousand dollars (\$100,000.00).<sup>77</sup> Salaries of assessors and/or tax collectors are determined through a legislatively-determined salary scale. The annual salary of each assessor and/or tax collector shall be based upon the total assessed valuation of his respective county for the preceding taxable year. The board of supervisors shall pay an additional five thousand dollars (\$5,000.00) to a person serving as assessor and tax collector for their county, or an additional three thousand five hundred dollars (\$3,500.00) to that person if the county is split into two judicial districts.<sup>78</sup>

Properly trained assessors and/or tax collectors and their deputies are vital to maintain equal and fair taxation across the state. *Code*, § 27-3-52 requires that "counties having not more than five thousand (5,000) applicants for homestead exemption shall have at least one (1) certified appraiser, and counties having more than five thousand (5,000) applicants for homestead exemption shall have at least two (2) certified appraisers. Section 27-1-51 also requires that "counties having not more than fifteen thousand (15,000) parcels of real property shall have a minimum of two (2) Collectors of Revenue I (CR 1), and counties having more than fifteen thousand (15,000) shall have a minimum of three (3) Collectors of Revenue I (CR 1)."

This certification can be obtained through the Mississippi Education and Certification Program administered by the Mississippi State University Extension Service Center for Government and Community Development.

## **APPOINTED OFFICIALS**

### **Board Attorney**

With the complexity of today's county government, the board attorney is a critical appointment for the board of supervisors. It is essential that the board attorney provide sound legal advice to the board of supervisors in all matters concerning the county and county operations. It is also critical for the board of supervisors to follow the advice given by the board attorney. Since a wide variety of legal issues surround the normal activity of county government, the board attorney keeps the board of supervisors within the confines of the law when the board makes decisions.

*Code*, § 19-3-47 authorizes the board of supervisors to employ counsel. The board attorney shall represent the board of supervisors in all civil cases in which the county has interest. This includes eminent domain proceedings, the examination and certification of title to property the county may be acquiring, and in any criminal suit against a county officer for malfeasance, where the county may be financially liable.<sup>79</sup> The board of supervisors also has the authority to employ a firm of attorneys to represent it as its regular attorney. However, the board may not employ an attorney and firm of attorneys at the same time as the regular attorney for the board.<sup>80</sup> The board attorney may be removed from office by a majority vote by the board of supervisors.

The board attorney's duties consist of a wide range of activities. Attending meetings of the board of supervisors; drafting minutes; answering legal inquiries from board members, other county officials, and citizens; researching land records; drafting board orders; and obtaining Attorney General's opinions are just a few of the basic duties of the board attorney. Other duties that do not occur on a daily basis include the acquisition of road and bridge right of ways, voting rights submissions, bond work, and an array of litigation.<sup>81</sup>

Generally, the county board attorney is compensated by an annual salary set at the discretion of the board of supervisors. The salary must not exceed the maximum annual amount authorized by law for payment to a member of the board of supervisors.<sup>82</sup> The board may also pay reasonable compensation to their counsel who may be involved with the issuance of bonds and other business in connection with the issuance of bonds. The attorney's fee for bond services shall not exceed the following amounts:

One percent (1%) of the first Five Hundred Thousand Dollars (\$500,000.00) of any one (1) bond issue; one-half (½%) of the amount of the issue in excess of Five Hundred Thousand (\$500,000.00) but not more than One Million Dollars (\$1,000,000.00); and one-fourth percent (¼%) of the amount of the issue in excess of One Million Dollars (\$1,000,000).<sup>83</sup>

## **County Administrator**

All counties in Mississippi operating under the unit system of road administration are required, by statute, to employ a county administrator. Counties that are exempt from the unit system of operation (beat or district counties) are not required to hire an administrator but may do so at the discretion of the board of supervisors.<sup>84</sup> The county administrator carries out all policies adopted by the board of supervisors and is subject to the supervision of the board.

Counties operating under the district (or beat) system of road administration who choose to hire a county administrator must hire an individual who holds a bachelor's degree from an accredited university and is knowledgeable in at least one of the following areas: budget planning, accounting, purchasing, personnel administration or road construction procedures.<sup>85</sup>

The county administrator in the unit system of road administration is not required to hold a college degree but must be knowledgeable in the areas of work projection, budget planning, accounting, purchasing, cost control, or personnel management. The board of supervisors may



appoint the chancery clerk to serve as county administrator. If the chancery clerk is appointed to serve as county administrator the board may also appoint him to serve as purchase clerk or inventory control clerk. A chancery clerk serving as county administrator in a unit system county may not serve as the county road manager or receiving clerk.<sup>86</sup> The chancery clerk, upon approval of the board, may receive additional compensation for serving as county administrator.<sup>87</sup>

The board of supervisors of at least two (2) counties, but no more than five (5) counties, can employ one county administrator through interlocal agreement. However, a chancery clerk may not be appointed to serve as administrator for more than one county, nor for any county other than the one in which the clerk holds office as chancery clerk.<sup>88</sup>

The county administrator serves at the will and pleasure of the board of supervisors and is compensated by salary fixed by the board. The administrator may be removed from office by a majority vote of the board of supervisors.<sup>89</sup>

Certain duties are prescribed by law for the county administrator in both unit and district (beat) counties:

1. Employ an office clerk and such other technical and secretarial assistance for the board as may be needed maintain an office for the board and prepare a budget for his office subject to approval of the board;
2. Have authority to make inquiry of any person or group using county funds appropriated by the board of supervisors as to the use or proper use of such funds and shall report to the board of supervisors as to such findings;
3. Have general supervision over the county sanitary landfills and refuse collection procedures;
4. Have general supervision over county-owned parks playgrounds and recreation areas;
5. Have general supervision over any and all zoning and building code ordinances adopted by the board of supervisors and shall administer such ordinances;
6. Have general supervision over any and all airports owned by the county;
7. Be the liaison officer to work with the various divisions of county government and agencies to see that county-owned property is properly managed maintained repaired improved kept or stored;
8. See that all orders resolutions and regulations of the board of supervisors are faithfully executed;

9. Make reports to the board from time to time concerning the affairs of the county and keep the board fully advised as to the financial condition of the county and future financial needs;
10. Keep the board of supervisors informed as to federal and state laws and regulations which affect the board of supervisors and the county shall advise the board as to the possible availability of federal or state grants and assistance for which the county may be eligible shall assist in the preparation and submission of plans and project specifications necessary to acquire such assistance and shall be the administrating officer of county grants from state and federal sources;
11. Be charged with the responsibility of securing insurance coverage on such county property as the board shall decide should be insured and of securing any other insurance required or authorized by law. He shall work out a plan of insurance for the county which will insure minimum premiums;
12. Receive inquiries and complaints from citizens of the county as to the operation of county government investigate such inquiries and complaints and shall report his finding to the board and the individual supervisor of the district from which such inquiry or complaint arises;
13. Meet regularly with the board of supervisors and have full privileges of discussion but no vote;
14. Do any and all other administrative duties that the board of supervisors could legally do themselves and that they can legally delegate without violating the laws of the state nor impinging upon the duties set out by law for other officers.<sup>90</sup>

The following additional duties are prescribed by law for the county administrator in district (beat) counties:

1. Prepare an inventory of all personal property owned by the county and the location and condition of such property and shall maintain a perpetual inventory of such property;
2. List all buildings and real estate owned by the county and keep a perpetual list of such real estate;
3. Be responsible for carrying out the responsibilities of the board of supervisors in regard to janitorial services and maintenance of buildings and property owned by the county except such as may be specifically assigned by the board of supervisors to some other person or office or may be the responsibility of some other office under law;
4. Exercise supervision over the purchase clerk and inventory control clerk of the county and the boards or other divisions of county government financed in whole or in part through taxes levied on county property and purchases shall be made from vendors

whose bids have been accepted by the board of supervisors under the provisions of law or to serve as purchase clerk or inventory control clerk;

5. Assist the board in the preparation of the budget and preparation of the tax levy.<sup>91</sup>

In unit counties, the following duties are also prescribed by law for the county administrator:

1. Be responsible for carrying out the policies adopted by the board of supervisors;
2. Exercise supervision over the boards or other divisions of county government except for the sheriff's department financed in whole or in part through taxes levied on county property and purchases shall be made from vendors whose bids have been accepted by the board of supervisors under the provisions of law;
3. Prepare the budget for consideration by the board of supervisors and assist the board of supervisors in the preparation of the tax levy; however the sheriff any governing authority as defined in *Code*, § 31-7-1 funded in whole or in part by the board of supervisors and any board or commission funded in whole or in part by the board of supervisors shall be responsible for preparing their respective budgets for consideration by the board of supervisors.<sup>92</sup>

The county administrator is required to take the official oath of office and give bond to the board of supervisors with sufficient surety, to be payable by law, in a penalty equal to three percent (3%) of the sum of all the state and county taxes shown by the assessment rolls. The bond premiums are paid from the county general fund or other available funds and shall not exceed the amount of \$100,000.<sup>93</sup>

### **County Engineer**

The boards of supervisors have the discretion to employ, as county engineer, a civil engineer or person qualified to perform the duties of a county engineer, and any assistant engineers thought necessary.<sup>94</sup> The county engineer may also serve as the county road manager.<sup>95</sup> The employment and work of the county engineer is controlled by the board of supervisors.<sup>96</sup>

For counties using the beat (district) system, all projects for the construction or reconstruction of a bridge which will cost more than five thousand dollars (\$5,000.00) or for the construction or reconstruction of roads which will cost more than five thousand dollars (\$5,000.00) per mile, the employment of a qualified engineer is mandatory, whether the work is being done by the county or by a separate district, and whether the work is to be done by contract or otherwise. In these cases the employment may be for the particular work, rather than for a term.<sup>97</sup>

For counties using the unit system, all projects for the construction or reconstruction of a bridge which will cost more than twenty-five thousand dollars (\$25,000.00) or for the construction or reconstruction of roads which will cost more than twenty-five thousand dollars (\$25,000.00) per mile, the employment of a qualified engineer is mandatory, whether the work is to be done by

contract or otherwise. In these cases the employment may be for the particular work rather than for a term.<sup>98</sup>

The county engineer is responsible for preparing all plans and estimates for the construction of bridges and superintend their construction, making all estimates and plans of work to be done in the construction and maintenance of roads and superintend the work, reviewing the report to the board of supervisors on the maintenance work that should be done to properly upkeep and maintain all roads and bridges in the county, and checking over and reporting to the board of supervisors on all estimates before payment by the board of supervisors of all work done on public roads.<sup>99</sup>

The county engineer may be required to furnish plans and estimates, and may superintend the construction of any road under the supervision of the state highway commission, if the highway commission may so elect. This provides a means for the board of supervisors and the highway commission to cooperate on such a project, when possible, and reduce the expense of construction of any road.<sup>100</sup>

The compensation of the county engineer shall be determined by the board of supervisors. The manner of making such compensation shall be spread annually upon the minutes of the board.<sup>101</sup>

### **Road Manager**

*Code*, § 65-17-1 establishes the county road department, discusses the employment of a county road manager, and prescribes the duties and powers of the county road manager. All counties operating under the county-wide system of road administration, or unit system, are required to appoint a road manager and operate a centralized county-wide road department. Counties operating under the district (beat) system may adopt all or part of the road policies and procedures applicable to unit counties, but are not required to by law.

In unit system counties, the board of supervisors is required to adopt general policies concerning the administration of the county road department. Those policies and procedures are administered by the county road manager.

The county road manager should be experienced and knowledgeable in the areas of construction and maintenance of roads and bridges.<sup>102</sup> Since this type of expertise is required, the board of supervisors may appoint the county engineer to also serve as road manager and may also serve in the same capacity in two separate counties.<sup>103</sup> The road manager cannot be a member of the board of supervisors.<sup>104</sup>

The road manager is required to assist the county administrator in the preparation of a road budget. The road budget should include all anticipated expenditures for the next fiscal year for the maintenance and the construction of all county roads and bridges. The proposed budget should be submitted to the board of supervisors for approval.<sup>105</sup>

The road manager, subject to approval of the board of supervisors, may hire assistants and employees necessary to maintain the county road system. The road manager has full supervision

of personnel engaged in the work of the road department. The road manager also has the authority to purchase or lease the necessary equipment and materials for operation of the county road department as long as it conforms with the county budget. The road manager must comply with all central purchase laws and all purchases are subject to approval by the board.<sup>106</sup>

The county road manager is compensated from county road and bridge funds and the amount is determined by the board of supervisors. Before entering office as road manager, he is required to post a bond payable in a penalty in an amount approved by the board; the bond should not be less than \$50,000.00.<sup>107</sup>

The board of supervisors may supersede any decision made by the road manager by a majority vote. However, any change or modification of a decision should not constitute a breach of contract.<sup>108</sup> The road manager can be removed from office at any time by a majority vote of the board of supervisors.<sup>109</sup>

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<sup>1</sup> Code, § 9-5-135.

<sup>2</sup> Code, § 25-7-11.

<sup>3</sup> Code, § 89-5-25 *et seq.*

<sup>4</sup> Code, § 9-5-141.

<sup>5</sup> Code, § 9-5-169.

<sup>6</sup> Code, § 19-3-27.

<sup>7</sup> Code, § 19-13-27.

<sup>8</sup> Code, § 19-11-13.

<sup>9</sup> Code, § 19-11-23.

<sup>10</sup> Code, § 27-51-13.

<sup>11</sup> Code, § 9-5-131.

<sup>12</sup> Code, § 9-1-43.

<sup>13</sup> Code, § 9-7-121 *et seq.*

<sup>14</sup> Code, § 9-7-135.

<sup>15</sup> Code, § 9-7-129.

<sup>16</sup> Code, § 9-7-127.

<sup>17</sup> Code, § 23-15-299.

<sup>18</sup> Code, § 41-57-48.

<sup>19</sup> Code, § 9-7-121.

<sup>20</sup> Code, § 9-1-43.

<sup>21</sup> Code, § 19-19-2.

<sup>22</sup> Code, § 19-19-5(2).

<sup>23</sup> Code, § 19-19-5(1).

<sup>24</sup> Code, § 19-19-7.

<sup>25</sup> Code, § 19-19-3.

<sup>26</sup> Code, § 25-7-27.

<sup>27</sup> Const., § 135.

<sup>28</sup> Code, § 19-21-103.

<sup>29</sup> Code, § 19-21-105.

<sup>30</sup> Code, § 41-61-57.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> Code, § 41-61-59.

<sup>34</sup> Code, § 9-11-9.

<sup>35</sup> Code, § 99-33-1.

<sup>36</sup> Const., § 171.

<sup>37</sup> *Ibid.*

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- <sup>38</sup> *Code*, § 9-11-2.
- <sup>39</sup> *Code*, § 9-11-15.
- <sup>40</sup> *Code*, § 9-11-4.
- <sup>41</sup> *Code*, § 9-11-3.
- <sup>42</sup> *Code*, § 9-11-27.
- <sup>43</sup> *Code*, § 9-11-7.
- <sup>44</sup> *Code*, § 9-11-25.
- <sup>45</sup> *Code*, § 19-25-1.
- <sup>46</sup> *Code*, § 19-25-3.
- <sup>47</sup> *Ibid*.
- <sup>48</sup> *Code*, § 19-25-67.
- <sup>49</sup> *Ibid*.
- <sup>50</sup> *Code*, § 19-25-71.
- <sup>51</sup> *Ibid*.
- <sup>52</sup> *Code*, § 47-1-51.
- <sup>53</sup> *Code*, § 19-25-69.
- <sup>54</sup> *Code*, § 19-25-13.
- <sup>55</sup> *Ibid*.
- <sup>56</sup> *Ibid*.
- <sup>57</sup> *Code*, § 19-25-65.
- <sup>58</sup> *Code*, § 19-25-63.
- <sup>59</sup> *Code*, § 19-25-61.
- <sup>60</sup> *Code*, § 19-25-74.
- <sup>61</sup> *Code*, § 19-25-5.
- <sup>62</sup> *Code*, § 25-3-25.
- <sup>63</sup> *Const.*, § 135.
- <sup>64</sup> *Code*, § 27-1-11.
- <sup>65</sup> **Error! Main Document Only.** Mississippi, Secretary of State, *Mississippi Official and Statistical Register 2008-2010*, pp. 243-334.
- <sup>66</sup> *Code*, § 27-1-11. **Error! Main Document Only.**
- <sup>67</sup> *Code*, § 27-1-19.
- <sup>68</sup> *Ibid*.
- <sup>69</sup> *Code*, § 27-1-21.
- <sup>70</sup> *Code*, § 27-1-23.
- <sup>71</sup> *Code*, § 27-1-7.
- <sup>72</sup> *Code*, § 27-1-13.
- <sup>73</sup> *Code*, § 27-1-9.
- <sup>74</sup> *Ibid*.
- <sup>75</sup> *Ibid*.
- <sup>76</sup> *Code*, § 27-1-15.
- <sup>77</sup> *Code*, § 27-1-7.
- <sup>78</sup> *Code*, § 25-3-3.
- <sup>79</sup> *Code*, § 19-3-47.
- <sup>80</sup> *Ibid*.
- <sup>81</sup> Michael D. Garriga and Sumner D. Davis III, “1998-99 Compensation Study.” Unpublished Report from the 1999 Mississippi Association of County Board Attorney’s 1999 Summer Continuing Legal Education Seminar, Tunica, Mississippi.
- <sup>82</sup> *Code*, § 19-3-47.
- <sup>83</sup> *Ibid*.
- <sup>84</sup> *Code*, § 19-4-1.
- <sup>85</sup> *Ibid*.
- <sup>86</sup> *Ibid*.
- <sup>87</sup> *Code*, § 19-4-3.
- <sup>88</sup> *Code*, § 19-4-1.
- <sup>89</sup> *Code*, § 19-4-3.

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- <sup>90</sup> *Code*, § 19-4-7.  
<sup>91</sup> *Ibid.*  
<sup>92</sup> *Ibid.*  
<sup>93</sup> *Code*, § 19-4-9.  
<sup>94</sup> *Code*, § 65-17-201.  
<sup>95</sup> *Code*, § 65-17-1(4).  
<sup>96</sup> *Code*, § 65-17-207.  
<sup>97</sup> *Code*, § 65-17-201.  
<sup>98</sup> *Ibid.*  
<sup>99</sup> *Code*, § 65-17-203.  
<sup>100</sup> *Ibid.*  
<sup>101</sup> *Code*, § 65-17-205.  
<sup>102</sup> *Code*, § 65-17-1(2).  
<sup>103</sup> *Code*, § 65-17-1(4).  
<sup>104</sup> *Code*, § 65-17-1(2).  
<sup>105</sup> *Code*, § 65-17-1(8).  
<sup>106</sup> *Code*, § 65-17-1(9).  
<sup>107</sup> *Code*, § 65-17-1(3).  
<sup>108</sup> *Code*, § 65-17-1(10).  
<sup>109</sup> *Code*, § 65-17-1(2).

## **CHAPTER 7**

### **FINANCIAL ADMINISTRATION**

#### **W. Edward Smith**

The board of supervisors has overall responsibility for the financial administration of a county. This responsibility includes approving and monitoring the budget, making appropriations, acting on claims against the county, authorizing the issuance of warrants (checks) and selecting depositories (banks) for county funds. Revenues to finance the various county departments and/or functions originate from various local, state and federal sources.

#### **REVENUE SOURCES**

Although specific revenue sources may differ from county to county, all counties receive revenue from three general sources – revenue generated at the local level, revenue received from the state, and revenue received from the federal government.

##### **Local Sources**

The primary source of local revenue for a county is ad valorem taxes on property. Other local sources of revenue include, but are not limited to, local privilege licenses, road and bridge privilege taxes, court fines and forfeitures, fees from the chancery and circuit clerks due to earnings over limitations established by state law, excess tax bids on property sold for taxes, charges for housing federal, state and other local government prisoners, E-911 emergency service fees, garbage collection fees, and gaming contract fees.

##### **State Sources**

State sources of revenue include, but are not limited to, reimbursements for food stamp/welfare payments, homestead exemption, state aid roads, emergency management funds (civil defense, disasters, etc.), distribution of commodities, gasoline tax distributions, truck and bus privilege tax distributions, oil, gas, and timber severance tax, liquor privilege tax, national forest distributions, grand gulf distributions, payments in lieu of taxes, insurance rebate distributions, and gaming contract fees.

##### **Federal Sources**

Federal sources of revenue include, but are not limited to, national forest distributions, payments in lieu of ad valorem taxes, and loans or grants.



## **BUDGETING<sup>1</sup>**

A budget is a plan of action for a fiscal year. It represents the choices of the board of supervisors as to how the county's limited resources are allocated among various competing demands. The budget becomes a detailed plan of operations and capital outlay for a fiscal year. It includes the activities and services which the county plans to provide for its citizens during the fiscal year, physical improvements such as roads and buildings which the county plans to construct during the fiscal year, expenditures required to support these operations and capital projections, and the resources available for meeting the planned expenditures. The budget also addresses such policy issues as debt service need, cash management, taxation and other revenue levels, and rates placed upon local taxpayers.

### **The Budgetary Process**

The budgetary process encompasses a number of different activities and decisions over a period of several months, the end result of which is the annual budget.

Budgetary process stages occur over the entire fiscal year because the budgetary process is ongoing. The budget is under review throughout the year, may be amended when necessary, and culminates with the final amended budget. The stages of the budgetary process may be described as follows:

- Identifying needs and forecasting requirements for such needs;
- Preparing departmental budget requests;
- Reviewing departmental budget requests;
- Preparing the recommended annual budget;
- Adopting and implementing the budget; and,
- Adopting the final amended budget.

Budgeting is only one of many policy control mechanisms; but it is the most fundamental and, therefore, the most important. How the services provided by county governments are financed must be properly planned and controlled in order to achieve maximum efficiency in the use of resources, so as to minimize the tax burden upon the citizens, comply with state law and contractual obligations, and assure that a sound financial position is maintained.

### **Organization of the Budget**

The budgetary process should take a "building blocks" approach to the development of a budget. A set of basic budget documents, estimating revenues and departmental requests for expenditures, is the foundation of the budget.

Initial steps in the budgetary process involve formulating budget policy; estimating the amount of revenues which can be expected to be available for the upcoming fiscal year; setting budgetary guidelines; and transmitting this financial forecast information, together with the budget forms, to the county departments. This preliminary work sets the stage for later decisions to be made by the county departments, the chancery clerk or county administrator and the board of supervisors.

Departmental budget requests must be submitted to the board of supervisors for approval each year at the July meeting of the board. A proposed budget is then prepared for the individual funds. The chancery clerk or county administrator usually performs this task.

The budget is presented at the August meeting of the board of supervisors. The board must then advertise a public hearing on the proposed budget and tax levy. The budget is required to be adopted by September 15 and is required to be published at least one time, no later than September 30, in a newspaper published and/or having general circulation in the county.

The budget is prepared on forms prescribed by the Office of the State Auditor and is required to be prepared by funds. The budget may be revised or amended as allowed by law.

Once the budget is completed, the board must adopt a resolution approving the budget and enter the resolution in detail on the minutes of the board of supervisors. Taxes are then levied in support of the budget.

At each regular monthly meeting of the board of supervisors, the chancery clerk is required to submit a financial report showing the expenditures and liabilities incurred against each separate budget during the preceding month, the unexpended balance of each budget item and the unencumbered balance in each fund. Receipts from taxes and other sources during the preceding month are also required to be reported.

The board of supervisors must keep expenditures within the limits set by the budget. The amount approved to be expended for any particular item in the budget must not be exceeded, except in the case of capital outlay, election expenses, emergency expenditures, and extraordinary court costs. The board may amend the budget by entering an amendment on the minutes using the prescribed budget forms. The budget may not be amended after September 30 of the fiscal year it represents. The clerk of the board is prohibited from issuing any warrant for an expenditure in excess of the budgeted amount.

The board must enter a complete, final amended budget on its minutes no later than October 31, following the close of the fiscal year.

## Budget Calendar

Date	Process
May Board Meeting	Formulate budget policy (board of supervisors).
May Board Meeting	Develop financial forecast (may be done by the budget officer).
June Board Meeting	Distribute departmental request forms to the sheriff and tax assessor/collector, and notify them of due date.
July - First Monday	Deadline for returning departmental requests.
July Board Meeting	Review departmental requests.
August Board Meeting	Formulate budget.
August - September	Advertise public hearing for budget and tax levy, hold public hearing
September 15	Deadline for adopting the budget.
September 30	Deadline for publishing the budget.
September Board Meeting	Set tax levy necessary to support the adopted budget.
September 30	Deadline for amending the budget for the fiscal year ending this same day.
October 31	Deadline for entering the final amended budget of all funds on the board minutes.
Monthly Board Meeting	Submit a financial report showing the expenditures, liabilities, unexpended balance and unencumbered balance in each fund, and the receipts for each fund.

## Budget Forms and Requirements

The Office of the State Auditor has prescribed the use of certain budget forms and adherence to certain budgeting guidelines, as follows:

- All funds are required to be budgeted individually, except for funds held for a third party or which represent a custodial function of the county. Generally speaking, the exceptions are expendable trust and agency funds.
- The budget must be prepared on forms prescribed by the Office of the State Auditor.
- Amendments to the budget must be prepared on the budget form or forms necessary for the amendments. The amended form(s) must then be entered on the

minutes of the board of supervisors. The budget may not be amended after the close of the fiscal year it represents (September 30).

- The final amended budget of all funds for a fiscal year, which may be amended up to the end of the fiscal year, must be entered on the minutes of the board of supervisors no later than October 31, next following the close of the fiscal year.

## **ACCOUNTING<sup>2</sup>**

The county budget law requires the clerk of the board of supervisors (chancery clerk) of each county to keep a set of books, as prescribed by the State Auditor. (See the *Mississippi County Financial Accounting Manual* issued by the Office of the State Auditor.) The books shall contain accounts under headings which correspond with the various headings of the budget, so that the expenditures under each heading are known. The clerk must enter all receipts and expenditures in the books each month so that the information needed for a comprehensive review of county operations under budgetary limitations may be readily obtainable.

All appropriations of funds made under the provisions of a budget for a fiscal year lapse at the end of that fiscal year, except for appropriations for uncompleted improvements in process of construction; all books close September 30. All disbursements and appropriations made on or after October 1, other than appropriations for uncompleted improvements in process of construction, are charged against the current budget and all funds received on or after October 1 must be credited to the current budget. Some restrictions exist on certain expenditures during the last six (6) months of a term.

## **APPROPRIATIONS<sup>3</sup>**

While budgeting is the process of estimating future receipts and expenditures, appropriating is the act of designating money to a particular function. With respect to county funds, the law provides, “The Board of Supervisors shall direct the appropriation of money that may come into the county treasury, but shall not appropriate the same to an object not authorized by law.” Any member of the board of supervisors that votes for the payment of any unauthorized claim or any appropriation not authorized by law, shall be subject to indictment and, upon conviction, be fined not exceeding double the amount of such unlawful charge, or may be imprisoned in the county jail not more than three (3) months, or be subject to both the fine and imprisonment.

## **CLAIMS<sup>4</sup>**

The method for presenting a claim against a county is prescribed by law. The claim must first be filed with the clerk of the board (chancery clerk). The claim must be sufficiently itemized to show in detail the kind, quantity, price, etc., of items sold to the county or services provided to the county. Each itemized invoice or statement involved in a claim must be properly supported by appropriate evidence of delivery, such as a receiving report or a proper signature on the invoice.

The clerk of the board of supervisors must keep a "Docket of Claims" in which all demands, claims, or accounts against the county presented to him during the month shall be entered (monthly). All demands, claims, and accounts filed against the county shall be preserved by the clerk as a permanent record and numbered to correspond with the warrants (checks) to be issued, if allowed (approved by the board of supervisors). Immediately upon being notified of any judgment being rendered against the county, the clerk must docket it as a claim for allowance and payment, as provided by law. Any claimant who has filed a claim with the clerk in the manner provided by law, whose claim is not allowed because of the failure of the clerk to keep the docket of claims as required, is entitled to recover the amount of the claim from the clerk on his official bond. Failure of the clerk to keep the docket of claims as required shall render the clerk liable to the county in the amount of \$500.00, and the State Auditor, upon information to the effect that a claim docket has not been kept, shall proceed immediately against the clerk for collection of the penalty.

When claims against a county are presented to the clerk of the board of supervisors, the clerk must mark "filed" on the claims and date them as of the date of presentation. The clerk must audit, number, and docket the claims consecutively under the heading of each fund from which it is to be paid. Any claim filed with the clerk on or before the last working day in the month, prior to the next regular meeting of the board of supervisors at which claims are considered, shall be docketed to be considered by the board at that meeting.

Procedures for disposing of claims are stated by law. At each regular meeting of the board, the claims docket must be called and all claims then on file, not previously rejected or allowed, must be acted upon in the order in which they are entered on the docket. All claims found by the board to be illegal, which cannot be made legal by amendment, must be rejected or disallowed. All other claims must be audited, and those found proper upon due proof must be allowed in the order in which they appear on the docket, whether or not there is sufficient money in the funds on which warrants must be drawn for their payment. Those claims to which a continuance is requested by the claimant and those found to be defective, but which might be perfected by amendment, must be continued. When any claim is allowed by the board it must see that the claims docket correctly specifies the name of the claimant, the number of the claim, the amount allowed, and on what account. The president, or the vice president in the absence or disability of the president, of the board of supervisors must check the claims docket at the close of each day's business and must verify the correctness of all docket entries made during the day. He must sign his name at the end of the docket entries covering the day's business, but it is not necessary that he sign the claims docket under each claim allowed or otherwise disposed. The board must enter an order on its minutes approving the demands and accounts allowed and refer to such demands and accounts by the numbers as they appear on the claims docket.

If the board shall reject any claim, in whole or in part, or refuse, when requested at a proper time to pass finally thereon, the claimant may appeal to the circuit court or may bring suit against the county on such claim. In either case, if the claimant recovers judgment and notifies the clerk of the board of supervisors, and if no appeal be taken to the Supreme Court, the board must allow the same and a warrant must be issued.

If the terms of the invoice provide a discount for payment in less than forty-five (45) days, boards of supervisors shall preferentially process it and use all diligence to obtain the savings by compliance with the invoice terms, if it would be cost effective.

Notwithstanding provisions to the contrary, the chancery clerk may be authorized by an order of the board of supervisors entered upon its minutes to issue pay certificates against the legal and proper fund for the salaries of officials and employees of the county, or any department, office or official thereof, without prior approval by the board of supervisors as required by this section for other claims. The chancery clerk may take this action provided the amount of the salary has been previously entered upon the minutes by an order of the board of supervisors or by inclusion in the current fiscal year budget. Such payment must be in conformity with law and in the proper amount for a salaried employee; for hourly employees, payment must not exceed the number of hours worked at the hourly rate approved on the minutes.

It is unlawful for the board of supervisors to allow a greater sum for any account, claim, or demand against the county than the amount actually due according to the legal or ordinary cash compensation for such services rendered, or for salaries or fees of officers, or for materials furnished, or to issue county warrants or orders upon such accounts, claims, or demands when allowed for more than the actual amount allowed. Any illegal allowance by such board may be inquired into by the proper tribunal upon legal proceedings for that purpose whenever such matter may come into question in any case.

If any person claims and receives from the board of supervisors any fee or compensation not authorized by law, or if a member of such board knowingly votes for the payment of any such unauthorized claim or any appropriation not authorized by law, he shall be subject to indictment and, upon conviction, be fined not exceeding double the amount of such unlawful charge, or may be imprisoned in the county jail not more than three (3) months, or be subject to both the fine and imprisonment.

Any member of the board of supervisors may have his vote on any question before the board recorded on the minutes of the board at the time of such vote, and a member who voted against any unauthorized appropriation of money shall not be liable therefor.

## **WARRANTS<sup>5</sup>**

The board of supervisors of each county must provide printed warrants with proper blanks, bound in book form, with a sufficient blank margin, to be used in drawing money out of the county treasury.

Warrants must be drawn by the clerk of the board (chancery clerk) under his seal of office in favor of the claimants on all demands, claims, and accounts allowed by the board in the order of their allowance against the several funds in the county depository from which allowed claims must be paid. The board of supervisors of any county may, in its discretion, adopt the use of a standard check signing machine to be used in place of the manual signing of warrants by the clerk, under such terms and conditions as the board considers proper for the protection of the county. A warrant cannot be signed, removed from the warrant book, nor delivered by the clerk

until there is sufficient money in the fund upon which it is drawn to pay the warrant and all prior unpaid warrants drawn upon that fund, whether delivered or not.

The owner of any claim so allowed may, either before or after allowance, transfer the claim by assignment, and the holder of such assignment is entitled to receive the warrant at the proper time by presenting assignment to the clerk at any time before delivery of the warrant to the original claimant.

County warrants must be registered in a book to be provided by the board for that purpose and the fact of registration must be noted on the back of the warrant. The county depository must pay warrants in the order of their registration, unless there be sufficient funds in the treasury to pay all registered warrants. Warrants not presented for payment within one (1) year after date of their registration lose their priority.

## **DEPOSITORIES<sup>6</sup>**

The amount of money belonging to the several funds in the county treasury which is required to meet the current needs and demands of no more than seven (7) business days must be kept on deposit in qualified financial institutions whose accounts are insured by the Federal Deposit Insurance Corporation (FDIC). Where there is no financial institution in a county qualified as a depository, some financial institution in an adjoining county may qualify as a depository. All deposits are subject to payment when demanded on warrants issued by the clerk of the board of supervisors on the order of the board or on the allowance of a court authorized to allow the same. Financial institutions qualifying as county depositories are not required to pay interest to the county for the privilege of holding deposits unless federal law permits the payment of interest on the deposits, in which case the maximum permitted interest rate must be paid. Where more than one (1) financial institution in a county offers to qualify as a depository, the board of supervisors may allocate such money to each qualified financial institution as practicable in proportion to their respective net worth, and may adopt the rules for receiving the deposits.

At the regular December meeting each year, the board of supervisors must give notice by publication that bids will be received from financial institutions at the following January meeting, or some subsequent meeting, for the privilege of keeping county funds. At the January meeting, or a subsequent meeting as may be designated in the notice, the board of supervisors must receive bids or proposals (as the financial institutions may make) for the privilege of keeping the county funds. The bids or proposals must designate the kind of security authorized by law which the financial institutions propose to give as security for funds. The board must cause the county funds and all other funds in the hands of the county treasurer to be deposited in the qualified financial institution or institutions proposing the best terms. The terms made with each depository shall remain in force for the current calendar year and until new arrangements are made for the next year. The board may, in its discretion, allow depository contracts for a two year period.

Any financial institution in a county, or in an adjoining county where there is no financial institution in the county qualifying, whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to that insurance corporation may qualify as a county depository,

if the institution qualifies as a public funds depository or a public funds guaranty pool member with the State Treasurer. The qualified financial institution shall secure those deposits by placing qualified securities on deposit with the State Treasurer as provided in *Code* § 27-105-5. Any financial institution not meeting the prescribed ratio requirement with the State Treasurer whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to that insurance corporation, may receive county funds in an amount not exceeding the amount that is insured by that insurance corporation and may qualify as a county depository to the extent of that insurance.

### **TRANSFER OF SURPLUS FUNDS<sup>7</sup>**

The board of supervisors may order the transfer of any balance remaining in a special fund to the county general fund to be used for general purposes during the next fiscal year, if the purpose for which the special fund was created has been fully carried out. Taxes for the next year must be reduced by the amount transferred.

Surplus money in a special fund may be transferred to other special funds. When the amount is \$2,500 or more certain newspaper publications are required. A smaller amount does not require publication.

Surplus money which represents the remaining proceeds of a bond issue must be transferred to the proper bond and interest fund to be used to retire the bonds and interest. This can be done without any publication.

Surplus money in a bond and interest fund may be transferred to the general fund or to other funds provided a sufficient balance remains in the fund to fully retire the bonds and interest and the tax levy for that purpose has been discontinued. Certain procedures prescribed by law must be followed.

### **AUDITS<sup>8</sup>**

The clerk of the board of supervisors (chancery clerk) is, by law, the county auditor. Duties of the county auditor include (1) maintaining certain ledger book accounts with county offices; (2) maintaining a “depository funds ledger” to record receipts and disbursements of county funds; (3) maintaining accounts with county officers that collect or receive money for the county; (4) issuing receipt warrants for money paid into the county treasury; (5) examining accounts of all officers receiving funds payable into the county treasury; (6) charging and crediting the tax collector with county taxes; (7) charging fines, penalties, forfeitures and jury tax imposed by the courts; (8) examining books of county officers; and (9) reporting any defaulting officers to the grand jury.

The State Department of Audit has the authority and responsibility to (1) post-audit, and when considered necessary, to pre-audit and investigate the financial affairs of the various offices, boards, and commissions of county government; (2) make written demand, when necessary, for the recovery of any amount representing public funds improperly withheld, misappropriated and/or otherwise illegally expended by an officer, employee, or administrative body of a county,



and for the recovery of the value of any public property disposed of in an unlawful manner and institute a suit if the demand is not satisfied within thirty (30) days; and (3) investigate any alleged or suspected violation of the laws of the state by any office or employee of the county in the purchase, sale, or use of any surplus, services, equipment, or other property belonging to the county, and to do any and all things necessary to procure evidence sufficient to either prove or dispose the existence of any alleged or suspected violations. The State Auditor has the authority to contract with qualified public accounting firms to perform selected county audits if funds are available.

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<sup>1</sup> *Code*, §§ 19-11-1 through 19-11-19 and 27-39-203.

<sup>2</sup> *Code*, §§ 19-11-1 through 19-11-27.

<sup>3</sup> *Code*, §§ 19-3-59 and 19-13-35.

<sup>4</sup> *Code*, §§ 19-13-27 through 19-13-39.

<sup>5</sup> *Code*, §§ 19-13-41 through 19-13-45.

<sup>6</sup> *Code*, §§ 27-105-303, 27-105-305, 27-105-315, and 27-105-349.

<sup>7</sup> *Code*, § 27-105-367.

<sup>8</sup> *Code*, § 19-17-1 through 19-17-19 and 7-7-211.

## CHAPTER 8

### AD VALOREM TAX ADMINISTRATION

**Frank McCain and Joe B. Young**

Ad valorem taxes – property taxes levied according to the value of the property – are the main source of income for county government. While cities receive ad valorem taxes and eighteen and one-half percent (18½%) of sales tax revenue collected within their boundaries, county governments receive no sales tax funds. Counties do receive some tax revenue rebates from state government.

The board of supervisors possesses considerable authority with respect to ad valorem tax administration. The jurisdiction and power to levy taxes by the board of supervisors is found in *Code*, § 19-3-41:

They shall have the power to levy such taxes as may be necessary to meet the demands of their respective counties . . . not exceeding the limits that may be prescribed by law. . . .

The ad valorem tax administration process involves three main, inter-related activities: assessment of property, setting the ad valorem tax levy, and collecting the ad valorem taxes. This chapter surveys these three activities and discusses special ad valorem tax exemptions.

#### PROPERTY ASSESSMENT<sup>1</sup>

The Mississippi Constitution requires all property to be assessed uniformly and equitably:

Section 112. Equal taxation; property tax assessments

Taxation shall be uniform and equal throughout the state. All property not exempt from ad valorem taxation shall be taxed at its assessed value. Property shall be assessed for taxes under general laws, and by uniform rules, and in proportion to its true value according to the classes defined herein. The Legislature may, by general laws, exempt particular species of property from taxation, in whole or in part....

#### Classes of Property<sup>2</sup>

The Mississippi constitution and law lists five categories of property that are taxed for ad valorem purposes. Real property (land, buildings, and other permanent improvements to the land) is divided into the first two classes of taxable property.

Class I real property is single-family, owner-occupied, residential property. In order for a property to qualify for Class I, it must meet each of these requirements exactly. All other property that does not meet the exact definition for Class I falls into the Class II category.

Therefore, all agricultural property, rental property, business property, and most vacant property are considered Class II. A parcel of property can be part Class I and part Class II.

In order to assess Class I and II properties, the assessor must first determine who owns each parcel of land in the county. This is accomplished by taking inventory of the county with a mapping system that identifies ownership from deeds, wills, court decrees, and other documents. Once ownership is determined, the assessor visits each parcel to value the property and any buildings or other improvements that add value to the land. The assessor must accomplish this task by using rules and guidelines provided by the Department of Revenue (DOR).

Class III property is personal property. This class includes furniture, fixtures, machinery, equipment, and inventory used by a business in its operations. The local tax assessor must list each item in every business, value the item according to DOR rules, and depreciate and revalue each item annually.

Class IV property is public utility property. Examples of public utility property include property owned by pipeline companies, electric companies, telephone companies, railroads, etc. This property is assessed on an annual basis by the DOR.

Class V property is motor vehicle property. When a person purchases a motor vehicle tag in Mississippi, they actually pay three separate items: a registration fee, a privilege license, and an ad valorem tax. The registration fee for a new tag is \$14.00; there is a \$12.75 renewal registration fee to purchase a decal alone. Most of this fee money is sent to the State. The privilege license for a car is \$15.00 and the privilege license for a truck is \$7.20. The proceeds from the sale of privilege licenses are retained primarily by the county. The ad valorem tax is based on the value of the car; all values are established statewide by the DOR. Ad valorem tax dollars collected go to support local government functions where the car is domiciled.

### **Audits and Responsibilities**

The county tax assessor is responsible to value Classes I, II, and III annually. *Code § 27-35-50* reads in part:

*Code, § 27-35-50. True value determination*

...(2) With respect to each and every parcel of property subject to assessment, the tax assessor shall, in ascertaining true value, consider whenever possible the income capitalization approach to value, the cost approach to value and the market data approach to value, as such approaches are determined by the State Tax Commission. For differing types of categories of property, differing approaches may be appropriate. The choice of the particular valuation approach or approaches to be used should be made by the assessor upon a consideration of the category or nature of the property, the approaches to value for which the highest quality data is available, and the current use of the property...

In order to make sure the county is maintaining its values on Class I, II, and III property, the DOR conducts annual audits called assessment ratio studies. The DOR will divide the values placed on the roll by the county by an arms-length market-sale or by an appraisal made by DOR personnel. The Department of Revenue then evaluates these ratios with three (3) statistical tests. If the county fails any one of the three (3) tests, it is given a period of time to bring its records into compliance. If this deadline is not met, the DOR withholds county homestead exemption reimbursement funds until the county is in compliance.

Each county is required by Title 35, Part VI, Subpart 02, Chapter 06 of the Administrative Code to update all real and personal property within a four-year cycle. A minimum of 25% of all personal property parcels must be physically reviewed and updated each year. All real property must be physically visited within the four-year period and all land schedules and building indexes must be updated within this time period to meet current sales data. Each county must also fly aerial photography and update all county tax maps within a specific time period as established by the DOR rule.

In addition, in order to spend the proceeds of the special one mill tax levy, the board must see that the county has the minimum number of state certified appraisers on staff and meets other certification requirements. Application must be made annually to the DOR to approve the spending of this money; it is escrowed until approval is received.

The board of supervisors works with the assessor in insuring equity in its tax rolls. While the assessor is required to do these tasks, he simply cannot complete them without the support and funding necessary to establish equity. Once the assessor files the assessment rolls with the board on the first Monday in July, the board is then responsible by law to make sure all assessments are equitable. After equalizing the rolls, the board opens them up for public inspection. The board of supervisors then acts as a board of equalization in hearing assessment appeals at the August meeting. After the assessor delivers the tax rolls to the board (on or before the first Monday in July), any changes to an assessment must be made by the board of supervisors. Any taxpayer dissatisfied after the August assessment hearings may appeal the decision of the board to the circuit court. In case of such an appeal, the suit is filed against the board of supervisors.

### **The Ad Valorem Tax Formula**

With only minor adjustments for homesteaded real property, the tax formula for ad valorem taxes is the same for all five (5) classes of property:

$$\text{“true value”} \times \text{“ratio”} = \text{“assessed value”}$$

$$\text{“assessed value”} \times \text{“millage rate”} = \text{“taxes”}$$

True value is defined in *Code*, § 27-35-50:

True value shall mean and include, but shall not be limited to, market value, cash value, actual cash value, property value and value for the purposes of appraisal for ad valorem taxation. . . . In arriving at the true value of all Class I and Class II property and improvements, the appraisal shall be made according to current use, regardless of location. In arriving at the true value of any land used for agricultural purposes, the appraisal shall be made according to its use on January 1 of each year, regardless of its location; in making the appraisal, the assessor shall use soil types, productivity and other criteria. . . .

The point here is that *true value* and *market value* are not the same. Agricultural values, for example, can be much less than the actual market value of the property.

The true value is multiplied by a ratio that is set by state law to yield the assessed value. The ratios are as follows:

Class I.....	10%
Class II .....	15%
Class III .....	15%
Class IV .....	30%
Class V .....	30%

True value multiplied by these ratios equals assessed value. It is necessary to understand the difference in market value, true value, and assessed value. Assessed value is used to determine everything from millage rates to salary levels for some county officials, including that of supervisors.

Once the assessed value has been determined, it must be multiplied by the appropriate millage rate for the tax district in which the property is located. The millage rate may vary from one taxing district to another, depending upon what services are rendered in that particular district, in what school district the property is located, and whether or not the property lies within or outside municipalities.

### **What Is a Mill and How Is It Used?**

A mill is one-thousandth of one dollar. Just as you would write \$1.00 for one dollar; and \$.10 for a dime, or one-tenth of a dollar; or \$.01 for a penny, or one-hundredth of a dollar; you would write .001, or one-thousandth of a dollar, for one (1) mill. The expression “54.5 mills” is the same thing as the factor .0545.



- For roads and bridges, as authorized by *Code*, § 27-39-305;
- For schools, including the county wide minimum education program levy . . . as authorized by Chapter 57, Title 37 of the *Code*. . . The levy for schools shall apply to assessed value of property in the respective school districts, including special municipal separate school districts, but excluding other municipal separate school districts, . . .;<sup>7</sup>
- For road bonds and the interest thereon, separately for county wide bonds and for the bonds of each road district (*Code*, § 19-9-1 *et seq.*);
- For school bonds and the interest thereon, separately for countywide bonds and for the bonds of each school district [*Code*, § 27-39-317(e)];
- For countywide bonds and interest thereon, other than for road bonds and school bonds [*Code*, § 27-39-317(f)];
- For loans, notes, and any other obligation, and the interest thereon, if permitted by law [*Code*, § 27-39-317(g)];
- For any other purpose for which a levy is lawfully made [*Code*, 27-39-317(h)].

If a countywide levy is made for any general or special purpose under the provisions of any law other than *Code*, § 27-39-303, each levy shall be separately stated in the board order adopting the tax levy.<sup>8</sup> The resolution levying ad valorem taxes must be published in a local newspaper within ten (10) days after adoption.<sup>9</sup>

### **Limits on the Levying of Ad Valorem Taxes**

There are limits placed on the levying of ad valorem taxes. The authority of boards of supervisors to levy taxes is restricted by statutory limits that have been placed on the amount of any increase in receipts from taxes levied. The board is limited when levying ad valorem taxes to a 10% cap. Thus, a board of supervisors may not levy ad valorem taxes in any fiscal year which would render in total receipts from all levies an amount more than the receipts from that source during any one (1) of the three (3) immediately preceding fiscal years...an increase not to exceed ten percent (10%) of such receipts.<sup>10</sup> If the ten percent (10%) cap is exceeded, then the amount in excess over the cap shall be escrowed and carried over to reduce taxes by the amount of the excess in the succeeding fiscal year. Excluded from the ten percent (10%) cap is the levy for debt service (notes, bonds, and interest), the library levy found in § 39-3-5 of the *Code*, and any added revenue from newly constructed property or any existing properties added to the tax rolls of the county. The ten percent (10%) cap may be figured by fund groups individually or by the aggregate of all county funds.

### **Advertising Prerequisite for Budget and Tax Levy Public Hearing**

The board of supervisors is required by *Code*, § 27-39-203 to advertise to the general public its budget hearing and proposed tax levy at which time the budget and tax levies for the upcoming

year will be considered. The public hearing notice and procedures are outlined in *Code*, § 27-39-203.

- The governing body of all taxing entities shall hold a public hearing at which time the budget and tax levies for the upcoming fiscal year will be considered.
- All hearings shall be open to the public. The governing body of the taxing entity shall permit all interested parties desiring to be heard an opportunity to present oral testimony within reasonable time limits.
- If an increase in the tax levy is necessary only because of an increased funding request made by a county district or any other cost which by law the county must fund and may not decrease in amount, then the notice required by this subsection shall be used and the county shall explain, in clear language in the notice, that the increase in the tax levy is necessary only because of the increased funding request of the county district or other cost incurred.
- During the fiscal year in which a county has completed a countywide reappraisal of the valuation of the property in the county that has been approved by the Department of Revenue and results in an increase in the assessed valuation of the property, the governing board of each taxing unit in the county, as defined in *Code*, § 27-33-11, shall include in the notice required to be published under this section the lower millage rate that would produce the same amount of revenue from ad valorem taxation on property of the taxing unit that was produced in the fiscal year before the property of the taxing unit was reappraised.
- After the hearing has been held in accordance with the above procedures, the governing body of the taxing entity may adopt a resolution levying a tax rate on classes of property designated by Section 112, Mississippi Constitution of 1890, as specified in its advertisement. If the resolution adopting the tax rate is not adopted on the day of the public hearing, the scheduled date, time and place for consideration and adoption of the resolution shall be announced at the public hearing and the governing body shall advertise the date, time and place of the proposed adoption of the resolution in the same manner as provided under section (2).
- Any governing body of a tax entity shall be prohibited from expending any funds for the applicable fiscal year until it has strictly complied with the advertisement and public hearing requirements set forth in this section.

## **COLLECTION OF AD VALOREM TAXES**

The main role of the supervisor in the collections process is one of support for the tax collector. Obviously, it is a tremendous task, annually, to collect on every item of taxable property in each county and distribute the funds accurately. The board must provide funds for adequate staff, materials, supplies, equipment, and items necessary for the tax collector to be able to perform the necessary tasks.



The board also has the authority to work with the tax collector to set up interlocal agreements for the collection of ad valorem taxes for the municipalities within the county. That authority can be found in *Code*, §§ 27-41-2 and 17-13-7.

Another collection function of the board is to approve certain reports that the tax collector presents annually. The collector is required by law to submit, for board approval, a report on personal property accounts that have been found to be insolvent.

In addition, the collector submits a list of all mobile home taxpayers who have failed to pay mobile home taxes. The collector is required to perform certain task before presenting this list to the board.

Another report that the collector must furnish to the board annually is a list of bad checks that the collector has determined to be non-collectible. This is only done after the collector has followed proper legal channels to attempt to collect on these bad checks.

## **SPECIAL AD VALOREM TAX EXEMPTIONS**

### **Homestead Exemption<sup>11</sup>**

There are three types of homestead exemption allowed.

#### **1. Regular Homestead Exemption**

For qualifying homeowners under age 65, up to \$7,500 of the assessed value of homesteads (not to exceed 160 acres of land) owned and actually occupied as homes by bona fide residents is exempt from the payment of up to the first \$300.00 of county and school district ad valorem taxes.

#### **2. Special Homestead Exemption**

Qualifying applicants who are over 65 or disabled are exempt from payment of all ad valorem taxes (city, county and school district) on up to \$7,500 of assessed value.

#### **3. Special Homestead – Totally Disabled American Veterans**

Starting in 2015, qualifying, service-connected, totally disabled American veterans who have been honorably discharged from military service and their unmarried surviving spouses are allowed an exemption from all ad valorem taxes on the assessed value of homestead property in accordance with *Code*, §§ 27-33-75 and 27-33-67(2)(a).

General administration of the homestead exemption law is vested in the Department of Revenue. The board of supervisors, however, is required to perform a variety of duties (*Code*, § 27-33-37) and to exercise certain authority as follows:

- The president of the board will receive applications for homestead exemption at each regular monthly meeting from the clerk of the board.

- The board will pass on the correctness and eligibility of each application. The board will indicate if each application should be approved, disapproved, or if further information is needed.
- If any application is disallowed, the board will notify the applicant immediately in writing.
- Applicants whose applications have been disallowed will be given the opportunity to appeal the decision of the board in the next regular meeting of the board.
- The board will review the Homestead Exemption Supplemental Roll (listing of applicants receiving homestead exemption) and vote on its approval.
- The Department of Revenue will send notice of any homestead disallowance to the clerk of the board. The board will notify the applicant(s). A hearing will be conducted by the board to allow applicant(s) an opportunity to respond to the disallowance. The board will then respond with an acceptance or objection to the disallowance. The Department of Revenue will respond to all objections. The County Board of Supervisors may appeal the Department of Revenue decision to the Board of Tax Appeals.
- The board will order the tax collector to reassess and collect taxes for all applicants who have been denied homestead exemption.
- The board may employ the clerk of the board to assemble the homestead data. Pay will be as described in *Code*, § 27-33-37(m).

### **Industrial Exemptions<sup>12</sup>**

At the discretion of the local governing authorities, exemptions from ad valorem taxation of certain properties may be granted to industries, with the exception of school district taxes, finished goods, and rolling stock.

The ad valorem tax exemption granted by a local government to a new enterprise shall continue even though there is a change from a leasehold to a fee title in an enterprise financed with bonds issued for the development of lands for industrial purposes or bonds issued under the Mississippi Small Business Financing Act.

Any request for an exemption must be made in writing by June 1<sup>st</sup> of the year following the year in which the enterprise is completed (*Code*, § 27-31-107). The time that such exemption may be granted is for a period not to exceed a total of ten (10) years.

New enterprises which may be granted an exemption from ad valorem taxes are as follows:

- Warehouse and/or distribution centers;
- Manufacturers, processors, and refiners;

- Research facilities;
- Corporate regional and national headquarters meeting minimum criteria established by the Mississippi Development Authority (MDA);
- Movie industry studios meeting minimum criteria established by the Mississippi Development Authority;
- Air transportation and maintenance facilities meeting minimum criteria established by the Mississippi Development Authority;
- Recreational facilities that impact tourism meeting minimum criteria established by the Mississippi Development Authority; and,
- Telecommunications enterprises meeting minimum criteria established by the Mississippi Development Authority.
- Healthcare Industry Facilities outlined under *Code*, §57-117-3.

*Code* § 27-31-107 contains the procedure by which applications are made to local governments for ad valorem tax exemptions for additions, expansions, or equipment replacements made with reference to a new enterprise and provides that such exemption may be granted in five-year periods, not to exceed a total of ten (10) years. The properties which are available for exemption from ad valorem taxation are: (1) real property (land and improvements) and (2) personal property (machinery/equipment, furniture/fixtures, raw materials, and work in process).

For new enterprises exceeding a total true value of one hundred million dollars (\$100,000,000), local authorities may grant a fee in lieu of taxes which will be negotiated and given final approval by the Mississippi Development Authority.

The minimum fee allowable cannot be less than one-third (1/3) of the property tax levy, including ad valorem taxes for school district purposes.

The general steps in processing an application for ad valorem tax exemption are:

- The proper and timely filing of the required documents to the local county and municipal authorities is essential.
- The original of the application, along with the local governing authorities' certified transcripts of resolutions of approval, must be forwarded to the Department of Revenue within thirty (30) days from the date of the Certified Transcript of the Resolution.
- Upon investigation and determination of the property's eligibility for exemption by the Department of Revenue, the Department of Revenue shall then certify its exemption to the governing authorities by issuing a certificate of approval.

- Upon certification by the Department of Revenue, the local governing authorities, at their discretion, may grant the exemption.
- The local governing authorities, after receipt of the certificate by the Department of Revenue, may enter a final board order declaring such property to be exempted and the date when the exemption begins and expires. Upon proper recording, one (1) copy of the final board order shall be filed with the Department of Revenue.

For further information and application formats, contact the following:

Bureau of Exemptions & Public Utilities  
 Department of Revenue  
 P. O. Box 960  
 Jackson, MS 39215

Telephone: 601-923-7634  
 Fax: 601-923-7637

### **Glossary of Selected Terms Related to Industrial Tax Exemptions**

Manufacturing Business	A business where tangible personal property is produced or assembled.
Processing Business	An establishment engaged in services such as manufacturing-related, computer-related, communications-related, energy-related, or transportation-related services, but the term “processing facility” does not include an establishment where retail merchandise or retail services are sold directly to retail customers.
Distribution Business	A business where shipments of tangible personal property is processed for delivery to customers, but “distribution” does not include a business which operates as a location where retail sales of tangible personal property are made directly to retail customers.
Research and Development Business	A business engaged in laboratory, scientific, or experimental testing and development related to new products, new uses for existing products, or improving existing products; but research and development does not include any business engaged in efficiency surveys, management studies, consumer surveys, economic surveys, advertising, promotion, or research in connection with literary, historical or similar projects.
Warehousing Business	A business primarily engaged in the storage of tangible personal

property. The term “warehousing business” does not include any establishment which operates as a location where retail sales of tangible personal property are made to retail customers.

Telecommunications  
Enterprises

Entities engaged in the creation, display, management, storage, processing, transmission or distribution for compensation of images, text, voice, video or data by wire or by wireless means, or entities engaged in the construction, design, development, manufacture, maintenance or distribution for compensation of devices, products, software or structures used in the above activities. Companies organized to do business as commercial broadcast radio stations, television stations or news organizations primarily serving in-state markets shall not be included within the definition of the term “telecommunications enterprises.”

### Free Port Warehouses<sup>13</sup>

State law currently offer eligible warehouses, public or private, a license to operate as a free port warehouse and be exempted from all ad valorem taxes subject to the following:

- Personal property which is consigned or transferred to such warehouse for storage in transit to a final destination outside Mississippi may be exempt, subject to the discretion of the governing authorities over the jurisdiction (city or county) in which the warehouse or storage facility is located.
- Caves or cavities in the earth, whether natural or artificial, do not qualify under the Free Port Warehouse definition.
- Licenses shall be issued by the local governing authorities.
- Such personal property shall not be deprived of exemption because while in a warehouse, the property is bound, divided, broken in bulk, labeled, relabeled or repackaged.
- Certain required annual inventory reports shall be filed with the county tax assessor.

For further information and application contact your local county tax assessor/collector.

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<sup>1</sup> Code, §§ 27-35-1 through 27-35-167.

<sup>2</sup> Const., § 112.

<sup>3</sup> Code, § 27-39-317.

<sup>4</sup> Ibid.

<sup>5</sup> Code, § 19-11-7.

<sup>6</sup> Code, § 27-35-55 *et seq.*

<sup>7</sup> Code, § 27-39-317(c).

<sup>8</sup> Code, § 27-39-317.

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<sup>9</sup> *Code*, § 27-39-319.

<sup>10</sup> *Code*, §§ 27-39-305, 27-39-320, and 27-39-321.

<sup>11</sup> *Code*, §§ 27-33-1 through 27-33-79.

<sup>12</sup> *Code*, §§ 27-31-101 through 27-31-117.

<sup>13</sup> *Code*, §§ 27-31-51 through 27-31-61.

## **CHAPTER 9**

### **PURCHASING**

#### **W. Edward Smith**

Purchasing is the procurement of equipment, heavy equipment, machinery, supplies, commodities, materials and services required for the operation of the various county offices and departments. The proper acquisition of these items is vital to county government operations.

Procurement of goods and services through purchasing accounts for a significant portion of a county's budget. The financial aspects of purchasing are of obvious importance. Only with close and intelligent cooperation between the county offices and the purchasing function can proper financial control be effectuated.

Constant changes in legislation require county purchasing personnel to monitor the enactment of new laws carefully to insure the county against violations. Since purchasing personnel cannot seek legal advice for every transaction into which they enter, they must be able to understand the basic legal requirements for each transaction and know when to seek legal advice from the attorney for the board of supervisors.

#### **ESTABLISHMENT OF A CENTRAL PURCHASING SYSTEM**

Each county in Mississippi is required by law (*Code*, § 31-7-101) to establish and operate a central purchasing system. The system is administered by a county department of purchasing and headed by a purchase clerk. Unless the board of supervisors assigns the duties of purchase clerk to the chancery clerk, the purchase clerk is appointed by the county administrator, with the approval of the board of supervisors, in counties required to operate under a county-wide system of road administration ("unit" system). In "beat" system counties, the board of supervisors appoints the purchase clerk. The purchase clerk shall not be a member of the board of supervisors. The purchase clerk may, subject to the approval of the entity which appointed him, hire personnel necessary to operate the department of purchasing efficiently. The central purchasing system must comply with requirements prescribed by the Office of the State Auditor.

Members of the board of supervisors in a "unit" county cannot make purchases under any circumstances. Members of the board of supervisors in a "beat" county may make limited purchases of not more than One Thousand Dollars (\$1,000.00) or for the emergency purchase of parts or repair services which are exempt from bid requirements pursuant to *Code*, § 31-7-13(m)(ii) and (iii). Department heads in both forms of county government may make limited purchases of not more than One Thousand Dollars (\$1,000.00) without following central purchasing procedures. Such purchases shall require the signature of the supervisor, officer or authorized designee on the receipt or invoice which shall then be forwarded to the purchase clerk. (*Code*, §§ 31-7-119 and 31-7-103)

The primary objectives of the purchasing department are to: (1) procure the necessary materials, supplies, services, etc. for the county government, (2) procure these items at the lowest possible cost and in a timely fashion, and (3) direct deliveries to their appropriate destinations. The goal of the purchasing department is to have on hand necessary items or have available necessary services to insure uninterrupted operations at the lowest expense. In summary, the task is to obtain what is wanted at the least cost, when it is wanted and where it is wanted.

### **Purchase Clerk – Code, § 31-7-103**

The purchasing department in small to medium size counties will consist of a purchase clerk and assistants to the purchase clerk. In large counties, the purchasing department may be expanded to include buyers and clerical help.

The purchasing department, headed by the purchase clerk, has the sole responsibility of purchasing all equipment, heavy equipment, machinery, supplies, commodities, materials and services used by any county office or county department except those offices or departments in which expenditures are not required by law to be approved by the board of supervisors. The purchase clerk shall disapprove any purchase requisitions which, in his opinion, are not in compliance with the purchasing laws of the state.

### **Receiving Clerk – Code, § 31-7-109**

In addition to appointing a purchase clerk, all counties must appoint a receiving clerk. Unless the chancery clerk is appointed as receiving clerk by the board of supervisors, the receiving clerk is appointed by the county administrator, with the approval of the board of supervisors, in counties required to operate under the “unit” system. In “beat” counties the board of supervisors appoints the receiving clerk. The receiving clerk shall not be a member of the board of supervisors. Assistant receiving clerks may be appointed by the receiving clerk when necessary, subject to the approval of the entity which appointed him.

The receiving clerk and his assistants shall be solely responsible for accepting the delivery of all equipment, heavy equipment, machinery, supplies, commodities, materials and services purchased by the county. The receiving clerk or his assistants must, upon proper delivery, acknowledge receipt of goods and services in compliance with the system prescribed by the Office of the State Auditor. The receiving clerk is responsible for maintenance of the prescribed system.

### **Inventory Control Clerk – Code, § 31-7-107**

In addition to the required central purchasing system, every county must maintain an inventory control system in accordance with requirements prescribed by the Office of the State Auditor. Every county must employ an inventory control clerk in the same manner used to employ or designate the purchase clerk.

The inventory control clerk is responsible for the maintenance of the inventory control system. He assumes responsibility for assistant inventory clerks needed for the efficient operation of the system. The inventory control clerk cannot be a member of the board of supervisors.



The inventory control clerk must perform physical inventories of assets of the county on or before October 1 of each year and must file a written report of such inventory with the board of supervisors. The clerk of the board of supervisors (the chancery clerk) shall keep the original of each inventory report filed by the inventory control clerk as a permanent record of the county and must forward a copy to the Office of the State Auditor no later than October 15. In a separate report to the clerk of the board of supervisors, the inventory control clerk must submit a list of additions to and deletions from the annual inventory report and a list of items unaccounted for from the previous annual inventory report.

### **Prescribed Forms and System – Code, § 31-7-113**

The Office of the State Auditor prescribes the purchase requisition, purchase order, receiving report and inventory control forms to be used, the system of filing and records necessary for maintenance of the central purchasing system and inventory control system.

When an emergency purchase has been properly authorized by the board of supervisors or its designee, the purchase requisition, purchase order and receiving report may be prepared and processed within three (3) working days after the emergency.

Some expenditures by the county are not considered purchases and accordingly do not require purchase requisitions, purchase orders and receiving reports. A list of exceptions may be found in the *Professional Education Curriculum For County Purchase Clerks* manual available from the Office of the State Auditor.

### **County Employees Serving As Purchase Clerk, Receiving Clerk or Inventory Control Clerk – Code, § 31-7-118**

The board of supervisors may designate county employees to serve as purchase clerk, receiving clerk, or inventory control clerk, in addition to their other responsibilities. An employee designated to serve as one of these clerks cannot, at the same time, be designated to serve in the other clerk positions, except in a few limited situations.

### **Bond of Purchase Clerk, Receiving Clerk and Inventory Control Clerk – Code, § 31-7-124**

The purchase clerk, receiving clerk, and inventory control clerk must each be bonded for \$75,000.00. All assistant purchasing, receiving, and inventory control clerks must each be bonded for \$50,000.00. The premiums on these bonds must be paid from any funds available to the board of supervisors for such payment.

### **Training of Purchase Clerk, Receiving Clerk and Inventory Control Clerk – Code, § 19-3-77**

Any person serving as a purchase clerk, receiving clerk or inventory control clerk must successfully complete a professional education program within one (1) year after his appointment **and** at the beginning of each term of office. The training is coordinated by the Center for Government & Community Development in the Mississippi State University Extension Service with instructors provided by the Office of the State Auditor.

### **Audit Requirements – Code, § 31-7-115**

The books, records, supporting documents and other data of the purchase clerk and inventory control clerk are required to be audited for compliance with applicable laws each fiscal year. The audit is performed by the Office of the State Auditor or a certified public accountant employed by the Office of the State Auditor. The report must be published in a newspaper published in the county or having general circulation in the county.

### **Enforcement – Code, § 31-7-127**

In order to insure the proper enforcement of county central purchasing laws, as well as to insure the enforcement of all other laws pertaining to county government and the board of supervisors, the district attorney, in addition to any other power the office holds, may investigate the personnel, records or supervisors of any county in his district and may bring criminal or civil actions to recover funds illegally spent, to recover damages, or to seek injunction relief to prevent unlawful acts or compel lawful acts by supervisors or other personnel of county government. In the event of a refusal or failure of the district attorney to act, the Attorney General's Office may exercise the above stated powers of the district attorney.

Failure to properly implement county central purchasing laws may result in state aid road construction funds, fuel tax reimbursements, and motor vehicle license seawall tax revenues being withheld and forfeited. (*Code*, § 19-2-11)

## **MISSISSIPPI PUBLIC PURCHASING LAWS**

### **Definitions – Code, § 31-7-1**

The following terms are used throughout public purchasing laws. An understanding of each is necessary to interpret and comply with the *Code*.

“*Agency*” means any state board, commission, committee, council, university, department or unit thereof created by the Constitution or statutes if such board, commission, committee, council, university, department, unit or the head thereof is authorized to appoint subordinate staff by the Constitution or statute, except a legislative or judicial board, commission, committee, council, department or unit thereof; except a charter school authorized by the Mississippi Charter School Authorizer Board; and except the Mississippi State Port Authority.

“*Governing authority*” means boards of supervisors, governing boards of all school districts, all boards of directors of public water supply districts, boards of directors of master public water supply districts, municipal public utility commissions, governing authorities of all municipalities, port authorities, Mississippi State Port Authority, commissioners and boards of trustees of any public hospitals, boards of trustees of public library systems, district attorneys, school attendance officers and any political subdivision of the state supported wholly or in part by public funds of the state or political subdivisions thereof, including commissions, boards and agencies created or operated under the authority of any county or municipality of this state. The term “governing

authority” shall not include economic development authorities supported in part by private funds, or commissions appointed to hold title to and oversee the development and management of lands and buildings which are donated by private individuals to the public for the use and benefit of the community and which are supported in part by private funds. The term “governing authority” also shall not include the governing board of a charter school.

“*Purchasing agent*” means any administrator, superintendent, purchase clerk or other chief officer so designated having general or special authority to negotiate for and make private contract for or purchase for any governing authority or agency.

“*Public funds*” means and includes any appropriated funds, special funds, fees or any other emoluments received by an agency or governing authority.

The word “*commodities*” means and include the various commodities, goods, merchandise, furniture, equipment, automotive equipment of every kind, and other personal property purchased by the agencies of the state and governing authorities, but not commodities purchased for resale or raw materials converted into products for resale.

The term “*equipment*” shall be construed to include: automobiles, trucks, tractors, office appliances and all other equipment of every kind and description.

The term “*furniture*” shall be construed to include: desks, chairs, tables, seats, filing cabinets, bookcases and all other items of a similar nature as well as dormitory furniture, appliances, carpets and all other items of personal property generally referred to as home, office or school furniture.

The term “*emergency*” means any circumstances caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection or caused by any inherent defect due to defective construction, or when the immediate preservation of order or of public health is necessary by reason of unforeseen emergency, or when the immediate restoration of a condition of usefulness of any public building, equipment, road or bridge appears advisable, or in the case of a public utility when there is a failure of any machine or other thing used and useful in the generation, production or distribution of electricity, water or natural gas, or in the transportation or treatment of sewage; or when the delay incident to obtaining competitive bids could cause adverse impact upon the governing authorities or agency, its employees or its citizens; or in the case of a public airport, when the delay incident to publishing an advertisement for competitive bids would endanger public safety in a specific (not general) manner, result in or perpetuate a specific breach of airport security, or prevent the airport from providing specific air transportation services.

The term “*construction*” means the process of building, altering, improving, renovating or demolishing a public structure, public building, or other public real property. It does not include routine operation, routine repair or regularly scheduled maintenance of existing public structures, public buildings or other public real property.

The term “*purchase*” means buying, renting, leasing or otherwise acquiring.

The term “*certified purchasing office*” means any purchasing office in which fifty percent (50%) or more of the purchasing agents hold a certification from the Universal Public Purchasing Certification Council or other nationally recognized purchasing certification, and in which, in the case of a state agency purchasing office, in addition to the national certification, one hundred percent (100%) of the purchasing officials hold a certification from the State of Mississippi's Basic or Advanced Purchasing Certification Program.

### **State Contract Price for Purchase of Commodities – Code, § 31-7-12**

The Department of Finance and Administration Office of Purchasing and Travel, a state agency located in Jackson, is responsible for obtaining contracts for the purchase of many commodities for state agencies. This information is made available to all governing authorities.

The county purchase clerk must be familiar with commodities under state contracts. Governing authorities may purchase commodities from the state contract vendor, or from any source offering the identical commodity, at a price not exceeding the state contract price established for such commodity, without obtaining or advertising for competitive bids. [If this option is not used, bid requirements must be followed.] This exception is not applicable to purchases of information technology products on contracts approved by Information Technology Services, a state agency.

### **Bid Requirements – Code, § 31-7-13**

All counties shall purchase their commodities and printing, contract for garbage collection or disposal, contract for solid waste collection or disposal, contract for sewage collection or disposal, contract for public construction and contract for rentals as follows:

Purchases which do not involve an expenditure of more than Five Thousand Dollars (\$5,000.00), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive bids. [The county may use a competitive solicitation process if it so chooses.]

Purchases which involve an expenditure of more than Five Thousand Dollars (\$5,000.00) but not more than Fifty Thousand Dollars (\$50,000.00), excluding freight or shipping charges, may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained. The term “competitive written bid” shall mean a bid submitted on a bid form furnished by the buying agency or governing authority (county) and signed by authorized personnel representing the vendor, or a bid submitted on a vendor’s letterhead or identifiable bid form and signed by authorized personnel of the vendor. “Competitive” shall mean that the bids are developed based upon comparable identification of the needs and are developed independently and without knowledge of other bids or prospective bids. Bids may be submitted by facsimile, electronic mail or other generally accepted

method of information distribution without the signature of the vendor's representative unless required by the county.

Purchases which involve an expenditure of more than Fifty Thousand Dollars (\$50,000.00), excluding freight or shipping charges, may be made from the lowest and best bidder after advertising for competitive sealed bids once each week for two (2) consecutive weeks in a regular newspaper published in the county. If no such newspaper exists, the county may post a notice at the courthouse and two prominent places in the county or the county may advertise in a newspaper having a general circulation in the county as provided above. On the same date that the notice is submitted to the newspaper for publication, the county involved shall mail written notice of the same information as that in the published notice to the main office of the Mississippi Procurement Technical Assistance Program, P. O. Box 849, Jackson, MS 39205. [Telephone number: 601-359-3449, Fax 601-359-2832, Website: www.mspsc.com]

**When to Open Bids – Code, § 31-7-13(c)**

No less than seven (7) working days are required between the date of the last published notice in the newspaper and the date set for the bid opening and no less than a fifteen (15) working day interval is required for construction projects when the total cost of the project is in excess of Fifty Thousand Dollars (\$50,000.00)

**Specification Requirements – Code, § 31-7-13(c)**

Specifications shall be written so as not to exclude comparable equipment of domestic manufacture.

Specifications may include life-cycle costing, total cost bids, extended warranties or guaranteed buy-back provisions that meet the guidelines of the Department of Financial Administration. [Code, § 31-7-13(d)(i)]

Specifications must include all factors that will be considered by the county when determining the lowest and best bidder.

The board of supervisors may approve a request for specific equipment necessary to perform a specific job. This is permissible when a registered professional engineer or architect writes specifications for the county to require a specific item of equipment available only from limited sources or vendors. These specifications must conform with the rules and regulations promulgated by an appropriate federal agency regulating such matters under the federal procurement laws. Documentation in the board minutes is required.

### **Lowest and Best Bid – Code, § 31-7-13(d)**

Purchases may be made from the lowest and best bidder:

Freight and shipping charges must be included when determining the lowest and best bid.

If the bid accepted is not the lowest, detailed calculations and a narrative summary showing how the lowest and best bid was determined must be recorded on the board's minutes. The dollar amount of the accepted bid and the dollar amount of the lowest bid must be included in this documentation. The purchase clerk may make the lowest and best bid decision for purchases not over Five Thousand Dollars (\$5,000.00). The board may delegate the lowest and best bid decision to the purchase clerk for purchases over Five Thousand Dollars (\$5,000.00) but not more than Fifty Thousand Dollars (\$50,000.00) by policy on the board's minutes.

### **Lease-Purchase Agreements – Code, § 31-7-13(e)**

A county may acquire equipment by lease-purchase agreement. The term of the lease-purchase may not exceed the useful life of the property as determined according to the maximum asset depreciation range (ADR) guidelines of the United States Internal Revenue Code and regulations there under. The annual interest rate may not be greater than the rate stated by law (presently 11%). Lease-purchase financing may be obtained from the vendor or from a third party source after having solicited and obtained at least two (2) written competitive bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment.

### **Petroleum Products – Code, § 31-7-13(h)**

In addition to other methods of purchasing authorized, when a county shall have a need to purchase gas, diesel fuel, oils and/or other petroleum products in excess of Five Thousand Dollars (\$5,000.00), the county may purchase the commodity after having solicited and obtained at least two (2) competitive written bids. In the event that a county has advertised for bids for the purchase of gas, diesel fuel, oils, other petroleum products and coal, and no acceptable bids can be obtained; the county may enter into any negotiations necessary to secure the lowest and best contract available for the purchase of such commodities.

### **Emergency Purchases – Code, § 31-7-13(k)**

If the board of supervisors or a person the board has designated to act on its behalf shall determine that an emergency exists in regard to the purchase of commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the county; then the provisions herein for competitive bidding shall not apply, and any officer or agent of the county having authority therefor in making such purchase or repair shall approve the bill presented therefor and shall certify in writing thereon from whom such purchase was made or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair

contract, including a description of the commodity purchased, the price thereof and the nature of the emergency, shall be presented to the board and shall be placed on its minutes.

**Exceptions to the Competitive Bid Process – Code, § 31-7-13(m)**

Purchasing agreements, contracts and maximum price regulations executed or approved by the Department of Finance and Administration [State Contracts];

Repairs to equipment, when such repairs are made by repair facilities in the private sector; however, complete assemblies such as engines, transmissions and rear axles must be bid when replaced as a complete unit when the need for such total component replacement is known before disassembly of the component. Repair invoices must include detailed information on parts used, supplies used, number of labor hours, and the hourly labor rate;

Purchases of parts for repairs to equipment by county personnel, not including entire assemblies;

Raw unprocessed deposits of gravel or fill dirt which are to be removed and transported by the county;

Motor vehicles or other equipment purchased from any federal agency or authority, another governing authority or state agency of the State of Mississippi or any state agency or governing authority of another state at a public auction held for the purpose of disposing of such vehicles or other equipment;

Negotiated purchases, sales, transfers or trades by counties from any federal agency or authority, another governing authority or state agency of the State of Mississippi or any state agency or governing authority of another state; [this does not permit bidding through public auctions except as stated above];

Perishable supplies or foods purchased for use in connection with hospitals and feeding county prisoners;

Noncompetitive items available from one (1) source only; a sole source purchase must have approval of board of supervisors prior to the purchase and documentation must be noted in minutes of the board at its next regular meeting;

Construction of incinerators and other facilities for disposal of solid wastes;

Purchases of supplies, commodities and equipment purchased by hospitals through group purchase programs pursuant to Code, § 31-7-38;

Purchases of information technology products made under the provisions of purchase agreements, contracts or maximum price regulations executed or approved by the State Department of Information Technology Services (ITS) and designated for use by governing authorities;

Energy efficiency services and equipment acquired on a shared-savings, lease or lease-purchase basis pursuant to *Code*, § 31-7-14;

Purchases by libraries or for libraries of books and periodicals; processed film, video cassette tapes, filmstrips and slides; recorded audio tapes, cassettes and diskettes; and any such items as would be used for teaching research or other information distribution; however, equipment such as projectors, recorders, audio or video equipment, and monitor televisions are not exempt;

Purchases of ballots printed pursuant to *Code*, § 23-15-351;

Purchases of any item manufactured, processed, grown or produced from the state's prison industries;

Purchases of surveillance equipment or any other high-tech equipment for use in undercover operations; however, requirements established by State Department of Finance and Administration must be followed;

Purchases of commodities made by school districts from vendors with which any levying authority of the school district has contracted through competitive bidding procedures;

Contracts for garbage, solid waste or sewage collection or disposal; however, such contracts over Fifty Thousand Dollars (\$50,000) require advertising for proposals [*Code*, § 31-7-13(r)];

Purchases of any item manufactured, processed or produced by the Mississippi Industries for the Blind;

Leases by hospitals of equipment or services if the leases are in compliance with *Code*, § 31-7-13(l)(ii); and,

Purchases made by certified purchasing offices under cooperative purchasing agreements previously approved by the State Office of Purchasing and Travel and established by or for the county government.

### **Term Purchase Contracts – *Code*, § 31-7-13(n)**

A county may enter into agreements for the purchase of commodities, equipment and public construction (including, but not limited to, repair and maintenance), may be let for periods of not more than sixty (60) months in advance, subject to applicable statutory provisions prohibiting the letting of contracts during specified periods near the end of terms of office. Term contracts for a period exceeding twenty-four (24) months shall also be subject to ratification or cancellation by



governing authority boards taking office subsequent to the governing authority board entering the contract.

Bid proposals and contracts may include price adjustment clauses with relation to the cost to the contractor based upon a nationally published industry-wide or nationally published and recognized cost index. The cost index used in a price adjustment clause shall be determined by the governing board for governing authorities. The bid proposal and contract documents utilizing a price adjustment clause shall contain the basis and method of adjusting unit prices for the change in the cost of such commodities, equipment and public construction.

### **Purchase of Certain Motor Vehicles (Local Dealer Preference) – Code, § 31-7-18**

In addition to the methods of purchasing previously mentioned, a county may accept the lowest bid received from a motor vehicle dealer domiciled within the county for the purchase of any motor vehicle having a gross vehicle weight rating of less than twenty-six thousand (26,000) pounds that shall not exceed a sum equal to three percent (3%) greater than the price or cost which the dealer pays the manufacturer as evidenced by the factory invoice for the motor vehicle. In the event the county does not have an authorized motor vehicle dealer, the county may receive bids from motor vehicle dealers in any adjoining county

Statutory bidding must be followed. In other words, the county may not simply negotiate the deal with the vendor. Also note that if the vehicle dealer is located in the county and is the state contract vehicle supplier, the county may not pay the dealer more than the state contract amount.

### **Preference to Resident Contractors – Code, § 31-7-47 & § 31-3-21(3)**

In the letting of public contracts, preference shall be given to resident contractors, a nonresident bidder domiciled in a state, city, county, parish, province, nation or political subdivision, having laws granting preference to local contractors shall be awarded Mississippi public contracts only on the same basis as the nonresident bidder's state, city, county, parish, province or political subdivision awards contracts to Mississippi contractors bidding under similar circumstances. Resident contractors actually domiciled in Mississippi are to be granted preference over nonresidents in awarding of contracts in the same manner and to the same extent as provided by the laws of the nonresident bidder's government. When a nonresident contractor submits a bid for a public project exceeding Fifty Thousand Dollars (\$50,000.00), he shall attach thereto a copy of his resident state's current preference law.

### **Fuel Management System Bidding Procedure – Code, § 31-7-13(q)**

Any county shall, before contracting for the services and products of a fuel management or fuel access system, enter into negotiations with not fewer than two (2) sellers of fuel management or fuel access systems for competitive written bids to provide the services and products for the systems. In the event the county cannot locate or obtain bids from two (2) sellers of such systems, it shall show proof that it made a diligent, good-faith effort to locate and negotiate with two (2) sellers of such systems. Proof shall include, but not be limited to, publications of a request for proposals and letters soliciting negotiations and bids.

### **Minority Set-Aside – Code, § 31-7-13(s)**

A county, by order placed on its minutes, may, in its discretion, set aside not more than 20% of its anticipated annual expenditures for the purchase of commodities from minority vendors. The statute provides that any such set-aside purchase shall be made in compliance with regulations promulgated by the State Department of Finance and Administration and shall be subject to bid requirement. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority bidder.

### **Construction Contracts – Code, § 31-5-51**

Any person entering into a formal contract with any county for the construction, alteration, or repair of any public building or public work shall furnish the county with a performance bond and a payment bond. Whenever a contract is less than Twenty-Five Thousand Dollars (\$25,000.00) the board of supervisors may elect to make a lump sum payment at the completion of the job instead of requiring these bonds.

Any person entering into a formal contract with the county which exceeds Twenty-five Thousand Dollars (\$25,000.00), for the construction, alteration, or repair of any public building or public work, before entering into such contract, shall furnish to the county proof of general liability insurance coverage in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury and property damage.

All construction and public works contracts must have a publication of contract completion in a newspaper in connection with determining the time allowed for bringing suit on performance or payment bonds. (This is usually done by the contractor.) (*Code*, § 31-5-53)

All bids submitted for public construction projects in excess of Fifty Thousand Dollars (\$50,000.00) shall contain on the outside or exterior of the envelope or container the contractor's current certificate of responsibility number, or there must appear a statement on the outside or exterior of such envelope or container to the effect that the bid enclosed therewith did not exceed Fifty Thousand Dollars (\$50,000.00). Any bids submitted without this information cannot be considered. (*Code*, § 31-3-21)

A county cannot award a construction contract of any public work involving the practice of engineering or architecture unless the plans, specifications and estimates have been prepared and the work supervised by a registered professional engineer or architect if the expenditure exceeds One Hundred Thousand Dollars (\$100,000.00). A county cannot (directly) engage in the construction of public buildings unless the plans, specifications and estimates have been prepared and the work supervised by a registered professional engineer or architect if the expenditure exceeds One Hundred and Fifty Thousand Dollars (\$150,000.00). This restriction does not apply to maintenance projects. (*Code*, § 73-13-45)

**Change Orders to Construction Contracts – Code, § 31-7-13(g)**

Reasonable change orders not made to circumvent the public purchasing statutes may be made without further public bidding, if the changes or modifications to the original contract are considered necessary or would better serve the purpose of the county and are approved by the board on its minutes prior to the change being made. The board may delegate the authority to make change orders to the architect, engineer or other authorized person for up to one percent (1%) cumulative of the total contract. Such authorization must be approved on the board minutes in advance of any changes to be made by the authorized party.

**Rebates, Refunds, Gratuities, Etc. from Vendors – Code, § 31-7-23**

Any rebates, refunds, coupons, merit points, gratuities or any article of value tendered or received by any agency or governing authority from any vendor of material, supplies, equipment or other articles shall inure to (go to) the benefit of the agency or governing authority making the purchase. The agency or governing authority may, in accordance with its best interest, either take delivery of the article of value tendered and use the same or convert it to cash by selling it for its fair and reasonable value, making use of the proceeds from such sale for the exclusive benefit of the agency or governing authority.

**PENALTIES FOR VIOLATION OF PUBLIC PURCHASING LAWS**

**Criminal**

***Code, §31-7-13(o)***

No contract or purchase as herein authorized shall be made for the purpose of circumventing the provisions of this section requiring competitive bids, nor shall it be lawful for any person or concern to submit individual invoices for amounts within those authorized for a contract or purchase where the actual value of the contract or commodity purchased exceeds the authorized amount and the invoices therefor are split so as to appear to be authorized as purchases for which competitive bids are not required. Submission of such invoices shall constitute a misdemeanor punishable by a fine of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment for thirty (30) days in the county jail, or both such fine and imprisonment. In addition, the claim or claims submitted shall be forfeited.

***Code, §31-7-55***

- (1) It is hereby declared to be unlawful and a violation of public policy of the State of Mississippi for any elected or appointed public officer of an agency or a governing authority, or the executive head, any employee or agent of any agency or governing authority to make any purchases without the full compliance with the provisions of Chapter 7, Title 31, *Mississippi Code of 1972*.

- (2) Except as otherwise provided in subsection (4) of this section, any person who intentionally, willfully and knowingly violates the provisions of Chapter 7, Title 31, *Mississippi Code of 1972*, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than One Hundred Dollars (\$100.00) and not more than Five Hundred Dollars (\$500.00) for each separate offense, or sentenced to the county jail for not more than six (6) months, or both such fine and imprisonment, and shall be removed from his office or position.
- (3) Any person who intentionally, willfully and knowingly violates the provisions of *Code*, § 31-7-57(1) shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than One Hundred Dollars (\$100.00) and not more than Five Hundred Dollars (\$500.00), or sentenced to the county jail for not more than six (6) months, or both such fine and imprisonment, and shall be removed from his office or position.
- (4) Any person diverting the benefits of any article of value tendered or received by any agency or governing authority to his personal use, in violation of *Code*, § 31-7-23, if the value of such article be less than Five Hundred Dollars (\$500.00) shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars (\$100.00) or more than Five Hundred Dollars (\$500.00), or sentenced to the county jail for not more than six (6) months, or by both such fine and imprisonment, shall be removed from his office or position, and shall be required to return the money value of the article unlawfully diverted to the agency or governing authority involved. If the value of the article be Five Hundred Dollars (\$500.00) or more, such person shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or sentenced to the Department of Corrections for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment, shall be removed from his office or position, and shall be required to return the money value of the article unlawfully diverted to the agency or governing authority involved.
- (5) The provisions of this section are supplemental to any other criminal statutes of this state.

**Civil – *Code*, § 31-7-57**

- (1) Any elected or appointed public officer of an agency or governing authority, or the executive head, any employee or agent of any agency or governing authority, who appropriates or authorizes the expenditure of any money to an object not authorized by law, shall be liable personally for up to the full amount of the appropriation or expenditure as will fully and completely compensate and repay such public funds for any actual loss caused by such appropriation or expenditure, to be recovered by suit in the name of the governmental entity involved, or in the name of any person who is a taxpayer suing for the use of the governmental entity involved, and such taxpayer shall be liable for costs in such case. In the case of a governing board of any agency or governing authority, only the individual members of the governing board who voted for the appropriation or authorization for expenditure shall be liable under this subsection.

- (2) No individual member, officer, employee or agent of any agency or board of a governing authority shall let contracts or purchase commodities or equipment except in the manner provided by law . . . ; nor shall any such agency or board of a governing authority ratify any such contract or purchase made by any individual member, officer, employee or agent thereof, or pay for the same out of public funds unless such contract or purchase was made in the manner provided by law; provided, however, that any vendor who, in good faith, delivers commodities or printing or performs any services under a contract to or for the agency or governing authority, shall be entitled to recover the fair market value of such commodities, printing or services, notwithstanding some error or failure by the agency of governing authority to follow the law, if the contract was for an object authorized by law and the vendor had no control of, participation in, or actual knowledge of the error or failure by the agency or governing authority. (A circuit court order is required.)
- (3) The individual members, officers, employees or agents of any agency or governing authority . . . causing any public funds to be expended, any contract made or let, any payment made on any contract or any purchase made, or any payment made, in any manner whatsoever, contrary to or without complying with any statute of the State of Mississippi, regulating or prescribing the manner in which such contracts shall be let, payment on any contract made, purchase made, or any other payment or expenditure made, shall be liable, individually, and upon their official bond, for compensatory damages, in such sum up to the full amount of such contract, purchase, expenditure or payment as will fully and completely compensate and repay such public funds for any actual loss caused by such unlawful expenditure.
- (4) In addition to the foregoing provision, for any violation of any statute of the State of Mississippi prescribing the manner in which contracts shall be let, purchases made, expenditure or payment made, any individual member, officer, employee or agent of any agency or governing authority who shall substantially depart from the statutory method of letting contracts, making payments thereon, making purchases or expending public funds shall be liable, individually and on his official bond, for penal damages in such amount as may be assessed by any court of competent jurisdiction, up to three (3) times the amount of the contract, purchase, expenditure or payment. The person so charged may offer mitigating circumstances to be considered by the court in the assessment of any penal damages.
- (5) Any sum recovered under the provisions hereof shall be credited to the account from which such unlawful expenditure was made.
- (6) Except as otherwise provided . . . , any individual member of an agency or governing authority . . . shall not be individually liable under this section if he voted against payment for contracts let or purchases made contrary to law and had his vote recorded in the official minutes of the board or governing authority at the time of such vote, or was absent at the time of such vote.

## CHAPTER 10

### BOND ISSUANCE AND DEBT ADMINISTRATION

**Randall B. Wall and Brad C. Davis**

This chapter presents an overview of the different types of bonds, the different purposes for which bonds can be issued, and the processes of issuing, underwriting, marketing, and servicing bonds. County officials need to understand the basics of the bond process so that they can make informed decisions and explain their county's special needs to the citizenry. Mistakes in the issuing of bonds can be costly, both fiscally and politically.

#### NATURE OF COUNTY BONDS

A municipal bond is a debt security issued by a county (or a state, a municipality or other governmental entity). Section 31-13-3 of the *Mississippi Code of 1972*, Annotated, provides the following definition:

"The word 'bond' or 'bonds,' when used in this chapter, shall be deemed to include every form of written obligation that may be now or hereafter legally issued by any county, municipality, school district, road district, drainage district, levee district, sea wall district, and of any other district or subdivision whatsoever, as now existing or as may be hereafter created."

#### AUTHORITY TO BORROW AND HOME RULE

A county must establish its authority to act by making the necessary findings and determinations required as a condition to taking action. The purpose of the “whereas” portion of a resolution is to make determinations that establish the authority and basis for action in the “therefore” portion. If publication is required prior to directing the issuance of bonds, the fact of publication must be set out. If a debt limit must be satisfied, then those findings must be set out prior to taking action for the issuance of the proposed bonds.

A county must have specific authority to issue bonds for a particular purpose. Home Rule (*Code*, § 19-3-40) does not help in this regard:

This section shall not authorize the Board of Supervisors of a County to...issue bonds of any kind...unless such actions are specifically authorized by another statute or law of the State of Mississippi.

The foregoing statement meshes with the provisions of *Code*, § 19-9-31:

No interest-bearing indebtedness shall hereafter be incurred by any county except in the manner provided by *Code*, §§ 19-9-1 to 19-9-31 or as may otherwise be provided by law.

## TYPES OF COUNTY BONDS AND DEBT

Most county bond offerings in Mississippi are of certain major types. Each type of issue has certain advantages and disadvantages. The type of bonds issued to finance a public improvement depends upon the financing options authorized for the particular purpose, how the proposed financing fits into the overall financial structure of the county and upon the circumstances of the particular project to be financed. Readers are cautioned that the provisions authorizing bonds set forth in this chapter do not constitute a comprehensive list, and there are many other specific provisions authorizing or otherwise pertaining to county bonds. Those major types of bonds issued by counties in Mississippi are as follows:

### **General Obligation Bonds**

*Security:* General obligation bonds pledge the unlimited taxing power and the full faith and credit of the county to meet the required payments of principal and interest (See *Code*, § 19-9-9 for taxing authority). General obligation bonds are generally limited to a maximum maturity of twenty years and can carry a maximum interest rate of 11% (*Code*, §§ 19-9-19 and 75-17-101).

*Debt Limitation:* The general obligation bonded indebtedness of a county is limited by *Code*, § 19-9-5 to the greater of (a) 15% of the assessed value of the taxable property within the county, according to the last completed assessment for taxation, or (b) 15% of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984.

However, any county in the state which shall have experienced washed-out or collapsed bridges may issue bonds for bridge purposes as now authorized by law in an amount which, when added to the then outstanding general obligation bonds of such county, shall not exceed either (a) 20% of the assessed value of the taxable property within such county according to the last completed assessment for taxation or (b) 15% of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984, whichever is greater.

In computing such indebtedness, there may be deducted all bonds or other evidences of indebtedness heretofore or hereafter issued, for the construction of hospitals, ports or other capital improvements which are payable primarily from the net revenue to be generated from such hospital, port or other capital improvement, which revenue shall be pledged to the retirement of such bonds or other evidences of indebtedness, together with the full faith and credit of the county. However, in no case shall any county contract any indebtedness payable in whole or in part from proceeds of ad valorem taxes which, when added to all of the outstanding general obligation indebtedness, both bonded and floating, shall exceed either (a) 20% of the assessed value of all taxable property within such county according to the last completed assessment for taxation, or (b) 15% of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984, whichever is greater. Nothing herein contained shall be construed to apply to contract obligations in any form heretofore or hereafter incurred by any county which are subject to annual appropriations therefor, or to bonds heretofore or hereafter issued by any county for school purposes, or to bonds issued by any county under the provisions of *Code*, §§ 57-1-1 through 57-1-51, or to any indebtedness incurred under *Code*, § 55-23-8, or to bonds issued under *Code*, § 57-75-37.

## **Revenue Bonds**

Revenue bonds pledge the revenue from the facility financed by the bonds to meet the bond principal and interest payments. Revenue bonds are appropriate debt instruments when the project can be expected to generate sufficient revenue to meet operating and debt service costs. Counties usually pay higher interest rates on revenue bonds than on GO bonds because revenue bonds are generally considered to carry more risk in terms of repayment of the bonds. The maximum interest rate to maturity for revenue bonds is 13%.<sup>1</sup> Hospital revenue bonds and certain indebtedness supported by specified revenues from ports are examples of this type of bond issue.

## **Industrial Development Revenue Bonds (IDRBs)**

*County IDRBs.* Industrial development revenue bonds are issued for purposes of industrial development related to products of agriculture, mining, or industry—i.e., the acquisition, construction, equipping, and leasing of facilities related to the manufacturing, processing, assembling, etc. of said products. Projects must be approved (granted a Certificate of Public Convenience and Necessity) by the Mississippi Development Authority. Bonds issued for such projects are subject to no maximum interest rate and are repaid solely out of the revenue received from leasing the industrial facility. The term of such bonds may not exceed thirty years (*Code*, §§ 57-3-1 through 57-3-33).

State law also authorizes counties to also issue "small issue" industrial development revenue notes (redemption term not to exceed ten years) for the purpose of financing projects where the loan to any one project does not exceed \$500,000 (*Code*, §§ 57-41-1 through 57-41-17).

*State IDRBs with Local Involvement.* Industrial Development Revenue Bonds may also be issued by the Mississippi Business Finance Corporation (MBFC) (*Code*, § 57-10-201 *et seq.*). Unlike the structure employed when the county acts as issuer, the title to the facilities so financed may remain with the corporate user (as opposed to being held by the issuer and leased to the corporate user). Before the MBFC will proceed to issue the bonds, it will require a resolution from the county approving the granting of the ad valorem tax benefits made available under the MBFC statute. In addition, bonds issued by MBFC may provide corporate users of certain types of facilities - including, but not limited to manufacturing facilities, large distribution facilities and telecommunications or data processing facilities - a credit against a portion of the entity's corporate income tax liability under the so-called RED Act (*Code*, § 57-10-401 *et seq.*).

## **Economic Development Bonds with State Involvement**

The State of Mississippi has a number of programs to assist or encourage economic development. Those programs included financial assistance and somewhat detailed and complex programs concerning tax incentives. These programs have changed frequently.

For current details on the programs referenced above, and advice as to economic development resources, the Mississippi Development Authority and/or bond counsel should be consulted.



## Regional Economic Development Act Bonds

Bond authority for economic development bonds was authorized through the enactment of the Regional Economic Development Act (*Code*, §§ 57-64-1 through 57-64-31). This act enables local government units (counties and municipalities) of the state to cooperate and contract with other local government units, and even with political subdivisions from another state, to form regional economic development alliances to share the costs of and revenues derived from a project, and to pledge revenue from a project to secure the payment of bonds. The types of projects for which development alliances may be formed include any of the following which promote economic development or which assist in the creation of jobs:

1. Acquisition, construction, repair, renovation, demolition, or removal of buildings and site improvements (including fixtures); potable and non-potable water supply systems; sewage and waste disposal systems; storm water drainage and other drainage systems; airport facilities; rail lines and rail spurs; port facilities; highways, streets, and other roadways; fire suppression and prevention systems; utility distribution systems, including, but not limited to, water, electricity, natural gas, telephone, and other information and telecommunications facilities, whether by wire, fiber or wireless means (provided that electrical, natural gas, telephone, and telecommunications systems shall be constructed, repaired or renovated only for the purpose of completing the project and connecting to existing utility systems); business, industrial, and technology parks; and the acquisition of land and acquisition or construction of improvements to land connected with any of the proceeding purposes;
2. County purposes authorized by or defined in *Code*, § 17-5-3 (waterworks and sewage systems for military camps) and *Code*, § 19-9-1 (uniform system for issuance of bonds except for construction of school buildings);
3. Municipal purposes authorized by or defined in *Code*, § 17-5-3, § 17-17-301 *et seq.* (regional solid waste authority), *Code*, § 21-27-23 (municipal utility borrowing powers), and *Code* § 21-33-301 (uniform system for issuance of bonds);
4. Refunding of bonds as authorized in *Code*, § 21-27-1 *et seq.*; and
5. A project as defined in *Code*, § 57-75-5(f)(i) or a facility related to the project as defined in *Code*, § 57-75-5(d) (such sections pertain to the Mississippi Major Economic Impact Act), or both.

To form an alliance the local government unit must apply to the Mississippi Development Authority for a Certificate of Public Convenience and Necessity. Certain details must be authorized by the Mississippi Development Authority and set out in such certificate.

The local government units in the alliance may issue general obligation bonds (*Code*, §§ 19-9-1 through 19-9-31 and 21-33-301 through 21-33-329), tax increment finance (TIF) bonds (*Code*, §§ 21-45-3 through 21-45-21), revenue bonds (as authorized by any statute authorizing the issuance of revenue bonds), and special assessment bonds (*Code*, §§ 21-41-1 through 21-41-47) for the project as authorized in the Certificate of Public Convenience and Necessity without

regard to whether the activities and improvements are within or without the boundaries of the local government unit.

Every agreement made under this act must be submitted to and approved by the Attorney General in order to be effective. In practice, this is done at the same time as the application to the Mississippi Development Authority.

If any party to the regional economic development alliance shall have authority to undertake a particular project or pursue a particular action with respect to such project, then the alliance shall have identical authority.

An amendment was approved in 2006 to make it clear that private property is covered and could be improved under this act without dedication to a public entity.

### **Mississippi Major Economic Impact Act**

Certain special powers and tax benefits have been granted with respect to large economic development projects under the Mississippi Major Economic Impact Act (*Code*, § 57-75-1, et seq.). While bonds issued pursuant to this authority are issued by the State, it is listed here since a county may be involved in the process and because this is an extremely important asset for recruiting major economic development projects.

### **Mississippi Development Bank Bonds**

A county may issue its note or notes to the Mississippi Development Bank which is authorized to issue its bonds and to loan proceeds thereof to a county in exchange for such note or notes of such county. Under the right set of circumstances, this borrowing method can achieve lower interest rates through enhanced credit status for the financing if a diversion of homestead exemption reimbursements is authorized, or if the moral obligation of the State is pledged (for those issues with reserve funds). Except as otherwise provided, the County must comply with the statute pursuant to which the note is issued to the Mississippi Development Bank.

### **Pollution Control Industrial Development Revenue Bonds**

The governing authority of a county, subject to the concurrence of the Mississippi Air and Water Pollution Control Commission, may issue bonds to acquire, purchase, construct, enlarge, expand, improve, operate, maintain, and replace pollution control facilities. These bonds may have a maximum maturity of forty years and carry a maximum interest rate of 13%. Repayment of such bonds must be made from revenue resulting from agreements with an industry to construct, operate, maintain, repair, and replace the pollution control facilities or lease/sale to an industry of the pollution control facilities (*Code*, §§ 49-17-101 through 49-17-123).

### **Urban Renewal Bonds**

A county has the authority to issue bonds to finance the undertaking of urban renewal projects. Such bonds have a maximum maturity of thirty years and can carry a maximum interest rate of 13%. Urban renewal bonds are repayable solely from the income, revenues, and funds of the county derived from the carrying out of the urban renewal project, including any contributions

from the federal government to the urban renewal project or a mortgage on the urban renewal project (Chapter 35 of Title 43). The urban renewal provisions expand the authority granted to counties as to the types of property and projects that may be financed by counties. Further, once the county has established its authority to act under the urban renewal laws, flexibility can be gained as to the methods of financing.

### **Solid/Hazardous Waste Disposal Bonds**

A county, after obtaining a Certificate of Public Convenience and Necessity from the Mississippi Development Authority, may issue bonds to acquire, own, and lease a project for the purpose of promoting the construction and installation of projects for the collection, treatment, processing, reprocessing, generation, distribution, recycling, elimination, or disposal of solid and hazardous waste products by inducing manufacturing and industrial enterprises, qualified persons, firms, or corporations to locate and construct said projects. The issuing of such revenue bonds is subject to approval by the voters if a written protest requires the calling of an election on the question of the issuance of such bonds. This type of bond issue has a maximum maturity of thirty years and can carry a maximum interest rate of 13%. Such bonds are payable solely out of the moneys to be derived by the county from agreements with an industry located in the county to construct, operate, maintain, repair, or replace a solid/hazardous waste project or a lease/sale of such a project to an industry (*Code*, §§ 17-17-101 through 17-17-135).

### **Harbor and Port Improvement Bonds**

Certain counties are authorized to issue bonds for a number of projects related to construction and improvement of ports and harbors (*Code*, § 59-5-41).

### **Refunding Bonds**

The governing body of a county may authorize the issuance of refunding bonds which can be used to refinance outstanding bonds. Sometimes substantial savings can be achieved through such a refunding. Neither an election nor notice of intent is normally required for a refunding, nor is a public sale usually required. Negotiated sales are typical, and in most cases are the only practical way to achieve a refinancing (*Code*, § 31-27-1 *et seq.*, § 31-15-1 *et seq.*, and several more limited statutes).

### **Tax Increment Finance Bonds**

Tax Increment Financing (“TIF”) Bonds, also referred to as "TIF Bonds," may be used for a variety of infrastructure improvements such as street construction and improvements, parking, utilities, lighting, signalization and related improvements. To initiate this type of financing, the county holds hearings and goes through a prescribed procedure for creating a tax increment development plan and a tax increment financing plan that defines a financing district or area. The base level of assessed value within that area is then established and a sufficient portion of the specified ad valorem taxes on any subsequent increase in assessed value over that base on property included in the tax increment financing plan is diverted to satisfy the principal of and interest on the TIF Bonds. Through agreement with a municipality, both eligible municipal and county ad valorem taxes may be so diverted. Any portion of an increase from an established base of sales taxes within that area may also be diverted to pay such bond. No election or protest

petition procedure is required, and public or private sale is authorized. Prior to 2007, any property financed with TIF Bonds was required to be dedicated to the public. In that year, an amendment to *Code*, § 21-45-9 was approved to allow the governing body to determine that such property does not have to be dedicated where it is in the best interests of such county or municipality. This allows TIF financing for certain private property if the county or municipality could have done that type of infrastructure. Due to the nature of the Bonds, negotiated sales are most common for smaller TIF bond issues, with public sales more often used for the larger TIF bond issues (*Code*, §§ 21-45-1 through 21-45-21).

### **USDA Utilities and Community Facilities Loans**

USDA provides a substantial amount of utilities and community facilities loans (the terms of such loans being evidenced by bonds) for buildings, streets, hospitals and other public facilities important to small municipalities, counties and rural areas.

## **SHORT-TERM DEBT**

### **Borrowing in Anticipation of Taxes**

#### 1. Tax Anticipation Notes<sup>2</sup>

In order to defray the expenses of a county (particularly from the start of the fiscal year on October 1 until the tax collection process begins around the first of each calendar year), a board of supervisors may borrow money in anticipation of taxes. The amount of money borrowed must not exceed 25% of the estimated amount of taxes collected and to be collected under the last annual tax levies for the particular fund for which the money is borrowed. A county may borrow money in anticipation of ad valorem taxes without regard to the statutory limitations on a county's total indebtedness.

A board of supervisors may borrow this money from any available fund in the county treasury or from any other source. For this debt, a board of supervisors will issue negotiable notes of the county, bearing a maximum interest rate of 11%<sup>3</sup>, which mature no later than April 1 of the year after the year the debt is incurred.

To repay this type of loan, a board of supervisors may (a) pledge that the notes will be paid out of the first money collected for taxes for the year in which the notes are issued; or (b) pledge the levy of a special tax each year sufficient to pay the amount borrowed for use that year, including interest. If the "special tax" method of repayment is selected, the special tax may be in excess of the rate of taxation otherwise limited by law.

Before issuing tax anticipation notes, a board of supervisors must publish notice of its intention to issue the notes once a week for three weeks in some newspaper having general circulation in the county. There must be a minimum of 21 days and a maximum of 60 days between the time the notice is first published in the newspaper and the meeting at which the board of supervisors proposes to issue the tax anticipation notes. If within the time of giving notice, a petition protesting the issuance of the notes (signed by 20% of the qualified electors in the county or 1,500 qualified electors, *whichever is less*) is filed, an election must be called for the purpose of seeking voter approval of the issuance of the

notes. Three-fifths (3/5) of the qualified electors of the county who vote in the election must approve the issuance of tax anticipation notes.

## 2. Other Authorized Borrowing in Anticipation of Taxes or Revenues

In addition to this general grant of power to borrow in anticipation of taxes:

- a. A board of supervisors is specifically authorized to borrow money for the purposes of defraying the expenses of the establishment and operation of garbage and rubbish disposal systems. This borrowing may be in anticipation of the tax levy authorized for such systems or revenues resulting from the assessment of any fees or charges for garbage and/or rubbish collection and/or disposal, or any combination of the two sources of revenue;<sup>4</sup> and
- b. Boards of supervisors of counties comprising an air ambulance service district may borrow, on behalf of the district, money in anticipation of the revenues to be received from taxes levied by district counties for the support of the district.<sup>5</sup>

### **Borrowing in Anticipation of Confirmed Federal or State Grants or Loans<sup>6</sup>**

A county with a binding commitment from the United States of America, or any of its agencies, or the State of Mississippi, or any of its agencies, for a grant or loan may borrow in anticipation of receipt of the grant or loan, unless prohibited by federal or state law or by the terms of the grant or loan. The amount borrowed is limited to the sum of: (a) the amount of the confirmed grant or loan; (b) the amount of interest payable on such interim financing; and (c) the reasonable cost of incurring the indebtedness or issuing the note or notes evidencing the indebtedness. The security for such interim financing are the proceeds of the grant or loan, earnings on the investment of the grant or loan proceeds and the proceeds of the interim financing, and from any other proceeds, revenues or earnings received by the issuing county in connection with such grant or loan or with the interim financing, and may be further secured or repaid from available revenues of a county-owned utility.

A county may borrow money in anticipation of confirmed grants or loans without regard to the statutory limitations on a county's total indebtedness. This type of borrowing does not require publication of a notice of intention or consent of the qualified electors.

A board of supervisors may borrow this money from any available fund in the county treasury (except taxes collected in excess of legal limits or taxes collected from the special one mill levy available to counties with tax assessment records, maps, personnel, and procedures approved by the Mississippi Department of Revenue, formerly known as the Mississippi State Tax Commission) or from any other source. This type of debt, structured upon the terms and conditions agreed upon by the county and the source of the loan, carries a maximum interest rate of 9%<sup>7</sup> and must be repaid from the first available federal funds received from the grant or loan.

In the event grant or loan proceeds pledged to the repayment of the debt have not been received in time to pay, at maturity, all or part of the principal and interest on the indebtedness, a county may borrow additional moneys in anticipation of the grant or loan proceeds in order to pay the original indebtedness at maturity. The original indebtedness must be promptly repaid upon

receipt of the proceeds of such subsequent borrowing. The issuing county may enter into agreements with one or more lenders obligating such lenders to provide such additional financing upon such terms and conditions as may be agreed upon by the issuing county and the lenders.

### **Borrowing to Meet Emergencies<sup>8</sup>**

In the event of some emergency (caused by fire, flood, storm, epidemic, riot, or insurrection; or defective construction; or the need to immediately preserve order or public health; or the need for restoration of the usefulness of any public building or property which has been destroyed by accident or otherwise; or the need to make mandatory expenditures required by law), a board of supervisors may borrow money to meet the emergency (but not more than is needed) without further notice or hearing. A board of supervisors must adopt, by unanimous vote of all members present, a resolution stating the facts constituting the emergency, enter the resolution on its minutes, and revise the county's budget accordingly.

Notes of the county for the amount borrowed may be issued. In such event, a board of supervisors may levy a special tax, not to exceed two mills, for the repayment of the notes, which must mature not later than the 15<sup>th</sup> day of March next succeeding the date of issuance.

### **Shortfall Notes<sup>9</sup>**

Counties may issue notes in an amount equal to an estimated ad valorem tax shortfall, but not to exceed 25% of its budget anticipated to be funded from the sources of the shortfall for its fiscal year. Such notes must be repaid in equal installments during the three fiscal years next succeeding the issuance of such notes.

### **Short-Term Financing Procedure<sup>10</sup>**

In 1985, the Mississippi Legislature enacted a "Uniform System for Insurance of Negotiable Notes or Certificates of Indebtedness." This law, as amended in 1994, authorizes a board of supervisors to borrow money up to the *greater* of \$250,000 *or* 1% of the assessed value of all taxable property located within the county according to the last completed assessment of taxation. Such borrowing may be undertaken:

1. "to accomplish any purpose for which such governing authorities are otherwise authorized by law to issue bonds, notes or certificates of indebtedness; and
2. to pay costs incurred by governing authorities as a result of a natural disaster. Such costs shall include, but not be limited to, debris removal and disposal, overtime wages paid to public employees, and the repair or replacement of public streets, roads and bridges, storm drains, water and sewer facilities and other public buildings, facilities and equipment. Money borrowed pursuant to this paragraph (b) may also be utilized as matching funds for federal or state disaster relief assistance."

This statutory procedure provides a convenient and streamlined method for obtaining short-term financing:

1. The governing authority, which would include a board of supervisors, is required first to adopt a resolution declaring the necessity for borrowing and specifying the purpose for which the money borrowed is to be expended, the amount to be borrowed, the date or dates of maturity, and how the indebtedness is to be evidenced.
2. The borrowing must be evidenced by negotiable notes or certificates of indebtedness signed by the head and clerk of such governing authority.
3. Such notes or certificates of indebtedness must be offered at public sale by the governing authority after not less than 10 days advertising in a newspaper having general circulation within the county.
4. The sale must be made to the bidder offering the lowest rate of interest or whose bid represents the lowest net cost to the governing authority; the maximum rate of interest which the governing authority can pay is 11%.<sup>11</sup>
5. The notes or certificates of indebtedness must be sold at not less than par and shall mature in approximately equal installments of principal and interest over a period of not more than 5 years from the dates of the issuance thereof.
6. The full faith, credit, and resources of the issuing entity are pledged for the prompt payment of the notes or certificates of indebtedness.
7. If the issuing entity does not have available funds in an amount sufficient to provide for the payment of principal and interest, then it is required annually to levy a special tax upon all of its taxable property at a rate sufficient to provide for such payment.

### **LEASE FINANCING**

A board of supervisors may enter into lease agreements under which the county may agree to lease, for a primary term not to exceed 20 years, a facility for the following purposes: public buildings, courthouses, office buildings, jails, auditoriums, community centers, civic art centers, public libraries and gymnasiums; and machinery and equipment for use in any of the foregoing, except office furniture and office machines, for a primary lease term not to exceed the useful life of the machinery or equipment as mutually agreed upon by the lessor and the county. All such rental contracts or leases must contain an option granting the county the right to purchase the leased property upon the expiration of the term of the lease or upon an earlier date agreed upon at a price not to exceed the unpaid principal balance at such time.<sup>12</sup>

Lease financing revenues may come from any legally-available source. (Counties are still limited to the property tax growth cap, however.) Generally, with regard to leases involving public buildings, the lessor is a non-profit corporation organized under applicable state law acting on behalf of the county for the purpose of financing the acquisition and construction of a public building. The lessee is generally the applicable county. If the obligation is subject to annual appropriation, then no notice of intent or election is required and the obligations are not subject to the debt limit of the county. As might be expected, interest rates will be at least slightly higher than for general obligations of the issuer. The borrowing may be structured so that certificates of participation can be issued which give the holders thereof a proportional interest in the lease-

purchase obligation (*Code*, §§ 31-8-1 through 31-8-13). The issuance of such certificates is advantageous for larger issues.

## **BANK LOANS**

Warning: Some issuers continue to think that more informal bank loans are somehow not subject to state law requirements for bonds. However, state statutes provide that no interest-bearing indebtedness may be incurred by any county unless the authority for incurring the debt is specifically provided for by statute (*Code*, § 19-9-31). Bank loans, like any other county debt, must be authorized, and must follow the requirements of such authority. In order for interest on such loans to qualify for tax-exempt status, those obligations must comply with requirements generally applicable to municipal bonds – including filing the required form with the Internal Revenue Service (IRS). In addition, in order for the bank to benefit from the tax-exempt status of such obligations, they must also be designated as “qualified tax-exempt obligations.”

## **LOCAL AND PRIVATE LEGISLATION**

A substantial number of county bond issues are authorized by local and private legislation, which is legislation that applies only to a particular locality or entity. This may be appropriate where the circumstances are somewhat unique, or where there is a good idea that has not yet been enacted into law.

## **TAX CONSIDERATIONS AND OVERVIEW**

There are both federal and state tax law considerations.

### **Federal Tax Law**

This is one of the most difficult and complex areas pertaining to municipal bonds. The arbitrage regulations alone are hundreds of pages. We must be content here to make a few important points.

1. All municipal bonds (includes bonds of a county) do not qualify for federal tax exemption. Even if the bond issue is for a qualifying purpose, the bonds will not be tax-exempt unless a filing is made with the IRS (among other requirements). Special consequences pertain to the types of bonds referred to as private activity bonds, working capital bonds, and arbitrage bonds.
2. Private use of a type or to an extent not allowed by the Internal Revenue Code can cause interest on bonds to be taxable. Private activity bonds may qualify for tax exemption under requirements pertaining to bonds for manufacturing purposes, for exempt facility bonds, for 501(c)(3) bonds, and for certain other favored categories.

It should be noted that what some people think of as public purpose bonds, the IRS thinks of as private activity bonds (industrial parks, facilities with non-qualifying management contracts, facilities with more than allowed private use). Use in excess of the allowed percentages by either Georgia Pacific, the Boy Scouts, or the federal government



(examples of private parties for this purpose) may cause the bonds to be treated as private activity bonds.

3. Working capital bonds are bonds for working capital rather than for capital improvements. Tax anticipation notes are usually for working capital. These bonds or notes may be tax-exempt, but must be done within strict federal tax requirements and limitations applicable to working capital financings. Generally, the applicable federal tax regulations limit favorable tax-exempt status to short-term obligations or to limited portions of the proceeds of bonds issued for capital improvements.
4. Arbitrage bonds: In the bond area, arbitrage refers to taking advantage of the difference between tax-exempt yields and taxable yields. The general rule is that issuers must pay to the IRS any investment returns over the yield that the issuer is paying on its bonds. Much of the tax law in this area is involved with trying to find or stay within an exception, and there are a number of them applicable to all or to portions of bond proceeds.
5. Reimbursement requirements: The current general rule is that if the county is planning to reimburse itself from bond proceeds for money it advanced on a bond-financed project, then it must declare its intent to do so prior to or within 60 days after an expenditure. Certain preliminary expenses are excluded from this requirement. Other requirements pertain to the time limitations for any such reimbursement.
6. Taxable bonds: It is generally not a problem (as such) under state law to issue bonds that are taxable under federal law so long as such bonds are authorized under state law. It does cost more in terms of higher rates.

### **State Law Exemption**

Interest on obligations of the State of Mississippi and political subdivisions thereof is excluded from gross income pursuant to *Code*, § 27-7-15. There are many statutes that provide specific exemptions.

### **BANK ELIGIBLE BONDS**

Even if interest on bonds are generally exempt from federal income taxes, banks do not fully benefit from such exemption unless the bonds are found to be eligible as "qualified tax-exempt obligations" and a designation that the bonds are such is made by the county. Note that qualification for this benefit requires positive action on a timely basis. Failure to act will be a failure to qualify. Currently, the ability for a county to designate bonds for such treatment is limited to counties that reasonably anticipate issuing no more than \$10 million of tax-exempt obligations (including for that purpose obligations issued by its subordinate entities or agencies and obligations it issues on behalf of non-profit entities) in the then current calendar year.

### **SECURITIES OVERVIEW – DISCLOSURE AND CONTINUING DISCLOSURE**

1. Bonds are securities. While county bonds are generally exempt from the filing requirements of the United States Securities and Exchange Commission (SEC), they are subject to anti-fraud provisions.

2. Disclosure statements, generally referred to as Preliminary Official Statements (POS) or Official Statements (OS), are required unless the particular bond issue fits within an exception. Common exceptions: issues below \$1 million, private placements.
3. Continuing disclosure requirements apply if an Official Statement is required. The issuer must generally file an annual continuing disclosure report and its annual audit with EMMA (Electronic Municipal Market Access), a centralized and internet-based system for free real-time public access for municipal securities. In addition, the issuer must file notice of certain material events upon occurrence thereof. In order to assure compliance, counties often contract with bond counsel or other professionals to make a required annual filing.
4. Any information released by or on behalf of a county pertaining to its finances or economy that is reasonably expected to reach the public may be considered as disclosure of financial information subject to securities laws. A county should, for example, ensure that any information on its website is accurate and up-to-date.

### **PUBLIC SALE REQUIREMENTS**

*Code*, § 31-19-25 requires (among other things) that all bonds sold by any county shall be advertised for sale on sealed bids or at public auction, and requires that publication be made at least two times in a newspaper published in the county. The first such publication shall be made at least ten days preceding the date set for receipt of bids. A 2% good faith check or exchange is also required. This section states general rules that will apply in the event there is no applicable statutory provision or interpretation that gets the county out of the general rules. Some statutes contain explicit or implied exemption from this requirement.

### **VOTING RIGHTS PRECLEARANCE**

On June 25, 2013, the Supreme Court of the United States held in *Shelby County v. Holder* (133 S. Ct. 2612) that it is unconstitutional to use the coverage formula in Section 4(b) of the Voting Rights Act of 1965 to determine which jurisdictions are subject to the pre-clearance requirement of Section 5 of the Voting Rights Act. The Supreme Court did not rule on the constitutionality of Section 5 itself. The effect of the Supreme Court's decision in *Shelby County* is that the jurisdictions, including all of the State of Mississippi, previously identified by the coverage formula in Section 4(b) no longer need to seek pre-clearance for new voting changes, unless they are covered by a separate court order entered into under Section 3(c) of the Voting Rights Act.

### **MAJOR STEPS IN THE PROCESS FOR ISSUANCE OF BONDS**

Although not to be considered an exhaustive listing, the following steps are the major steps or procedures usually involved in the process of issuing bonds (certain bond issues may involve only some of these steps):

1. Resolution of Intent

The board of supervisors of the county may be required to adopt a resolution declaring the intention of the county to issue bonds (assuming an election is not called), stating the

amount of bonds proposed to be issued and the purpose for which the bonds are to be issued, and specifying the date upon which the governing authority proposes to direct the issuance of the bonds. Generally, with respect to general obligation bonds, the resolution of intent must be published in a newspaper published in the county (if there is one) at certain times and "posted" under certain conditions (e.g., *Code*, § 19-9-11).

2. Protest; Authorization

If, on or before the date of issuance of the bonds, a proper written protest is filed against the issuance of the bonds, an election on the question of the bonds must be called. It should be noted that the board of supervisors, in its discretion, may call an election on the question of the issuance of certain types of bonds. If no election is required for the issuance of the bonds or if a required election is successful, the board of supervisors of the county will adopt a resolution authorizing the issuance of the bonds.

3. Official Statement Preparation and Distribution of Preliminary Official Statement

The Official Statement (or disclosure document) describes in detail the financial resources and liabilities of the issuer relevant to the proposed bonds, and the details and security pertaining to the proposed bond issue. Investors and underwriters base their decision to commit funds to the issue, in large part, upon the information found in the Official Statement. The Official Statement is also used by the bond rating firm, if any, in assigning a rating to the issue. The Official Statement is referred to as the "Preliminary" Official Statement prior to the bond sale to an underwriter, before re-offering by the underwriter.

4. Notice of Sale (for non-negotiated bonds)

The board of supervisors will adopt and publish a Notice of Bond Sale for receipt of bids on non-negotiated bonds. The Notice of Bond Sale, a copy of the Preliminary Official Statement (if any), a designation of the bond rating (if applicable), information concerning bond insurance (if applicable), and bid forms are usually disseminated or otherwise made available to prospective investors (financial institutions, underwriters, etc.).

5. Bond Rating

The bond rating (usually done by Moody's Investors Service, Standard and Poor's Ratings Services or Fitch Ratings) is in effect a credit evaluation of the bond issue—a shorthand description of the county's credit worthiness with regard to the proposed bonds. In general, the higher the bond rating, the lower the interest rate for sale of the bonds by the county. Bond ratings are obtained only upon payment of a fee, and are usually obtained only by larger issuers or for larger issues in Mississippi.

6. Bond Insurance (if any)

Bond insurance may be obtained if such insurance appears to be cost-effective.

7. Private Placements

Issues may be sold without Official Statements if sold at “private placement” in compliance with federal securities laws. There is often confusion between the term “public sale” under state law when the issue is sold at bid, and the term “private placement” which refers to qualifying under federal securities laws and regulations for disclosure exemption.

8. Award

A resolution will be adopted awarding the bonds to the conforming bid presenting the lowest net interest cost if bids are being received. At a negotiated sale, a bond purchase agreement will be executed.

9. Preparation of Bond Transcript

The county board attorney and/or the clerk of the board will prepare the bond transcript— all legal documents, including appropriate minutes of the governing authority, pertaining to the authority to issue. This may be done just prior to or subsequent to the bond sale. In the former case, a supplemental transcript will be subsequently prepared to include the sale. The bond transcript is required for validation and is usually required by the purchaser as a condition of sale.

10. Validation

This is a process initiated by filing the bond transcript with the local Chancery County, after having been first submitted to and approved by the State Bond Attorney (not to be confused with the county’s bond counsel). Notice is given to taxpayers to present any legal objection they might have. If properly approved by the court following such notice, a judgment is entered validating the bonds. This is intended to foreclose questions as to the authority to issue the bonds to the extent that matters are properly presented in the bond transcript.

11. Delivery/Issuance

Bonds are issued when exchanged for payment. Closing papers appropriate to the type of bonds being issued are executed and opinions of bond counsel and attorney for the county are delivered. Moneys are deposited as directed.

12. Post-Closing

County officials should also take care to know what their obligations are regarding:

- a. Federal tax law compliance following the closing, and
- b. Federal securities law regarding continuing disclosure requirements.

**ALPHABETICAL REFERENCE TO CERTAIN PURPOSES**

State statutes authorize a county to issue bonds for specified purposes. Some – but certainly not all – of those purposes are as follows:

1. Agricultural high schools (*Code*, § 19-9-1(f))
2. Airports and air navigation facilities (*Code*, §§ 19-9-1(j), 61-3-1 *et seq.* and 61-5-1 *et seq.*)
3. Airports for colleges or universities (*Code*, § 19-9-1(j))
4. Auditoriums (*Code*, § 31-8-3 (lease financing))
5. Boat landing ramps (*Code*, §19-9-1(h))
6. Bridges (*Code*, § 19-9-1(e))
7. Buildings (*Code*, §§ 19-9-1(a), 19-7-1 and 31-8-3)
8. Civic art centers (*Code*, § 31-8-3 (lease financing))
9. Clinics, health centers, nurses' homes (*Code*, § 19-9-1(a))
10. Community centers (*Code*, § 31-8-3 (lease financing))
11. Convention centers (*Code*, §§ 17-3-9 through 17-3-19)
12. County buildings (*Code*, § 19-9-1(a))
13. County Cooperative Service district projects (*Code*, § 19-9-1)
14. County farms for convicts (*Code*, § 19-9-1(d))
15. Courthouses (*Code*, §§ 19-9-1(a) and 31-8-3)
16. Dams, low water control structures (*Code*, § 19-9-1(p))
17. Economic development (*Code*, §§ 19-9-1(o) and 57-64-11 and various provisions in Title 57)

18. Economic Development Districts (*Code*, § 19-5-99)
19. Election and voting machines and equipment (*Code*, § 19-9-1(g))
20. Emergencies (*Code*, §§ 19-11-21 and 17-21-51)
21. Equipment and machinery with a useful life in excess of ten (10) years (*Code*, § 19-9-1(m))
22. Fire-fighting equipment and apparatus, including housing and land therefor (*Code*, §§ 19-9-1(n) and 19-5-97)
23. Game and fish management projects (*Code*, § 49-5-17 and § 55-9-1)
24. Garbage disposal systems (*Code*, §§ 19-9-1(k) and 17-5-3 (in certain counties))
25. Gymnasiums (*Code*, § 31-8-3 (lease financing))
26. Harbors and appurtenant facilities, including land and improvements therefor (*Code*, §§ 59-7-101 *et seq.*, 59-7-501 *et seq.* and 59-13-1 *et seq.* (coast counties))
27. Hazardous waste (*Code*, §§ 17-17-101 *et seq.*)
28. Homes for indigents (*Code*, § 19-9-1(b))
29. Hospitals (public) and health facilities, including land and improvements therefor (*Code*, §§ 19-9-1(a), 41-13-19, and 41-73-1 *et seq.*)
30. Housing (*Code*, § 43-33-1 *et seq.*)
31. Industrial Parks (*Code*, §§ 19-5-99 and 59-7-105)
32. Industrial Revenue Bonds (*Code*, §§ 57-10-201 *et seq.*, 57-10-401 *et seq.* (MBFC programs), 57-3-1 *et seq.* (IDB leasing statute), and various other provisions in Title 57)
33. Jails (public) (*Code*, §§ 19-9-1(a), 17-5-1 and 31-8-3 (lease financing))
34. Lakes (*Code*, § 55-9-1)
35. Library buildings, land, equipment, and books (*Code*, §§ 19-9-1(c) and 31-8-3 (lease financing))
36. Nursing homes (*Code*, § 19-5-39)
37. Office buildings (*Code*, §§ 19-9-1(a) and 31-8-3)
38. Parks, including land therefor, equipment, improvements, and adornments (*Code*, § 55-9-1)

39. Pollution control facilities (*Code*, § 49-17-101 *et seq.*)
40. Ports, harbors, docks and wharves (Chapter 7 of Title 59)
41. Public buildings (*Code*, §§ 19-19-1 *et seq.*, and 31-8-1 *et seq.* (lease financing))
42. Rail terminals, rail lines (*Code*, § 59-7-105)
43. Recreational facilities, including land and equipment therefor (*Code*, § 55-9-1)
44. Redevelopment projects (*Code*, §§ 21-45-9 and 43-35-21)
45. Refunding or refinancing outstanding bonds (*Code*, §§ 31-27-1 *et seq.* and 31-15-1 *et seq.*)
46. Regional Economic Development projects (*Code*, §§ 57-64-11 and 19-9-1(o))
47. Roads, highways and bridges, including land, heavy construction equipment (*Code*, §§ 19-9-1(e) and 19-9-3)
48. Rubbish disposal system or incinerators (*Code*, §§ 19-9-1(k) and 17-5-3 (in certain counties))
49. Sea walls in certain counties (*Code*, § 65-33-1 *et seq.*)
50. Sewage disposal systems (*Code*, § 17-5-3 (in certain counties))
51. Sewerage systems (*Code*, § 17-5-3 (in certain counties))
52. Solid waste facilities (*Code*, §§ 17-17-101 *et seq.* and 17-17-335 (closure, post closure maintenance and corrective actions))
53. Stadiums (*Code*, § 55-9-1)
54. Tax Increment Finance infrastructure (*Code*, § 21-45-1 *et seq.*)
55. Tax shortfall notes (*Code*, § 27-39-333)
56. Urban renewal project (*Code*, § 43-35-1 *et seq.*)
57. Waterworks plants, distribution systems, or franchises (*Code*, § 17-5-3 (in certain counties))
58. Wharves, including land and improvements therefor (*Code*, § 19-9-1(h))

## **MISCELLANEOUS STATUTORY PROVISIONS RELATED TO THE ISSUING OF BONDS OR OTHER DEBT**

1. *Code*, §§ 17-3-9 through 17-3-19 provide that certain counties may issue bonds for convention centers.
2. *Code*, §§ 17-5-1 through 17-5-11 authorize municipalities and counties to jointly issue bonds for the construction, expansion, remodeling and/or maintenance and equipping of a jail and authorize counties with military camps to issue bonds for certain public works systems or activities.
3. *Code*, § 19-3-47, in part, specifies the maximum compensation which may be paid to the board attorney for bond work.
4. *Code*, § 19-9-21 prohibits the diversion of bond proceeds for a use other than that for which the bonds were issued. A willful diversion is a felony.
5. *Code*, § 19-9-23 specifies when and for what purpose the balance of bond proceeds may be used.
6. *Code*, § 19-9-25 establishes the conditions under which any excess in the bond and interest fund may be used to purchase outstanding bonds.
7. *Code*, §§ 19-9-29 and 27-105-315 direct the use and investment of surplus or excess moneys in bond and interest funds and other special funds. A U.S. Department of the Treasury Regulation has also been promulgated to cover investment of bond proceeds.
8. *Code*, § 27-105-367 outlines when and how surplus funds in the bond and interest fund and other special funds may be transferred.
9. *Code*, § 21-35-19 provides for authority to borrow for emergency expenditures under certain conditions.
10. *Code*, § 21-35-31 describes the requirement for annual audits. Note requirement for completing audit for current year before close of next succeeding fiscal year and filing with the Mississippi State Auditor within 30 days of completion.
11. *Code*, § 21-45-9 authorizes the issuance of tax increment revenue bonds.
12. *Code*, § 27-7-15 provides for exclusion of interest on obligations of the State and political subdivisions thereof from Mississippi income taxes.
13. *Code*, § 27-31-1(u) provides for an exemption from ad valorem taxes for any county bonds.
14. *Code*, § 27-105-367 provides for the handling of surplus moneys in a bond and interest fund and the disposition of same when the bond issue has been retired.



15. *Code*, §§ 31-13-1 through 31-13-11 discuss validation of public bonds—the role of the State Bond Attorney, the actions taken by the Chancery Court, the "stamping" of validated bonds, the payment of court costs, and the State Bond Attorney's fees and expenses.
16. *Code*, §§ 31-17-45 through 31-17-59 discuss repurchase, retirement, and cancellation of bonds and repayment of unused funds by the bond paying agent.
17. *Code*, § 31-19-1 specifies that bonds must be issued on the serial payment plan (unless otherwise authorized).
18. *Code*, § 31-19-5 specifies the conditions under which the proceeds received from the sale of bonds, notes, and certificates of indebtedness may be invested.
19. *Code*, § 31-19-7 confirms the validity of the execution of bonds signed by officials no longer in office at the time of the sale or delivery of bonds.
20. *Code*, §§ 31-19-9 and 31-19-11 specify the procedure for bond payments.
21. *Code*, § 31-19-25 establishes the procedures for advertisement and sale of bonds. This provision requires public sale of bonds unless private sale is authorized.
22. *Code*, § 31-19-33 specifies that legal actions related to payment of bonds and coupons must commence within twenty (20) years after the maturity date of the bonds.
23. *Code*, §§ 31-21-1 through 31-21-7, the Registered Bond Act, provide for the registration of bonds in order to bring Mississippi bond laws into conformance with federal legislation, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). This statute also affects the methods of execution and preparation of bonds.
24. *Code*, §§ 31-23-51 through 31-23-69, the Mississippi Private Activity Bonds Allocation Act, establish regulations relative to the issuance of private activity bonds in order to bring Mississippi's bond laws into conformance with federal legislation, The Tax Reform Act of 1986 (Public Law 99-514).
25. *Code*, §§ 31-25-1 through 31-25-55, and 31-25-101 through 31-25-107, the Mississippi Development Bank Act, authorize counties to issue certain securities and to sell such securities to the Mississippi Development Bank to raise money for most of the purposes for which counties are authorized to issue bonds.
26. *Code*, §§ 31-27-1 through 31-27-25, the Mississippi Bond Refinancing Act, specify the authority and process under which counties may issue refunding bonds. *Code*, § 31-15-1 through 31-15-27 also provides refunding authority.
27. *Code*, § 19-9-9 requires that a board of supervisors must annually levy a special tax upon all of the taxable property within the county sufficient to provide for the payment of the principal of and interest on its bonds.

28. *Code*, § 31-19-15 provides remedies for bondholders when a public official fails or refuses to comply with state law regarding bond issues.

### **GLOSSARY OF SELECTED TERMS**

Accrued Interest	Interest earned on a bond or security from its last interest date. The purchaser buys this interest at the time the bond is purchased and receives the entire interest on the next coupon date.
Ad Valorem Tax	A tax on the value (or assessed value or taxable value) of property.
Amortization	The systematic reduction of debt through use of serial bonds or term bonds with sinking fund payments on an actuarial basis. Also, the gradual and periodic reduction of premiums and discounts on bonds purchased and sold so as to show the true amount of assets or liabilities represented by the premiums or discounts.
Arbitrage Bond	A bond issued at a low (tax-exempt) interest rate, proceeds of which are invested at a higher (taxable) interest rate in violation of federal tax requirements. Interest earned on arbitrage bonds is fully taxed. Arbitrage profits must be rebated to the IRS to the extent an exemption is not established.
Average Maturity	The number of years from issue which marks the point at which half the principal remains unpaid. It is equal to the total bond years divided by the total number of bonds. The average maturity is important because it demonstrates how rapidly the issue is being paid off.
Balloon Payment	Final principal payment that is much larger than the other principal payments.
Basis Point	One hundredth of a percentage point (0.01%). If an interest rate is 5.25%, the 0.25% is referred to as 25 basis points. 100 basis points equals 1%.
Bearer Bond	A bond without an identified owner. The presumed owner is the person who holds it.
Bid	A proposition to purchase an issue offered for sale either in a competitive offering or on a negotiated basis.
Bidding Syndicate	Two or more firms of underwriters that act together to underwrite a bond issue.
Bond Counsel	An attorney retained by the county with recognized expertise in municipal finance who assures the purchaser that the bond issue was legally issued and covers tax aspects of such issue. The bond

counsel's approving opinion is printed on or accompanies each bond and states that in its opinion the county has complied with all legal requirements in the issuance of the bonds and that interest paid on the bonds is exempt from income tax (unless issued as taxable bonds). Without such an opinion the bonds are not marketable.

Bond Register	The permanent and complete record maintained by a government issuer for each bond issue. It shows the amount of interest and principal coming due each date, the bond numbers, and all other pertinent information concerning the bond issue.
Bond Transcript	All legal documents, including appropriate minutes of meetings, associated with the authority to issue a bond.
Call Price	The price at which callable bonds may be redeemed if called.
Callable Bond	A type of bond which permits the issuer to pay the obligation before the stated maturity date by giving notice of redemption in the manner specified in the bond contract.
Capital Improvement Plan	A plan for capital expenditures to be incurred each year over a fixed period of years to meet anticipated needs. It sets forth each project or other contemplated expenditure in which the government is to have a part and specifies the full resources estimated to be available to finance expected expenditures.
Coupon	The part of a bond which serves as proof of interest due. Historically, bondholders have detached coupons, usually at semiannual intervals, and presented them for payment to the issuer's paying agent. Now, bonds must be issued as fully registered bonds without coupons in order to be tax exempt. The term is still in use in such terms as "coupon rate" even though no actual coupon is involved.
Current Yield	Annual interest payable on a bond divided by its current price, expressed as a percent.
Debt Limit	The maximum amount of debt that a governmental unit may incur under constitutional, statutory, or charter requirements. The limitation is usually some percentage of taxable valuation and may be fixed upon either gross or net debt. The legal provision in the latter case usually specifies what deductions from gross funded debt are allowed to calculate net debt.
Delivery Date	Date on which the bonds are exchanged for the purchase price.

Discount	The difference between the par value (face value) of a bond, or other security, and the lesser price for which it is acquired or sold. See Premium.
Financial Advisor	Person who offers a broad range of services to governmental entities regarding financial matters.
General Obligation Bond	A bond for which the full faith and credit of the issuer has been pledged for payment.
Interest	Compensation paid or to be paid for use of money, including interest payable at periodic intervals or as a discount at the time a loan is made.
Investment Grade	A bond rated at least "BBB" by Standard and Poor's Corporation or at least "Baa" by Moody's Investor's Service. Bank examiners require that most bonds held in bank portfolios be investment grade.
Maturity	The date on which the principal of a bond becomes due and payable.
Negotiated Underwriting	Contractual arrangements between an underwriter and an issuer of debt in which the underwriter is given the exclusive right to underwrite the issue.
Net Interest Cost	Total interest cost plus discount or minus premium divided by total bond years (net interest cost per \$1,000 bond), divided by 10 (to turn result into a percentage).
Official Statement	Document that gives information on the bond issue and the financial, economic, and social characteristics of the issuing entity, and specifies how the funds raised by the issue will be used. Potential bidders and investors use the information included in the statement to evaluate the credit quality of the bonds and to determine the interest rates at which they would purchase the bonds. The Official Statement reduces the cost to both bidders and investors of acquiring credit information. Such document is referred to as the Preliminary Official Statement until final sale information is determined.
Par Value	The face value of a security. In the case of bonds, it is the amount that must be paid at maturity. Although bonds are usually issued in denominations that are a multiple of \$5,000, a quotation of 100 means at par. A \$1,000 bond quoted at 98 costs \$980 and is selling at a discount. A \$1,000 bond quoted at 102 costs \$1,020 and is selling at a premium.

Paying Agent	A bank or other institution which acts as the agent for the county in making bond interest and principal payments. This bank also usually serves as registrar and transfer agent in keeping a record of all registered owners and in changing the records regarding registered owners upon sales or transfers of bonds.
Point	1.0% of the face value of a bond (usually \$10, or 1% of \$1,000). For example, 2% is expressed as 2 points.
Premium	The excess of the price at which a bond, or other security, is acquired over its par value. See Par Value.
Principal	The face amount of a bond exclusive of accrued interest.
Rating	A designation used by analysts or by investor services to represent the relative quality of a bond.
Refunding Bond	Bond used to retire another bond already outstanding. A refunding bond may be sold for cash and an outstanding bond redeemed in cash, or the refunding bond may be exchanged with holders of outstanding bonds.
Registered Bond	A bond listed in the name of the holder. When sold, it must be transferred on the books of the issuer (usually kept by its paying agent). When fully registered, there are no coupons attached to the bond.
Settlement	Exchange of bonds for purchase price.
Underwriter	The investment house (or houses) that purchases a bond offering from the issuing government usually with a view toward public distribution.
Underwriting Syndicate	Two or more underwriters who collectively underwrite a single issue.
Yield	The net annual percentage of income from an investment. See Current Yield and Yield to Maturity.
Yield to Maturity	Percentage return from a bond that takes into account current yield and amortization of any premium or discount.

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<sup>1</sup> *Code*, § 75-17-103.

<sup>2</sup> Most of the material in this section is found in *Code*, § 19-9-27.

<sup>3</sup> *Code*, § 75-17-105.

<sup>4</sup> *Code*, § 19-5-21.

<sup>5</sup> *Code*, § 41-55-45(g).

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<sup>6</sup> The material in this section is taken from *Code*, § 19-9-28.

<sup>7</sup> *Code*, § 75-17-107.

<sup>8</sup> The information in this section is found in *Code*, § 19-11-21.

<sup>9</sup> *Code*, § 27-39-333.

<sup>10</sup> The information in this section is taken from *Code*, § 17-21-51 *et seq.*

<sup>11</sup> *Code*, § 75-17-101.

<sup>12</sup> *Code*, §§ 31-8-1 through 31-8-13.

## CHAPTER 11

### PERSONNEL ADMINISTRATION

Gary E. Friedman

#### INTRODUCTION

Personnel administration in county government is a complicated area, where a host of state and federal laws and regulations impact the employment relationship. This chapter surveys these employment laws and gives a brief overview of some of the requirements with which county officials should be familiar.

County officials need to understand basically what the law requires; however, this guide will not answer every question or deal with every situation. It is merely a survey and a simplification of a number of complex laws. Employment law is a field ripe for lawsuits, which could result in individual liability, so before making any important decision regarding either a particular employee or county-wide employment practices and policies, county officials should discuss the matter with an attorney who has expertise in labor and employment law.

Of the eighty-two (82) counties in Mississippi, thirty-eight (38) are on the beat system of government, and forty-four (44) are on the unit system. Whether a county operates on the unit or beat system will be an important distinction for personnel administration practices. In unit system counties, state law requires that there be a county administrator to deal with all personnel issues. Furthermore, unit counties are required to adopt formal, written personnel policies.

On the other hand, in the beat system the individual supervisors may hire, discipline and fire their own employees, and there is no requirement of written personnel policies. In both cases, supervisors should be familiar with the county's personnel policies, but the implementation of these policies is the responsibility of the county administrator in those counties having an administrator. Remember, unit system county administrators and road managers have the authority to do the county's hiring and firing and to make other personnel decisions, and the board should defer to them on specific personnel matters. However, it is up to the county boards of supervisors under both forms of county government to adopt the broad personnel policies that are to be followed.

For counties operating under the beat system of government, it is strongly recommended that the board of supervisors adopt clear, specific written personnel policies if the county does not already have them. However, once a county has adopted such policies, it must follow them as written; otherwise, the county might be subject to a lawsuit. Also, in beat counties, all supervisors should try for a *consistent* application of personnel policies. County employees will not be happy about being disciplined by their supervisor for activities allowed by another supervisor. A listing of unacceptable behavior that can result in disciplinary action should be included in any personnel handbook. In sum, beat system supervisors *should* adopt clear, uniform, written policies and delegate the implementation of them to a personnel specialist; unit system supervisors do not have that same luxury and *must* do so.

## **BASIC TERMS OF PERSONNEL POLICIES**

In counties operating under the unit system of government, the board of supervisors is required to adopt and maintain a system of countywide personnel administration applicable to all county employees, other than employees of other elected county officials who are authorized by law to employ their own employees, such as the sheriff, circuit clerk, chancery clerk, coroner and tax collector. These other elected officials with their own employees are still required to adopt personnel policies, and they can have the same policy as that adopted by the board. Any such policies adopted must be filed with the board.<sup>1</sup>

The law governing unit system counties goes on to read:

The personnel system shall be implemented and administered by the county administrator. Such personnel system may include, but not be limited to, policies which address the following: hiring and termination of employees, appeal and grievance procedures, leave and holidays, compensation, job classification, training, performance evaluation and maintenance of records. All employees of the county shall be employees of the county as a whole and not of any particular supervisor district. However, any employee which the county administrator is authorized to employ may be terminated at the will and pleasure of the administrator without requiring approval of the board of supervisors. The board of supervisors of each county shall spread upon its minutes all its actions on personnel matters relating to hiring or termination and such other personnel matters deemed appropriate by the board.

The existence of a unified personnel system is one of the criteria utilized by the State Auditor's office to determine whether unit counties are complying with the County Government Reorganization Act and continue to be entitled to state funding.<sup>2</sup> The law also provides that the chancery clerk may be appointed to serve as county administrator.<sup>3</sup>

Beat system counties are authorized, in their discretion, to hire a person to serve as county administrator.<sup>4</sup> It is the best course, if at all feasible, for a beat system county to hire a personnel manager or someone with experience in personnel matters to oversee the day-to-day work of hiring, firing and managing employees. This policy can serve to protect county supervisors from individual liability in an employment practice lawsuit, should the county be sued for employment discrimination or any of the other offenses listed in the subsequent sections of this chapter.

As stated above, Mississippi law allows sheriffs, among other elected county officials, to set their own personnel policies and to hire their own deputies, although the funds for the compensation of deputies must be approved by the board as part of the sheriff's budget. Deputies serve at the will and pleasure of the sheriff, and the sheriff sets the wages.<sup>5</sup> The salary for the sheriff is set by statute, according to the county's population.<sup>6</sup>

To further the goal of consistency when it comes to employee discipline, the board should always adhere to uniform standards of conduct that apply to all employees. If a rule of conduct



is violated, there should be specified ways of dealing with the violations, perhaps with greater and lesser penalties (such as written warnings, varying periods of suspension, and then termination) for different types of infractions. In addition, the board should adopt a uniform grievance procedure for employees who feel they have been treated wrongfully. The implementation of grievance procedures can serve to air employee complaints and head off larger problems in the workplace. Rights to grievance procedures are discussed in a later section; however, if disciplinary or grievance procedures are adopted, they should be followed consistently and explicitly as written, so that an employee will not be able to complain he was denied the full hearing to which he was entitled. When a decision is made to terminate an employee, the board must note such termination upon its minutes, even if all the board does is to accept the recommendation of the county administrator or personnel manager.<sup>7</sup>

Supervisors also should be aware of various kinds of record keeping requirements. It is important to maintain personnel files on every employee and also to keep files on job applicants. You can draw from this applicant file for future hiring, and such information may be needed to show that the county does not discriminate in employment. For this reason, the applications of rejected job seekers should be retained for at least three (3) years. Furthermore, various government entities, such as the Department of Labor's Wage and Hour Board and Equal Employment Opportunity Commission, require that certain records be kept for county personnel.

Boards of supervisors may adopt sick leave and vacation policies for their employees, as long as these policies are consistent with state law.<sup>8</sup> State law sets out certain holidays, and other holidays may be proclaimed by order of the Governor. Counties may, in their discretion, choose to give employees a day off on these extra days decreed by the Governor.<sup>9</sup>

## **MISSISSIPPI EMPLOYMENT LAW**

### **At-Will Employment**

Mississippi is an "at-will" employment state. Thus, an employer in Mississippi can fire an employee for a good reason, a bad reason, or no reason at all. This principle does not, however, allow you to ignore federal law. There are important federal laws which prohibit discrimination in hiring and firing, and employees commonly sue their employers under these laws.

Even under Mississippi law, you cannot fire someone for no reason if to do so will breach a contract of employment with that person. The Mississippi Supreme Court has held that a personnel handbook or similar document may be an *implied contract* of employment if certain conditions are met.<sup>10</sup> For this reason, it is important to have a *disclaimer* at the beginning of your personnel manual which states that the manual does not operate as a contract of employment.

Another limitation on the employment-at-will doctrine in Mississippi is the "public policy exception." The state Supreme Court has said that an employer cannot fire an employee in retaliation for that employee having refused to do something illegal.<sup>11</sup> A good example of this exception to employment at will is the case of the employer who instructed his employee to use unsafe and illegal amounts of a certain hazardous chemical. When the employee refused to follow these instructions, his employer fired him. The employee sued and won because the Supreme Court said it was against the state's public policy to fire someone for refusing to do

something illegal. So far, the public policy exception has been limited in its application; however, the Supreme Court might choose to expand upon it in the future. In general, it is illegal to fire someone for doing something that person has a legal right to do (like file an EEOC complaint, or support a certain political party).

In addition to the protections offered by the employment-at-will doctrine, supervisors are also shielded from liability by state-official immunity, which allows a supervisor to be held liable only when he acts substantially outside of his authority, or when he commits an intentional tort (such as assault and battery, slander, or intentional infliction of emotional distress).<sup>12</sup> Generally, county employment decisions will fall within the scope of a supervisor's authority and will not amount to intentional torts.

### **Workers' Compensation**

County employees are covered by Worker's Compensation if they are injured on the job. It is important for all counties to have in place adequate safety procedures and training to minimize the risk of on-the-job injuries. Should an employee be injured at work, the county's Worker's Compensation insurance will compensate the eligible employee for his injury.

### **Unemployment Compensation**

The Mississippi Employment Security Commission (MESC) is the state's "unemployment office." When an employee is terminated from his employment, he can apply for unemployment benefits with the MESC. However, no employee may receive benefits if, among other reasons, he voluntarily left the county's employ or was terminated for misconduct.<sup>13</sup> Misconduct is defined by the MESC as:

Conduct evincing such willful and wanton disregard of the employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect from his employee. Also, carelessness and negligence of such degree, or recurrence thereof, as to manifest culpability, wrongful intent or evil design, and showing an intentional or substantial disregard of the employer's interest or of the employee's duties and obligations to his employer, came within the term. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, or inadvertences and ordinary negligence in isolated incidents, and good faith errors in judgment or discretion were not considered "misconduct" within the meaning of the Statute.<sup>14</sup>

### **Garnishments and Child Support**

Another obligation imposed upon employers by state law is the execution of writs of garnishment. Following proper service upon the chancery clerk, the sheriff, or in the case of county school employees, upon the school superintendent, of a writ of garnishment,<sup>15</sup> the county *must* withhold from an employee's wages "the nonexempt percentage of disposable earnings" for

the payment of a judgment or other debt.<sup>16</sup> State law also requires that an employee's wages or other payments for delinquent child support payments be withheld, should a proper order of withholding be served upon the county.<sup>17</sup> The laws and procedures concerning garnishments and child support payments can be complex, and are areas with which the county's payroll officer should be familiar. Federal law prohibits employers from discharging an employee because his earnings have been garnished for any one debt.<sup>18</sup>

## **Nepotism**

The board should be aware that state law specifically forbids nepotism, that is, hiring one's relatives.<sup>19</sup> The statute prohibits the employment "as an officer, clerk, stenographer, deputy or assistant" any person related by blood or marriage within the third degree. Relatives within the third degree are parents, children, spouses, grandparents, aunts and uncles, siblings, and cousins, and these same relatives by marriage. If, however, you have relatives who were employed by the county *prior* to your having been elected supervisor, they may continue their county employment.

## **FEDERAL EMPLOYMENT LAW**

### **Title VII and the Civil Rights Act of 1991**

This federal law prohibits discrimination in employment based on race, color, religion, sex, pregnancy or national origin.<sup>20</sup> A board of supervisors should inform employees and job applicants that the county is an "equal opportunity employer" and does not discriminate on any unlawful basis. An effective notice of nondiscriminatory personnel policies might read as follows:

It is the policy of the county to provide equal opportunity in employment to all employees and applicants for employment. There will be no discrimination against any employee because of race, creed, color, religion, national origin, sex, age, veteran status, or disability.

Further, counties may be sued for racial discrimination under 42 U.S.C. § 1981 (referred to as "Section 1981"). This law forbids racial discrimination in the "making and enforcing" of contracts. This clause includes the making of contracts for employment.

Title VII's provisions against sex discrimination also include sexual harassment.<sup>21</sup> Counties are encouraged to develop and publish a clear policy regarding sexual harassment and to make it known to all county employees. There are two kinds of sexual harassment claims — quid pro quo and hostile environment. Quid pro quo sexual harassment occurs when an employee demands sexual favors from another employee in return for job benefits, or threatens an employee with a job detriment for refusing sexual favors. Hostile environment sexual harassment occurs when the work environment becomes sexually offensive (through inappropriate remarks, innuendo, physical contact, or the like) so that it interferes with an employee's work.

## **ADEA (Age Discrimination in Employment Act)**

This law prohibits an employer from firing or otherwise taking adverse employment action against a person because that person is over forty (40) years of age. It also prohibits discrimination against an applicant for employment because of that applicant's age.<sup>22</sup> The ADEA also forbids retaliation against an employee or applicant who makes an age discrimination charge. Further, job advertisements that make any reference to age are prohibited.

## **ADA (Americans with Disabilities Act)**

This law prohibits discrimination in employment against an otherwise qualified individual based on that individual's disability.<sup>23</sup> A disability is defined as "a physical or mental impairment which substantially limits one of more major life activities."<sup>24</sup> These "major life activities" include performing manual tasks, walking, seeing, hearing, speaking, breathing, and working. Counties must make reasonable accommodations to cope with such disabilities, as long as the person with the disability is otherwise qualified to do the job, but no accommodation need be made if to do so will constitute an "undue hardship" for the county.<sup>25</sup> Disabled persons in the community also cannot be discriminated against in the provision of public services and accommodations.<sup>26</sup>

## **FLSA (Fair Labor Standards Act)**

This law requires that workers be paid the federal minimum wage for forty (40) hours per week of work, and one and one half times that wage for every hour over forty (40) worked per work week.<sup>27</sup> There are many exceptions, or exemptions, to this law, however. The most widely used exemptions are for professional, administrative, or executive employees who may be paid on a salary basis, without regard to hours worked.<sup>28</sup> The rules and regulations used by the Department of Labor to determine whether a particular employee will fall within the professional, administrative, or executive category are predicated on that employee's *actual job duties and functions*, not on the job title assigned to that employee.

In addition to the professional or administrative exception, there are many other categories of employees excluded from the Act, for example, elected officials and inmates.<sup>29</sup> For a complete list of exempted employees, consult your board attorney or your local office of the U.S. Department of Labor.

Counties also have the option of offering employees compensatory (or "comp") time. "Comp" time allows employees to receive one and one half (1½) hours of paid time off for every hour over forty (40) worked in a week.<sup>30</sup> However, any agreement regarding comp time must be worked out in advance of employment between the employee and the county.

There is a special provision of the Fair Labor Standards Act, commonly referred to as "7(k)," to govern law enforcement personnel, so work time for sheriff's department personnel (deputies and jailers) can be calculated differently from other employees.<sup>31</sup> If a sheriff's department employee meets the statutory definition of an "employee engaged in law enforcement activities" (for example, is a trained, uniformed or plain clothes law enforcement officer with the power of arrest), then that employee's work period may be calculated for up to twenty-eight (28)

consecutive days, and no overtime compensation will be required until the number of hours worked exceeds the number of hours which bears the same relationship to 171 hours as the number of days in the work period bears to twenty-eight (28) days. (Thus, no overtime is due for a 28-day work period if the hours worked are fewer than 171.)

The Equal Pay Act, an amendment to the Fair Labor Standards Act, prohibits discrimination on the basis of sex in regards to wages paid for jobs which require equal skill, effort, and responsibility and which are performed under similar working conditions. Jobs do not need to be identical to be covered by the Equal Pay Act but only substantially equal.<sup>32</sup>

### **FMLA (Family and Medical Leave Act)**

Employees must be offered up to twelve (12) weeks of unpaid leave time per year in certain situations, such as the birth or adoption of a child, to care for a seriously ill child, parent or spouse, for the employee's own serious health condition, or a "qualifying exigency" arising out of active military duty by a child, spouse, or parent.<sup>33</sup> In addition, an employee must be given up to twenty-six (26) weeks of unpaid leave time per year to care for a service-member who is the spouse, child, parent or next of kin of the employee.<sup>34</sup> Only employees who have worked for the county for at least twelve (12) months, and who have worked at least 1250 hours during that twelve (12) month period are eligible to take FMLA leave. When these employees return from leave, they must be offered the same or a substantially similar position, and it is unlawful to discriminate or retaliate against an employee for exercising his rights to such leave.

### **Military Leave**

The Uniformed Services Employment and Re-Employment Rights Act of 1994 (USERRA) prohibits employers from discriminating against individuals because of past, present, or future membership in a uniformed service.<sup>35</sup> In addition, USERRA requires employers to promptly reemploy returning military service personnel in their former positions after absences taken for military training or service, with certain exceptions and special provisions based on the length of the absence.<sup>36</sup>

Mississippi law also prohibits employment discrimination against members or former members of the Armed Services or Reserve branches.<sup>37</sup> Furthermore, Mississippi law requires counties to pay an employee for the first fifteen (15) days of absence from county employment in each calendar year to serve in a Reserve branch of the United States Armed Forces. If the leave exceeds fifteen days, it shall be without loss of seniority, annual leave or efficiency rating, and the employee is protected from discharge without cause for one (1) year.<sup>38</sup>

### **The Immigration Reform Act**

It is unlawful for a county to employ, recruit for employment, or continue to employ a person known to be an illegal alien.<sup>39</sup> All employers are required by federal law to take steps to ensure they do not hire any such person. The county must therefore verify, by reviewing specified documents provided by prospective employees, that all new hires are eligible for employment in the United States. These documents must be reviewed, affidavits signed as to their apparent genuineness, and a form I-9 submitted to the Immigration Naturalization Service.

## **COBRA (The Consolidated Omnibus Budget Reconciliation Act)**

Under certain circumstances, an employee or the beneficiary of an employee may continue coverage under the county's group health insurance plan for up to eighteen (18) months after the termination of employment (or another event causing loss of benefits, such as the death of the covered employee, a divorce from the covered employee, or the child of the covered employee ceasing to be a dependent); however, the cost of continuing these benefits is the responsibility of the employee.<sup>40</sup> The employer can charge the employee up to 102% of the amount of premiums for a continuation of coverage.<sup>41</sup> This extra two percent (2%) is intended to cover administrative costs. COBRA also requires that notice be given to qualified employees and beneficiaries of their right to continue insurance coverage after termination.<sup>42</sup>

## **HIPAA**

As of April 14, 2003, a federal law called "HIPAA" protects the privacy of health information (called "PHI" or "protected health information") that is developed and maintained by health care providers, employer/plan sponsors, and health care clearinghouses.<sup>43</sup> An employer that is not a healthcare provider or health care clearinghouse will typically use protected health information to administer its health plan. Among other restrictions and requirements, under the new law, limitations are placed on the manner in which protected health information can be stored, the persons who can have access to protected health information, and the purposes for which the information can be used and disclosed.

HIPAA privacy compliance is mandated, in most circumstances, by April 14, 2003. In order to insure compliance, employers should (1) have their plans reviewed by legal counsel, and amended as appropriate; (2) implement policies and procedures as required by HIPAA; (3) execute all necessary agreements, including all business associate agreements; (4) provide all required notices and certifications; and (5) train employees with access to protected health information.

Generally, government-sponsored plans must comply with all of the provisions of HIPAA. The plan sponsor of a non-federal governmental plan, such as a state or local government employer, however, may elect to be exempted from any or all of the following requirements: (1) limitations on pre-existing condition exclusion periods, (2) special enrollment periods for individuals (and dependents) losing other coverage, (3) prohibitions against discriminating against individual participants and beneficiaries based on health status, (4) standards relating to benefits for mothers and newborns, and (5) parity in the application of certain limits to mental health benefits.<sup>44</sup> However, even though a governmental employer may opt out of many of HIPAA's substantive requirements, it still must provide coverage certificates to individuals when they lose coverage. So, governmental employers should notify its employees of any discretionary decisions concerning HIPAA.

## **The United States Constitution**

42 U.S.C. § 1983 (referred to as "Section 1983") gives citizens a right to sue a government entity they allege has violated their Constitutional or other federal rights. The First, Fourth and

Fourteenth Amendments establish certain Constitutional rights having bearing on the employment relationship.

Under the First Amendment, county employees have a constitutional right to free speech, as do all U.S. citizens. Thus, county employees have a right to criticize county government. While the county can require loyalty and dedication to the job, no employee generally can be terminated or treated unfavorably in his employment for criticizing the county or its officials.

A related problem that can arise with government employees occurs when county employees express a political (or even religious) point of view that is different from your own. It would be a violation of the law for a supervisor to fire or discipline an employee for expressing his political point of view. However, you may require that county employees refrain from such political expressions during working hours.

Another freedom guaranteed by the First Amendment is the freedom of association. In most contexts, this means the right to organize labor unions; however, county governments are excluded from the provisions of the National Labor Relations Act. Therefore, the county has no legally imposed duty to recognize and bargain with any union of county employees. Further, Mississippi law prohibits labor strikes by public employees.<sup>45</sup>

The Fourth Amendment prohibits unreasonable searches and seizures. In the employment area, this amendment most often comes into play regarding drug testing. Drug testing is addressed in a later section of this chapter. However, the Fourth Amendment's guarantees against unreasonable search and seizure would also protect employees from having their lockers, and possibly their desks or locked file cabinets, searched unless there was a valid reason for the search, such as the need to retrieve county documents from the desk or file cabinet.<sup>46</sup> The first question courts ask to determine whether a county official has violated an employee's Fourth Amendment rights is whether the employee has a "reasonable expectation of privacy" in the area that was searched. Then the courts will look into whether the search that was conducted was reasonable under the circumstances.

The Fourteenth Amendment (along with the Fifth Amendment) contains a "due process" clause. Basically, no government entity, such as a county, can deprive a U.S. citizen of a liberty or property interest without due process of law. In the county personnel area, the concept of a property interest applies when an employee with a contract of employment (or an implied contract, such as a personnel manual which requires "cause" for termination) is terminated. To terminate a public employee with a protectable property interest in his employment, the employee must be given *notice* of the adverse employment action to be taken and an *opportunity* to have a hearing to present his side of the story.

School teachers have special protections under the Mississippi School Employment Procedures Act.<sup>47</sup> This law affords teachers due process rights to hearings and other procedures which the courts have held endows school teachers in Mississippi with protectable property interests in their jobs. If these procedures are not followed specifically, then teachers can sue for reinstatement or back pay.

Public employees can bring suit for deprivation of their Constitutional right to liberty by alleging defamation. For instance, if an employee is falsely accused of misconduct on the job, and his reputation in the community is impaired, he can file suit against the county alleging deprivation of his liberty. Courts then inquire whether a "stigma" has been placed on the employee so that he is no longer free to associate in the community or take advantage of other employment opportunities. If an employee claims he has been deprived of a liberty interest through such a defamation, then he must be granted a hearing upon request to refute the charges and clear his good name.

## **Drug Testing and the DOT**

The Fourth Amendment gives United States citizens the right to privacy, and this impacts a public employer's rights to conduct general drug testing of employees or applicants for county jobs. There are certain exceptions to the rule against random drug testing, including the exception for law enforcement personnel who carry firearms and employees involved in drug interdiction. Department of Transportation (DOT) regulations require employers to randomly drug test those employees having a commercial driver's license.<sup>48</sup> For county governments, this will include school bus and truck drivers. These employees may be randomly drug tested, as long as DOT regulations are followed. The regulations can be quite complex, allowing for the testing of a fluctuating number of employees, to be not fewer than twenty-five percent (25%) of the workforce or greater than fifty percent (50%). Another DOT regulation allows for drug testing of employees who will be working around gas or hazardous chemical pipelines. In the drug testing area particularly, because of the complexity of the laws, supervisors should be cautioned to consult legal counsel before implementing any drug testing policy. Otherwise, county employees could sue for invasion of privacy rights.

This being said, however, all counties should adopt and publish a clear policy regarding a drug-free workplace. Certain federal grants require that counties have drug-free workplace policies before grant money can be distributed. Mississippi state law also provides for drug testing employees and job applicants.<sup>49</sup>

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<sup>1</sup> Code, § 19-2-9.

<sup>2</sup> Code, § 19-2-11.

<sup>3</sup> Code, § 19-4-1.

<sup>4</sup> Ibid.

<sup>5</sup> Code, §§ 19-25-19, 19-25-13 and 25-3-27.

<sup>6</sup> Code, § 25-3-25.

<sup>7</sup> Code, § 19-2-9.

<sup>8</sup> Code, § 19-3-63.

<sup>9</sup> Code, § 25-1-99.

<sup>10</sup> *Bobbitt v. Orchard, Ltd.*, 603 So.2d 356 (Miss. 1992).

<sup>11</sup> *McArn v. Allied-Bruce Terminix Co., Inc.*, 626 So.2d 603 (Miss. 1993).

<sup>12</sup> Code, § 11-46-1 *et seq.*

<sup>13</sup> Code, § 71-5-513.

<sup>14</sup> *Shannon Eng'g and Constr. v. Miss. Employment Sec. Comm'n*, 549 So.2d 446, 448-49 (Miss. 1989); *Wheeler v. Arriola*, 408 So.2d 1381, 1383 (Miss. 1982).

<sup>15</sup> Code, § 11-35-11.

<sup>16</sup> Code, § 11-35-23.

<sup>17</sup> Code, § 93-11-101 *et seq.*



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- <sup>18</sup> 15 U.S.C. § 1674(a).  
<sup>19</sup> *Code*, § 25-1-53.  
<sup>20</sup> 42 U.S.C. § 2000e *et seq.*  
<sup>21</sup> 29 C.F.R. § 1604.11(a).  
<sup>22</sup> 29 U.S.C. § 623 *et seq.*  
<sup>23</sup> 42 U.S.C. § 12101 *et seq.*  
<sup>24</sup> 42 U.S.C. § 12102(2)(A).  
<sup>25</sup> 42 U.S.C. § 12112(b)(5)(A).  
<sup>26</sup> 42 U.S.C. § 12131 *et seq.*  
<sup>27</sup> 29 U.S.C. § 201 *et seq.*  
<sup>28</sup> 29 U.S.C. § 213(a)(1).  
<sup>29</sup> 29 U.S.C. § 203(e)(2)(C); *Harkin v. State Use Industries*, 990 F.2d 131 (4<sup>th</sup> Cir. 1993); *Alexander v. Sara, Inc.*, 721 F.2d 149 (5<sup>th</sup> Cir. 1983).  
<sup>30</sup> 29 U.S.C. § 207(o).  
<sup>31</sup> 29 C.F.R. § 553.211.  
<sup>32</sup> 29 U.S.C. § 206(d)(1); *Brennan v. City Stores, Inc.*, 479 F.2d 235, 238 (5<sup>th</sup> Cir. 1973); *Cf. United States v. Milwaukee*, 441 F. Supp. 1371 (D.C. Wis. 1977).  
<sup>33</sup> 29 U.S.C. § 2612.  
<sup>34</sup> 29 C.F.R. § 825.127.  
<sup>35</sup> 38 U.S.C. § 4301 *et seq.*  
<sup>36</sup> 38 U.S.C. § 4313.  
<sup>37</sup> *Code*, § 33-1-15.  
<sup>38</sup> *Code*, § 33-1-21(a).  
<sup>39</sup> 8 U.S.C. § 1324a(a)(1).  
<sup>40</sup> 29 U.S.C. § 1162(2)(A)(i).  
<sup>41</sup> 29 U.S.C. § 1162(3)(A).  
<sup>42</sup> 29 U.S.C. § 1166.  
<sup>43</sup> 45 C.F.R. §§ 160, *et seq.*; 164 *et seq.*  
<sup>44</sup> 29 U.S.C. § 1181, *et seq.*  
<sup>45</sup> *Code*, § 25-1-105.  
<sup>46</sup> *O'Connor v. Ortega*, 480 U.S. 709, 107 S.Ct. 1492 (1987).  
<sup>47</sup> *Code*, § 37-9-101 *et seq.*  
<sup>48</sup> 49 U.S.C. §§ 31136, 31302 *et seq.*, and 31502 (and the regulations thereunder).  
<sup>49</sup> *Code*, § 71-7-1 *et seq.*

## CHAPTER 12

### RECORDS MANAGEMENT

Tim Barnard

#### INTRODUCTION

County governments generate numerous records in the process of carrying out their functions. The duties of chancery<sup>1</sup> and circuit<sup>2</sup> clerks include managing and maintaining many of these records. Often the volume of records amassed seems overwhelming. Clerks often ask, “Do we have to keep everything?” Fortunately, no, but for years a single section of the *Mississippi Code*,<sup>3</sup> the primary authorization for counties to dispose of records, covered only a handful of record series.

In 1996, the Mississippi Legislature passed the Local Government Records Act, *Code*, § 25-60-1, et seq., creating an office within the Mississippi Department of Archives & History (MDAH) and a committee to establish procedures for local governments to better manage their records. The Local Government Records Office is charged with the following duties:<sup>4</sup>

- Provide and coordinate education and training for counties and municipalities on records management issues.
- Establish records management standards to guide counties and municipalities, such standards to include, but not be limited to, guidelines for microfilm production and storage, electronic records security and migration, records preservation, imaging and records storage.
- Prepare records control schedules for adoption or amendment by the Local Government Records Committee established in *Code*, § 25-60-1. In the preparation of the schedules and amendments thereto, the office shall seek input from interested citizens and organizations.
- Establish standards for records storage areas of local governmental bodies, such standards to include, but not be limited to, guidelines for the selection of an off-site storage facility for records of enduring or archival value.

The Local Government Records Committee<sup>5</sup> meets quarterly to review and approve records control schedules for local government offices. Approved records control schedules, or records retention schedules, have the force of law. These schedules allow local governments to dispose of a variety of records, while protecting other records not otherwise covered by statute. Approved Records Retention Schedules for counties, municipalities, school districts, community colleges, libraries, and airports are located on the MDAH Web site: <http://mdah.state.ms.us/new/government-2/records-management/local-government-records/record-retention-schedules/>.

## BASICS OF RECORDS MANAGEMENT

Of course, there is more to records management than just being able to legally dispose of records. There are several benefits to implementing a records management program. An ongoing program makes it easier to find needed records, frees up storage space, reduces costs, increases efficiency, reduces liability, and helps identify and preserve essential records.

Records management can be defined as “a systematic approach to the creation, use, maintenance, storage and ultimate disposition of records throughout the information life cycle.”<sup>6</sup> “Ultimate disposition” may mean either destruction or permanent archiving of a record. Records management answers the “*what, why, who, how, where, and how long*” questions about records.

### **What Is a Record?**

The simple answer is “documentation of an activity.” Mississippi’s statutory definition is:

“‘Public records’ shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other materials regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency or by any appointed or elected official. *Code*, § 25-59-3(b)”

Records can be in any format, not just written or printed words on paper. Whether it is paper, electronic, film, or some other media, it is the information content, not its format that determines it is a record. Convenience copies, published matter from other sources, and personal or bulk e-mail are generally *not* official records for you to maintain, and can be disposed once their purpose has been served.

### **Why Do Records Matter?**

Records protect life, property, and rights. They also provide information needed for a local government to restore order and resume operations after a disaster.

### **Who Should Learn About Records Management?**

While anyone whose duties include handling records at any point in their life cycle should learn the fundamentals, each office should designate a “records liaison” familiar with that particular office’s records. The county should also designate and train someone to oversee retention and storage of all county records. Since so many records are now created and maintained electronically, information technology staff (in-house or contract) should also be familiar with basic records management principles.

## **How Are Records Kept?**

While most new records are created electronically, many records still exist only in paper format. Others may have been microfilmed or scanned, or they may exist in more than one format. How records are kept depends on several factors – how many will be using them, how often, and how long they need to be available. Before an office decides to scan paper records, these factors should be considered, along with initial costs and hardware/software costs associated with migration of long-term records.<sup>7</sup> If a record exists only in electronic format, there should be at least one backup copy in another location; if it is a long-term record, it is wise to maintain a backup copy in another format.

## **Where Should Records Be Kept?**

That depends on where they are in the information life cycle. Records currently in use should be readily available, in the office or on an easily accessible computer drive. Once activity drops below a certain threshold, paper-based records can be moved to a storage area within the building or off-site, while electronic records can be moved to secondary storage, such as a removable disk or auxiliary hard drive. Older records that must be preserved long-term may be moved to an archive, which may be operated by the government entity, a library or a non-profit organization.<sup>8</sup> Long-term records, no matter where they are kept, should be maintained in a climate-controlled facility, to minimize deterioration from heat, cold, and humidity. Standards for both off-site storage and archives that hold public records are available on the MDAH Web site, under “Records Management: Standards & Guidance.”<sup>9</sup>

## **How Long Should a Record Be Kept?**

This is determined by a records retention schedule. The retention period is determined by consideration of the administrative, fiscal, legal, regulatory, and historic value of the record series. Records retention schedules approved by the Local Government Records Committee, available on the MDAH Web site mentioned above, determine the *minimum* time a record must be kept. Records may *not* be disposed before a corresponding retention schedule allows, or without specific approval from MDAH or the Local Government Records Committee.<sup>10</sup> Court records are not covered by retention schedules; certain ones may be disposed with MDAH approval.<sup>11</sup> Contact the Local Government Records Office with questions about schedules, to request disposal of unscheduled records or to propose new schedules.

When records reach the end of their retention period, the Board of Supervisors or other local government entity should authorize their disposal through action recorded in its official minutes.<sup>12</sup> These can be listed simply as “all (title of record series) between (start date) and (end date);” in this way, records found later that fit the authorized time period may be disposed without further action. However, the official charged with managing these records should retain a more specific inventory of all records disposed. Records involved in audit, investigation, or litigation *should not* be disposed until at least 12

months after the action is settled.<sup>13</sup> Disposal of records dated 1940 or earlier must be approved by MDAH or the Local Government Records Committee.<sup>14</sup> Confidential records or those containing “personally identifiable information” such as social security numbers should be disposed in a secure manner, such as shredding or incineration.

### **IMPLEMENTING A RECORDS MANAGEMENT PROGRAM**

Now that it has been determined that records management is a beneficial program, how does a county go about implementing it? Here is a brief outline of the steps involved.

- The Board of Supervisors appoints someone to be in charge of records management. This gives that person authority to implement the program. While this person should be an elected or appointed official to act as a “champion for the cause,” the day-to-day duties will often fall to a subordinate.
- The Board votes to adopt the Records Management Fee authorized in *Code*, § 25-60-5. For any document filed (or generated) for which a fee is charged,<sup>15</sup> \$1.00 may be added to that fee for records management. The county keeps half of the money collected, dedicated for records management purposes, such as purchasing storage boxes, shelving, and scanning equipment; contract services such as shredding and off-site storage; and other expenses directly related to the management of the county’s records. The other half goes to MDAH to operate the Local Government Records Office. While the fee may not generate large sums of money, especially in smaller counties, it *is* additional revenue outside the general tax collections, and it shows citizens that their government is interested in managing *their* records. By 2015, forty percent (33) of Mississippi’s 82 counties had adopted this fee.
- The records management officer conducts an inventory of all the records in the county, by either a physical inventory, a survey of each department, interviews with other employees, or a combination of these. This may be done all at once or in stages, depending on the volume of records and time allotted. The inventory should include each record series, date range, format, volume, location, growth rate, and other information as necessary. Then retention schedules are applied to each record series, in order to determine which records in each series are eligible for disposal. With Board approval, eligible records can then be disposed. Other inactive records may be moved to secondary storage locations within the courthouse, in other government buildings, or to an off-site storage location. The general rule-of-thumb for an initial “purge” is that one-third of the records can be disposed, while another third can be moved out of primary office space. Through this process, the entity can also develop a file plan that identifies where records are located, and which ones are essential records.
- The Board develops policies and procedures for managing records. These can include an overall records management policy, a policy for handling open records requests,<sup>16</sup> a policy for imaging paper records, policies for managing electronic

records, electronic messages,<sup>17</sup> and social media, procedures for records storage (which should include the use of standard letter/legal records storage boxes for paper records and standardized names for record series), and procedures for records disposal.

- Employees are trained in basic records procedures. An initial workshop will familiarize all employees with the new program. Basic records training should be included in new employees' orientation, while records liaisons need more in-depth training. The Local Government Records Office periodically holds workshops on records management topics. A 90-minute interactive course, "Introduction to Records and Information Management," developed by the Council of State Archivists (CoSA), is also available on the MDAH Local Government Records Web page under Training for Local Government.<sup>18</sup>
- The county incorporates essential records into its disaster recovery or Continuity of Operations (COOP) Plan. Most counties have a COOP Plan through their Emergency Management office, but few consider records in the plan. Yet certain records are needed when responding to a disaster, while others are needed to resume normal business afterward.<sup>19</sup> MDAH also offers workshops based on CoSA's Intergovernmental Preparedness for Essential Records course.<sup>20</sup> These courses will help the county identify which records are essential to its ongoing operation, and plan for their safety and accessibility in the event of a disaster.

## CONCLUSION

A goal frequently quoted by records managers is, "Get the right information to the right person at the right time." Implementing and maintaining a records management program can help a county government achieve that goal. While the initial implementation may be time-consuming, the money and time *saved* in properly managing records will pay off. The MDAH Local Government Records Office is available for advice and assistance in managing county records. Contact them by phone at 601-576-6894 or by email at [logov@mdah.state.ms.us](mailto:logov@mdah.state.ms.us).

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<sup>1</sup> *Code*, § 9-5-137.

<sup>2</sup> *Code*, § 9-1-33, § 93-1-23, etc.

<sup>3</sup> *Code*, § 9-5-171.

<sup>4</sup> *Code*, § 39-5-9.

<sup>5</sup> *Code*, § 25-60-1. Seventeen members represent state agencies, local government associations and research organizations.

<sup>6</sup> Based on ISO 15489:2001.

<sup>7</sup> <http://mdah.state.ms.us/new/government-2/records-management/standards-guidance/> "Public Records Reformatting Policy," "Standards for Digital Imaging," and "Recommended Practices for Digitizing Public Records" (hyperlinks for latter two embedded in first document).

<sup>8</sup> *Code*, § 25-59-25(2).

<sup>9</sup> <http://mdah.state.ms.us/new/government-2/records-management/standards-guidance/> "Off-site Storage of Local Government Records" and "Standards for Local Government Archives."

<sup>10</sup> *Code*, § 25-59-23.

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<sup>11</sup> Common examples include certain circuit and county court records, *Code*, § 9-7-128; justice court case files, § 9-11-11; and youth court case files § 43-21-265.

<sup>12</sup> *Code*, § 9-5-171(1).

<sup>13</sup> *Code*, § 9-5-171(2).

<sup>14</sup> Local Government Committee rules; see cover page of retention schedules for details.

<sup>15</sup> Common sources include recording of land-related documents, filing of court cases, marriage licenses, various building and zoning permits, wage garnishment fees, and mobile home permits.

<sup>16</sup> *Code*, § 25-61-5(1) (a).

<sup>17</sup> Guidelines for managing email are available on MDAH Web site under “Records Management: Standards & Guidance: Email Standards for Local Government” <http://mdah.state.ms.us/new/government-2/records-management/standards-guidance/>.

<sup>18</sup> <http://mdah.state.ms.us/new/government-2/records-management/training-for-local-government/>

<sup>19</sup> See *Code*, § 19-15-1 for authority.

<sup>20</sup> <http://mdah.state.ms.us/new/government-2/records-management/training-for-local-government/>

## CHAPTER 13

### COUNTY PLANNING AND ZONING: AN OVERVIEW

**Kenneth M. Murphee**

#### INTRODUCTION

Section 17-1-3, *Mississippi Code of 1972, Amended*, reads as follows:

... [F]or the purpose of promoting health, safety, morals, or the general welfare of the community, the governing authority of any municipality, and, with respect to the unincorporated part of any county, the governing authority of any county, in its discretion, are empowered to regulate the height, number of stories and size of building and other structures, the percentage of lot that may be occupied, the size of the yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes, but no permits shall be required with reference to land used for agricultural purposes, including forestry activities as defined in *Code*, § 95-3-29(2) (c), or for the erection, maintenance, repair or extension ...

I do not know why lawmakers want to make planning and land use regulations seem so complicated. They do not have to be.

Planning is a subject that is very familiar to everyone. We do financial planning, vacation planning, family planning, etc. What it all amounts to is preparing now for what will happen in the future. That is exactly what county planning is. We take steps now to guide our growth and development so that we will not create unfavorable situations as far as the health and safety of people, traffic congestion, unnecessary expenses for local government, etc. in the years ahead.

The first step in planning – whether it is urban planning or family planning – is to decide what you want the end result to be. What size family or county do you want; what economic situation are you capable of creating and do you want to create; what facilities does your family or county want; what services are desired? You must determine what your *goals and objectives* are before you start.

The next step in the planning process is the preparation of *base studies* to determine with what you have to start. Here again the same questions apply to families, businesses or counties. What are my present assets; what is my present population; what are my present facilities?

The third step is to *develop a comprehensive plan*; take into consideration all information you know about your family, business, or county and apply it to your goals and objectives. Based on what you currently have, how can you best achieve what you want to have ten (10), fifteen (15), or twenty (20) years from now? In the case of county planning, we must develop and coordinate land use plans, transportation plans, economic plans and community facilities plans.



The fourth step is to *re-evaluate* our original goals and objectives and see if the plan fits. Can we achieve these goals with this plan? If so, then comes the fifth step, the *most important step – implementation of the plan*.

In urban planning we make use of zoning ordinances, subdivision regulations, building codes, and capital improvements plans. With a zoning ordinance we can work toward meeting our land development goals by regulating the use of land. With subdivision regulations we give procedures for development of land so that the benefits that are received by the property are paid for by the owner, not the county, and the design of subdivisions conforms with the adjoining property. With building codes we assure that all construction in the county meets established national standards. With a capital improvements plan we program our major community improvements so that priority items come first and funding for the improvements is secured in an orderly fashion.

The next few pages will attempt to: (1) explain the planning process; (2) present the legal basis of planning in Mississippi; (3) help you understand the regulations and programs necessary to implement your county plan; and (4) suggest ways to administer your plan and ordinances.

## **THE PLANNING PROCESS**

For example, if one were planning a fishing trip, he would take these logical steps:

- |                               |  |
|-------------------------------|--|
| Step 1: Goals and Objectives  | We have to figure out what we want to catch – 50 bream, a 40 pound catfish, or one of those big mackerel.                |
| Step 2: Base Studies          | What kind of fishing gear, bait, and boats are on hand. Also, check your fishing license and study the weather forecast. |
| Step 3: Citizen Participation | We better check with the wife and kids to make sure they don't already have plans.                                       |
| Step 4: Develop the Plan      | Decide where we are going to fish, how much bait and additional gear we need, and which boat we are going to use.        |
| Step 5: Implement the Plan    | Pick me up Joe; I'll bring the cooler.   |

The planning process for counties is just as simple:

### **Step 1: Goals and Objectives**

Before your county begins to develop a comprehensive plan to guide future growth and development, it is necessary to reach a community consensus about what kind of county you want. Do you want new residential growth or do you want to keep the little county just like it is? Do you want to attract industrial growth or do you want to become a tourist and leisure resort?

Do you want big new “super” stores or do you want to emphasize small locally owned retail growth? What do you expect in terms of parks, schools, and emergency services?

There are several ways to develop a consensus on future goals. The public hearing process is one way; just “open up the floor” and give everyone a chance to be heard. The public hearing itself can take several different formats. It could be a formal presentation given on behalf of the board of supervisors followed by public comments, or it could be a three or four hour informal time when the public could drop by individually to express opinions to board members or other county officials.

In addition to giving the general public an opportunity for participation, it is a good idea to solicit input from community business and political leaders through private interviews. You are more apt to get frank and meaningful answers from such officials in a private setting where comments are not attributable to specific individuals.

Many times meaningful dialogue can be generated by focus groups assembled at civic clubs or in a retreat setting. Utilizing these methods can get ideas tossed around more easily and provide a comfortable forum for the ideas to be debated and/or refined.

Regardless of what format is used during the goals and objectives phase, the result must be the development of some consensus on what you want the county to be like.

## **Step 2: Base Studies**

Once you have determined what you want the county to be, the next step is to analyze what the county is like now. You need to inventory the existing land use characteristics, transportation systems, housing characteristics, community facilities and services, economic and social indicators and consider the current population and potential population growth.

An existing land use map depicting the utilization of land by residential, commercial, industrial, public, and semi-public uses will need to be prepared. This establishes a starting point for where you want to guide and encourage future development.

A road map must be developed showing existing road conditions, traffic counts, major drainage features, or other potential constraints to road construction. Airports must be documented showing existing runway orientation, length, and condition. Railroad locations and access points must be identified. The location and capacity of ports must be inventoried. The availability of any public transit, the schedules used, and primary users must be determined.

An analysis of the housing stock must be accomplished. You will need to know how many houses exist in the county, whether they are owner or renter occupied, how many are sub-standard, and how many are vacant.

An inventory of existing community facilities must be done to reveal the location and capacity of various emergency services, schools, medical facilities, parks and recreation areas, libraries, and other public buildings and properties.

Economic and social indicators must be accumulated on employment trends, major employers, retail sales history, agricultural production, welfare recipients, prevailing wage rates, and educational attainment.

An analysis of the existing population by age, sex, and ethnic background will be needed. Population trends for the past thirty years must be reviewed and projections must be made for the next thirty years.

### **Step 3: Citizen Participation**

Citizen participation is not really a defined step in the planning process, but it is an activity which must be incorporated into the process from start to finish. Several of the best techniques to obtain citizen participation were discussed previously under the section on goals and objectives. These included public hearings, focus groups, retreats, and private interviews. The important thing to remember here is that you cannot have too much public participation. You must keep the public informed and make them feel like part of the process.

### **Step 4: Develop the Plan**

This is the fun part. You have invited virtually everyone in the county to participate in building a consensus on what you want your county to be like five (5), ten (10), or twenty (20) years from now. You have inventoried and documented all your current assets and conditions. Now you develop a future land use plan, a transportation plan, a community facilities plan, and strategies for attracting industry or tourism.

The future land use plan will require a map showing the general distribution and extent of land intended for residential, commercial, industrial, and other uses. Policies will be established concerning residential densities and the desire to encourage or discourage new residential growth. Commercial priorities developed during the goals and objectives phase will be addressed. Strategies to carry out the industrial or tourism preferences will be created, and locations for these types of development will be identified.

The transportation plan will address all forms of movement – roads, airports, rail, water ports, and public transit. A map is prepared showing the road system and setting out the functional classification and capacities of each road. The coordination of the land use plan and transportation plan is critical because they are so dependent upon each other. All transportation modes should be included on the map, and in-depth proposals of future improvements should be addressed.

A community facilities plan is prepared containing a schedule of improvements or creation of facilities as they are required by the land use and transportation plans and population projections. Specific facilities are included in a capital improvements plan covering the first five (5) years, along with budget projections and possible funding sources. Long-range community facilities needs are included in the plan with more generalized locations and cost estimates.

## Step 5: Implement the Plan

The comprehensive plan is just that – a plan. To make it effective, the board of supervisors has to adopt ordinances and regulations to carry out the plan. Although the types and intent of the local laws enacted can vary greatly, most counties, as a minimum, adopt zoning ordinances and subdivision regulations; and many also adopt building codes. The zoning ordinance uses a map to divide the county into areas for residential, commercial, industrial, and agricultural uses. It establishes regulations on development related to use of property, location of structures, and population density.

The subdivision regulations establish minimum standards for development in the county. The regulations establish procedures for creating parcels of under a minimum size, design standards for street, blocks and lots, and minimum required improvements.

Many municipalities in Mississippi and a few counties have adopted building codes, usually the Standard Codes of the Southern Building Code Congress. This series of codes include areas of land development such as building, plumbing, mechanical, housing, swimming pool, and several others. The National Electrical Code is the predominant code in that field. (The third section of this chapter deals in more detail with zoning ordinances, subdivision regulations, and building codes.)

## THE LEGAL BASIS

The general legislative authority that enables counties to adopt comprehensive plans for development is found in Title 17, Chapter I of The *Mississippi Code of 1972*, as amended. It contains a good definition and outline for a county plan. *Code*, § 17-1-1 states:

(c) "Comprehensive plan" means a statement of public policy for the physical development of the entire municipality or county adopted by resolution of the governing body, consisting of the following elements at a minimum:

(i) Goals and objectives for the long-range (twenty (20) to twenty-five (25) years) development of the county or municipality. Required goals and objectives shall address, at a minimum, residential, commercial and industrial development; parks, open space and recreation; street or road improvements; public schools and community facilities.

(ii) A land use plan which designates in map or policy form the proposed general distribution and extent of the uses of land for residences, commerce, industry, recreation and open space, public/quasi-public facilities and lands. Background information shall be provided concerning the specific meaning of land use categories depicted in the plan in terms of the following: residential densities; intensity of commercial uses; industrial and public/quasi-public uses; and any other information needed to adequately define the meaning of such land use codes. Projections of population and economic growth for the area

encompassed by the plan may be the basis for quantitative recommendations for each land use category.

(iii) A transportation plan depicting in map form the proposed functional classifications for all existing and proposed streets, roads and highways for the area encompassed by the land use plan and for the same time period as that covered by the land use plan. Functional classifications shall consist of arterial, collector and local streets, roads and highways, and these classifications shall be defined on the plan as to minimum right-of-way and surface width requirements; these requirements shall be based upon traffic projections. All other forms of transportation pertinent to the local jurisdiction shall be addressed as appropriate. The transportation plan shall be a basis for a capital improvements program.

(iv) A community facilities plan as a basis for a capital improvements program including, but not limited to, the following: housing; schools; parks and recreation; public buildings and facilities; and utilities and drainage.

The statute sets out the general powers of local government to promote the health, safety, morals, and general welfare of the community. The law restricts counties from requiring permits for land used for agricultural purposes or for farm buildings.

Counties are authorized to develop and implement comprehensive plans independently. Counties may also join with municipalities in order to attain uniformity and consistency in the plans and in implementing regulations.

Counties are allowed to adopt zoning ordinances and to appoint planning commissions or such other advisory committees as they see fit. The ordinance may delegate certain powers and decision making responsibility to the planning commission. However, any party aggrieved with the decision of the planning commission or other advisory committee shall be entitled to a public hearing before the board of supervisors.

If someone violates the zoning ordinance, the board of supervisors may institute any appropriate action or proceeding to prevent the unlawful action. If it is a relatively minor violation which does not pose an immediate threat to the neighborhood in which it is occurring, the most effective action is an affidavit in justice court or a hearing before the justice court judge. In more complicated matters or zoning violations which threaten the health or safety of the area, an action in Chancery Court with perhaps a temporary injunction might be required.

The enabling legislation for subdivision regulations gives the board of supervisors authority to order that no plat of a subdivision be recorded until it has been approved by the board of supervisors, and the board of supervisors shall have power to require the installation of utilities and laying out of streets in subdivisions or to accept performance bonds in lieu thereof. The statute also prescribes procedures for vacating or altering recorded plats after affected parties are notified and have agreed to the actions.

## **ZONING ORDINANCES, SUBDIVISION REGULATIONS, AND BUILDING CODES**

Once a county has adopted a comprehensive plan for future development, it should be used as a guide in decision-making by the board of supervisors. It should influence the thought process of practically every meeting as the board sets policy and carries out actions to improve the county. There will be dozens of board of supervisors' orders and local regulations which will reflect the intent of the comprehensive plan. There are, however, three types of ordinances which have the specific purpose of implementing the comprehensive plan. They are the: (1) zoning ordinance; (2) subdivision regulations; and (3) building codes.

### **Zoning Ordinances**

The zoning ordinance contains two elements – a text which sets forth the various zoning classifications and allowable uses within those classifications and a map which delineates how every parcel of land in the county is zoned.

The zoning ordinance text can be as detailed or as simple as a community wants to make it. For example, the original zoning ordinance adopted by DeSoto County over forty (40) years ago was about fifteen (15) pages long and had four (4) zones: agricultural, residential, commercial, and industrial. The current ordinance is eighty (80) pages and contains fifteen (15) different zoning classifications. Both of those ordinances follow the same format, however.

The ordinance starts out with a general statement of title and purpose. Then there is a list of definitions which are necessary to insure that everyone knows what the various terms and procedures mean.

The actual schedule of district regulations follows. This lists the various districts which will be contained in the ordinance, it establishes what uses will be allowed by right (permitted uses) and perhaps others which could be allowed in certain situations (conditional uses), it imposes restrictions on the location of structures within lots (setback requirements), and establishes other limitations which the board of supervisors deem appropriate. The ordinance will contain sections dealing with procedures for amendments, conditional uses, signs, nonconforming uses (grandfather clause for uses existing at the time of ordinance adoption), request for variances from the requirements of the ordinance, off-street parking, and ordinance administration.

The administration of the zoning ordinance requires, as a minimum, a planning commission and staff to carry out the ordinance. It must provide an appeals board or board of adjustment for persons who feel aggrieved by the provisions of the ordinance or its application of them. The planning commission itself is made up of citizens appointed by the board of supervisors and usually ranges in size from five (5) to fifteen (15) people. Actions of the planning commission are usually recommendations to the board of supervisors who must approve the decisions of the planning commission.

## **Subdivision Regulations**

Subdivision regulations establish an orderly procedure for developing property in the county that will result in a desired growth pattern and insure that costs associated with the development are paid for by the development, not the general public.

Like the zoning regulations, the subdivision regulations begin with sections on the title and purpose and list definitions needed in the ordinance. All subdivision regulations must contain three critical sections to be effective – (a) the procedure for creating new parcels of land; (b) the design standards required for new development; and (c) the procedure for installing improvements.

- (a) The procedure for subdividing land needs to be as simple as possible, keeping in mind costs associated with complying with the ordinance. Ordinances can be written which require major developments to follow detailed procedures and provided surveys, soil conditions, erosion control plans, and drainage plans, yet still have a simplified procedure for the family that wants to give the newlyweds a lot upon which to build.
- (b) Design standards for multi-lot subdivisions are critical. The established standards must address the design requirements for laying out streets, blocks, easements, and parks and must contain minimum construction standards to insure quality control and minimize long term maintenance.
- (c) The ordinance must set out procedures for installing improvements that allow for the sale of lots and construction to begin prior to completion of improvements. This is usually done by allowing surety bonds to be posted guaranteeing construction within a certain time frame.

## **Building Codes**

Building codes require construction to meet minimum standards. The Southern Building Code Congress International publishes a series of codes called the *Standard Code* which are used by practically every jurisdiction in Mississippi with adopted building codes. They include requirements for building construction, mechanical installation, plumbing, housing, swimming pools, and others. The predominant electric code used is the National Electric Code. The county must publish notice of its intent to adopt a building or related code and allow the opportunity for a petition to be filed requiring a referendum. If no petition is received, the board of supervisors may adopt the proposed code.

## **ADMINISTRATION**

The adoption of land use regulations and building codes will require someone to administer them on a daily basis. In small counties with only a few new buildings per month, the administrative staff could be an existing employee or a semi-retired architect, engineer, or contractor working

on a part-time basis. In most counties, however, a staff will need to be hired to effectively administer the ordinances.

There will be significant clerical requirements to process building permits, zoning, and subdivision applications. It will be necessary to have someone available as an employee or consultant who has a basic understanding of land use regulations. The building code requires that a building official be designated who has a minimum of ten (10) years experience as an architect, engineer, building contractor, or building inspector. That individual must inspect all construction to insure compliance with the building code and issue certificates of occupancy before a building can be occupied.

The zoning ordinance and building codes require creation of a planning commission and board of adjustment or board of appeals. The zoning staff or building official processes applications for zoning changes, variances, subdivision approvals, or appeals from staff decisions and then presents them to the appropriate commission or board for a decision. State law requires that persons aggrieved by decisions of the planning commission or appeals boards be afforded a hearing before the board of supervisors.

Many jurisdictions also require certain tradesmen such as electricians, plumbers or mechanical contractors to be licensed. Criteria must be established to determine required qualifications of contractors and a means of testing or measuring those qualifications is required. Sometimes a license commission is created to oversee this process and insure the testing is objective and fair.

## **CONCLUSION**

As Mississippi enters a new century, continued growth and development of her counties will require that attention be given to the establishment of a comprehensive planning process. The need for orderly, planned growth and development will only increase in the years ahead. Adoption and implementation of a comprehensive planning process in our counties will work to protect private property and allow the counties to grow and develop in accordance with the wishes of the citizenry.



## CHAPTER 14

### MUNICIPAL BOUNDARY EXPANSION FROM A COUNTY PERSPECTIVE

Jerry L. Mills<sup>1</sup>

#### INTRODUCTION

Mississippi is divided into eighty-two (82) counties whose boundaries are fixed by statute.<sup>2</sup> A new county may be created only in accordance with certain provisions (Section 260) of *Mississippi Constitution of 1890*. Most of the lands of the state lie outside the boundaries of a municipality.

Municipalities originally provided a more intense level of service to a more densely populated area than did counties. Over the years, however, the level of service demanded of counties has increased significantly. Counties now provide many services which were once within the exclusive domain of municipalities (e.g., door-to-door garbage collection, wastewater collection and treatment, solid waste disposal, etc.).

Many municipalities have engaged in aggressive annexation policies which have resulted in the addition within their corporate limits of property which is, at least initially, rural in nature. Inevitable conflicts between municipalities and counties have arisen related to municipal annexation and incorporation. Whenever there is a change in municipal boundaries, whether it involves the creation of a new municipality, annexation of territory by an existing municipality, or a de-annexation effort, the county will be impacted.

#### COUNTY STANDING TO OPPOSE ANNEXATION

The right of counties to oppose municipal annexation first reached the Mississippi Supreme Court in the case of *Harrison County v. City of Gulfport*, 557 So. 2d 780, (Miss. 1990).<sup>3</sup> Prior to the decision of the Supreme Court in that case, there was considerable legal controversy over whether a county had the right to oppose an annexation. In the *Harrison County* case, there were pending annexations in both Gulfport and Biloxi to which Harrison County had filed objections. The cases were being heard by separate Chancellors. In both cases the chancellors ruled that Harrison County was not a proper party to oppose an annexation. The Mississippi Supreme Court granted an interlocutory appeal.

On appeal, the Mississippi Supreme Court examined the right of a county to oppose an annexation in view of two distinct legal requirements – standing and underlying authority. The Court found that counties possess both requisites.

## Standing

In order to participate in any litigation potential parties must show that they have a “colorable” interest in the litigation, or an adverse effect. In determining whether counties have standing to intervene in an annexation, the Supreme Court first examined the general principles of standing applying to all litigation: “Parties may sue or intervene where they assert a colorable interest in the subject matter of the litigation or experience an adverse effect from the conduct of the defendant, or as otherwise authorized by law.”<sup>4</sup> The Court recognized that this view has been statutorily incorporated into the state law procedure of annexation confirmation, which authorizes intervention by any party “interested in, affected by or aggrieved by” a proposed annexation.<sup>5</sup>

The Court then moved to the more specific question of whether the concerns of a County were sufficient to meet this test in an annexation proceeding. The Court found that standing is similar to any other charge of a party in its pleadings; a county’s well-pleaded allegations must be taken as true on their face. However, the Court also noted that factual components of a standing claim may be challenged via a certain procedural rule of court – Rule 56 – dealing with what is called “summary judgment,” (where there is no genuine issue of material fact and one party is entitled to judgment as a matter of law). One example the Court gave is, if a county geographically remote from Biloxi or Gulfport were to have asserted a right to intervene in the *Harrison County* case and objected to those annexations, that remote county would likely not have a colorable basis in fact for its claim of interest or effect, giving the court the power to dismiss the county as a party for lack of standing. An appellate court can apply the same standard, i.e., if there is no genuine issue of material fact regarding the interest or effect of a county as an asserted party, the objecting county lacks a colorable claim and the court dismiss the objector county. On the other hand, the Court noted, the objector county is not required to prove it may prevail in its case on the merits simply to overcome a motion to dismiss for standing. Such a motion to dismiss should be denied unless, under a Rule 56 analysis, a court finds that the objector county has no colorable basis for a claim of interest or effect from the annexation.

In the *Harrison County* case, the Court used this analysis under the facts of that case and found as follows:

The Board of Supervisors of Harrison County, Mississippi, on January 25, 1988, adopted a resolution finding the proposed annexations by the Cities of Gulfport and Biloxi “inimical to the best interests and general welfare of the people of Harrison County”; that said annexations would adversely affect the areas proposed to be annexed, and that such would seriously affect the operation of the Harrison County School System in these areas; that Harrison County’s tax base and its school system would suffer irreparable damage due to loss of taxpayers and students, etc. These findings suggest standing. Moreover, the interest of the county is derived from the interest of the citizens of the county living in or owning property in the areas tabbed for annexation. The board of supervisors is the governmental authority closest to those people and is surely charged to protect their welfare. From these thoughts it is a short step to *Code*, § 21-1-31, which describes those who may appear and object to an annexation as

“all parties interested in, affected by or being aggrieved by said proposed enlargement.”

Rules regarding standing, statutory or otherwise, import objective standards. Still, common sense suggests the party asserting standing would be more sensitive to whether its interests will be affected by an annexation – than would the annexing municipality or even the trial court. Cf. *Hentz v. State*, 489 So. 2d 1386, 1388 (Miss. 1986). A party’s assertion of an interest or effect goes a long way toward establishing that it has an interest in or will likely be affected by an annexation.<sup>6</sup>

The *Harrison County* Court noted that, because the cities in that case were objecting to the county’s standing, those cities would in essence have had the Supreme Court review the merits of the County’s facts and “findings” (with regard to the reasonableness of the proposed annexation) just to decide the standing question. The Court relied on its previous authority as a reminder that “[w]hat proof the objectors may or may not have been prepared to offer at the hearing bearing upon the question of the reasonableness of the proposed expansion is of course, impossible for us to know or foresee with any degree of accuracy.”<sup>7</sup>

The Court’s earlier case contained language noting that at an early stage of the suit’s proceedings it is impossible to determine what facts or circumstances of evidence a party may develop which would have a bearing upon the reasonableness of the proposed annexation, in part because of many factors which bear upon the question to ascertain the weight of both the advantages and disadvantages of the annexation.<sup>8</sup> In the *Harrison County* case, the Court could not say with confidence that Harrison County had no interest in, nor that it would not be affected by, the proposed annexations, giving Harrison County standing to object to each of those annexations.<sup>9</sup>

Though the precise question has not arisen in the Supreme Court before or since, the Court has not denied a county’s standing since, and the *Harrison County* finding regarding the standing of a county has been observed by the Court in looking at the impact of municipal annexations on adjacent county school districts.<sup>10</sup> More recently, the Court also expressly recognized the finding that standing concerning in annexation cases depended solely on the language of the statute, *Code*, § 21-1-31, “which specifically authorizes intervention by any party ‘interested in, affected by or aggrieved by a proposed annexation,’ in order to determine whether there was a colorable basis in fact for the intervening counties’ claim.”<sup>11</sup>

### **Legal Authority**

Having found that the County had standing to oppose the annexations, the Court in the *Harrison County* case then turned to the more basic question: “Does state law permit counties to oppose an annexation?” After an examination of applicable law, the Court found that counties do have the authority to oppose annexations.

The Court found that common sense limits must be applied, for a board of supervisors could not function if its every act was required to be previously authorized specifically and in detail, noting that authority not expressly provided may be exercised if “vested by necessary implication.” For

decades, the Court has recognized the statute authorizing the board to sue “in all matters in which the county may be interested” and held the authority to give the attachment bond, though not expressed, was necessarily implied.<sup>12</sup>

Long ago, the Court held a County Board could institute suit, just as an individual can, under an older statute which entitled the county “to the benefit of all actions to which individuals are entitled in a given state of the case.”<sup>13</sup> The *Harrison County* Court noted that “what others in business may do, the county in its authorized business affairs is free also to do unless otherwise commanded by law.”<sup>14</sup>

Besides noting a county’s “individual” standing, the Court also said:

Harrison County is a political subdivision of the State of Mississippi. Consistent with the general principle, a county has no right to sue incident to its being, but only as authorized by law. But when we turn to our statute books, we find three code sections (*Code*, §§ 11-45-17, 11-45-19, and 19-3-47(1)(b)) which, read together, seem wholly adequate unto the day.<sup>15</sup>

The Court then examined those three statutes, beginning with *Code*, § 11-45-17:

Any county may sue and be sued by its name, and suits against the county shall be instituted in any court having jurisdiction of the amount sitting at the county site; but suit shall not be brought by the county without the authority of the board of supervisors, except as otherwise provided by law.

The Court emphasized this statute “by necessary implication” authorized a county to hire a lawyer and bring legal action, clarifying that this authority should not be limited to suits where the county had a pecuniary interest, for “it is to the interest of the county to maintain the peace and harmony of its inhabitants.”<sup>16</sup> The Court also noted that county supervisors “are charged generally to promote the peace, happiness, and economic and social welfare of the people they serve.”<sup>17</sup>

Secondly, the Court noted that *Code*, § 19-3-47(1)(b) provides in part: “The board of supervisors shall have the power, in its discretion to employ counsel in all civil cases in which the county is interested. . . .”

Finally, *Code*, § 11-45-19 further elaborates a county’s authority to sue: “Suit may be brought, in the name of the county, where only a part of the county or of its inhabitants are concerned, and where there is a public right of such part to be vindicated.”

Not finding a reason to give these statutes anything other than a common sense reading, the Court found Harrison County was acting by and through its board of supervisors “legally empowered to proceed in court regarding matters affecting the county’s interest.”<sup>18</sup> The Court also noted: “It is the board of supervisors which decides whether the county is interested in a matter, this Court’s authority to intervene being limited to cases where the assertion is seen a sham.”

The Court refused to reading into these statutes that a county had the authority to take legal action “except in annexation cases;” the Court regarded the supervisors’ decision as “a political one, not subject to judicial review, and for which the supervisors are answerable only at the polls.”<sup>19</sup>

Looking to cases from Mississippi, Georgia, and Colorado, the Court agreed a county being “invaded” by an annexation effort (from a city located in a neighboring county) is a “person aggrieved” in annexation cases, and “should be permitted to oppose invasion from a municipality principally situated in an adjoining county,” giving Harrison County authority to intervene and object in the annexation case if it faced one from a neighboring city outside the county.<sup>20</sup> The Court then reasoned:

If an invaded county whose lands are being annexed has authority to object, so may a home county so long as our law is posited in its present form. It may well be that an adjacent invaded county’s “interest” or “effect” may differ from that of a home county. This hardly proves a home county has no legally cognizable “interest” or “effect” from annexations such as these, and no inconsiderable difficulty attends the effort to articulate a legally cognizable distinction between the effects of Gulfport’s annexation of 53.65 miles of incorporated Harrison County lands and the effect of a like annexation of Hancock or Stone County lands. If the authority exists it surely exists without regard to the particular county interest(s) at stake and without regard to the ground(s) on which the county may oppose the annexation. Put otherwise, if Harrison County has no standing to object to these annexations, this may only be because the law does not permit counties to contest annexations, period. As indicated above, we find that the authority to appear and object does exist and that the matter of whether and when that authority may be exercised is committed wholly to the discrete judgment of the board of supervisors.

We are told litigation between municipalities and counties is unseemly and that we should move to prevent it. The argument belies our history. See, e.g., *City of Indianola v. Sunflower Co.*, 209 Miss. 116, 46 So. 2d 81 (Miss.1950) (county brought suit against city to confirm title to property); *Town of Crenshaw v. Panola County*, 115 Miss. 891, 76 So. 741 (1917) (suit between political subdivisions, town sought to recover tax money from county); *City of Bay St. Louis v. Board of Sup’rs of Hancock County*, 80 Miss. 364, 32 So. 54 (1902) (county sued city for room in courthouse used as city hall). If such suits be seen an evil, the legislature may certainly administer a cure.

A further objection is that residents of Gulfport and Biloxi pay taxes to Harrison County and have a right that their tax dollars not be used to thwart their interests in the two annexations. The source of the right is never identified, nor is it apparent on reflection. The point requires a presumption that all taxpayers of Gulfport and Biloxi approve their city’s annexation plans. The short answer is found in *Code*, § 11-45-19. The county may sue where only a part of its

inhabitants have interests at stake. Citizens of Gulfport and Biloxi, unhappy with the actions of any of the governmental bodies litigating today, may find a remedy in the political and not the legal process.<sup>21</sup>

With the right of counties to be involved in annexations clearly established by our law, the question of “*Can* a county oppose an annexation?” then becomes “*Should* a county oppose an annexation?” This decision is often made with little consideration as to the real impact of annexation on a county. A board of supervisors considering whether to oppose an annexation can rest assured that the municipality will seek and will get an answer to the question “Why does the County oppose this annexation?” Generally there will be a number of reasons put forth, some are legitimate, others less so.

## **Politics**

Whether true or not, you may be assured that the municipality will claim that the proposed annexation is based on nothing more than politics. Very often supervisors will be faced with a vocal constituency living in an annexation area. Those being annexed very often will seek to have the board of supervisors oppose the annexation as a way of avoiding the cost of the litigation themselves. Though the board of supervisors may decide to oppose an annexation on the grounds of politics alone, heed should be paid to the words of Justice Hawkins’s dissent in *Harrison County*:

It should be perfectly plain that the employment by the board of supervisors of Harrison County of lawyers to protect their own political and economic power under the argument that they are “protecting the county taxpayer” is no more valid than laying out and building roads and bridges on private property.

No doubt laying out subdivisions, building driveways, field roads and bridges with public, taxpayers’ money helped create in hundreds of instances political bosses. A supervisor rendering such services to taxpayers in his district enormously enhanced his political power. Those days are over. But the Mississippi Supreme Court has told the boards of supervisors you can salvage or re-establish some of your economic and political power by paying disgruntled property owners’ legal fees out of the public treasury to fight any municipal expansion.

If this is not illegal, void and against public policy, then what is?

The majority has given a lengthy exposition of authority by political subdivisions generally to go to court, but ignored and missed the point of this case entirely: that the public treasury is funding legal fees to help individual supervisors and private property owners. This should never be classified as an “object authorized by law.”

No law book is needed to detect the violation of public policy in this action by the Harrison County board of supervisors. *You do not even need to be a lawyer. An unimpaired olfactory sense will suffice.*<sup>22</sup>

Though a dissenting opinion like this one is not controlling law, it does show that the court was far from unanimous in rendering its decisions; the reasoning in such dissents can sometimes lead to a later court altering the case law landscape on certain issues.

Municipal officials have become much more vocal in opposition to members of boards of supervisors who oppose annexations. The political reality often is that there are many more voters adversely affected by supervisors' opposition to annexation than are aided. Municipal residents pay county taxes. Many resent county government using their tax money against municipalities. The Supreme Court recognized that citizens of the municipality unhappy with the actions of any of the governmental bodies litigating annexations, may find a remedy in the political and not the legal process." In fact opposition to annexations was a factor in the defeat of a number of incumbents during the most recent elections.

### **School Issues**

As the Supreme Court noted one of the reasons that Harrison County asserted for opposing the Gulfport and Biloxi annexations was the potential impact on county schools. This is no longer a real issue in annexation.

Prior to 1986 state law provided that with regard to cities with a municipal school district, the boundaries of a school district automatically changed when the city annexed.<sup>23</sup> In 1986 the legislature repealed this legislation. Under the new legislative scheme, annexations no longer impact school district lines. Because, however, the change had voting implications, the preclearance was required under the *Voting Rights Act of 1965*.

Initially the Justice Department rejected the change. Years of litigation ensued with the federal courts ultimately holding the repeal of the automatic expansion of municipal school lines upon annexation was unenforceable. Following the litigation, however, the repeal was ultimately precleared. The relationship between annexation and school district lines is now a thing of the past.<sup>24</sup>

### **Jurisdiction Over Roads and Streets**

The question frequently arises as to who has jurisdiction over public roads and streets in areas annexed by a city. On annexation jurisdiction over public roads and the obligation of maintenance becomes a municipal responsibility.<sup>25</sup>

### **Utility Districts**

Certain counties have challenged municipal annexation based on county utility districts created under certain, specific Local & Private Legislation which provides that no city may annex any portion of the utility district unless that city annexes the entire district. Some trial courts have held these provisions to be unconstitutional as applied. The Supreme Court has not yet dealt with this issue in Mississippi.

## County Parks

County owned and maintained parks are often in an area annexed by a municipality. The question is frequently raised as to whether the annexation will result in the park becoming a municipal park. The Attorney General has addressed this issue, saying, “the jurisdiction of a county park commission created pursuant to *Code*, § 55-9-81, et seq. (Rev. 1989) would not be affected by a municipality’s annexation of territory wherein one or more county parks have been established by said commission.”<sup>26</sup>

## Financial Impact on the County

Municipal annexations do have some financial impact on counties. Generally, the impact is offset by the fact that service requirements are reduced. In certain localized areas this may not be the case. The following are examples of specific financial impacts of annexation on counties: road taxes,<sup>27</sup> garbage and trash collection,<sup>28</sup> fire protection rebate funds, TVA lieu funds, gaming fees,<sup>29</sup> and funds impacted by local and private legislation or legislation which is local in nature.

## THE EXPANSION PROCESS

In compliance with the mandates of § 88 of the *Mississippi Constitution of 1890*, the Legislature adopted statutes related to the classification, creation, contraction, abolition, and expansion of municipalities. Though the original statutes have been amended on numerous occasions, Title 21 Chapter 1 of the *Mississippi Code* contains those statutes today.

### CLASSIFICATION

All municipalities in the state are divided into three (3) classes. Municipalities with a population of two thousand (2,000) or more are classified as cities. Those with a population of more than less than two thousand (2,000) but more than three hundred (300) are classed as towns. A village has three hundred (300) or fewer inhabitants.<sup>30</sup> If a new federal census changes the population so that a municipality is in a different class, the governing authorities are required to enter an order on the minutes changing the municipality to the proper class. This order is to be filed with the secretary of state. The census is conclusive as to the class of a municipality.<sup>31</sup> Municipalities are to operate under the corporate name of “The City of \_\_\_\_\_,” “The Town of \_\_\_\_\_,” or the “Village of \_\_\_\_\_” according to the proper classification.

### CREATION

*General Requirements.* A new municipality may be created in Mississippi provided the area has the certain characteristics; however, “no municipal corporation shall be created hereafter except those classed as cities or towns.”<sup>32</sup> The status of any municipality created before the current Mississippi Code is unchanged; thus, all such municipal corporations, including villages, shall continue to exist as such with all the rights and privileges thereof. The required characteristics are:



- one square mile of territory;
- population of at least 300;
- at least one (1) mile of hard surface streets (either existing or under construction);
- at least six (6) streets making up the one (1) mile of hard surfaced streets; and
- there is a public utilities system (water and/or sewer) existing or under construction.<sup>33</sup>

### **The Petition**

If an area possesses these characteristics, it may incorporate as a town or city on the petition containing signatures of at least two thirds (2/3) of the qualified electors residing in the area. Normally, failure to include this minimum number of signatures is not amendable; however, the Supreme Court has allowed amending if a clerical error was made. “We have previously held that the two-thirds-signature element is a mandatory and jurisdictional requirement, and a petition for incorporation cannot be amended to include additional signatures.” *City of Jackson v. Byram Incorporators*, 16 So. 3d 662, 673 (Miss. 2009). However, the Byram Incorporators’ “failure to include page three *when filed* was a clerical error, not a failure to comply with the specific requirements of *Code*, § 21-1-13.” *Id.* (emphasis in original).

The petition must meet the following requirements:

- describe that area proposed to be incorporated;
- contain a map or plat of the area to be incorporated;
- set forth the corporate name of the new municipality;
- set forth the number of inhabitants in the new municipality;
- set forth the assessed valuation of the real property in the area according to the latest available assessment;
- state the aims of the petitioners in seeking to incorporate;
- set forth the municipal and public services the municipality proposes to provide;
- set forth the reasons that the public convenience and necessity requires a new municipality and contain a statement of the names of the persons the petitioners desire to be appointed as officers of the new municipality; and
- be sworn to by at least one (1) of the petitioners.

Once the necessary signatures are obtained the petition must be filed in Chancery Court.<sup>34</sup>

### **Notice**

After the petition is filed in the Chancery Court, a date is set for the hearing by the Chancellor. Notice of the time of the hearing must be given by publication in a newspaper, to all persons interested in, affected, or having objections to the proposed annexation.<sup>35</sup> If there is an existing municipality within three (3) miles of the area to be incorporated, process must be served on it at least 30 days prior to the hearing.<sup>36</sup>

## Hearing

At the time set forth in the notice,<sup>37</sup> a hearing is to be held in chancery court. At the hearing, any evidence related to the issues of “public convenience and necessity” or reasonableness may be presented. If the proposed incorporation is found to be reasonable and required by the public convenience and necessity, the chancellor is to grant the incorporation as requested. If not, the incorporation is to be denied. Additionally, the chancellor may allow only a part of the area to be incorporated.<sup>38</sup>

If the chancellor grants the incorporation, in whole or part, a decree is to be entered which shall contain the following:

- a declaration that the municipal corporation is created;
- an accurate description of the boundaries of the new municipality;
- classification of the new municipality as a town or city; and
- the names of the officers of the municipality.<sup>39</sup>

A map of the new municipality must be filed with the chancery clerk.<sup>40</sup>

## Public Convenience and Necessity

Factors that the court should look to determine whether the incorporation is required by the public convenience and necessity were summarized by the Mississippi Supreme Court in *City of Pascagoula v. Scheffler*, 487 So. 2d 196 (Miss. 1986). More recently, the Supreme Court revisited the *Scheffler* holdings in *City of Jackson v. Byram Incorporators*:

This Court has set forth the following factors to aid the chancellor's determination of public convenience and necessity:

- The governmental services presently provided;
- The quality of services and adequacy of all services provided;
- The services expected from other sources;
- The impairment of an immediate right vested in an adjoining city; and
- The substantial or obvious need justifying incorporation.<sup>41</sup>

## Reasonableness

The following factors have been identified as indicating reasonableness in an incorporation case (these are not the same as those factors considered in an annexation case):

- whether a proposed area has definite characteristics of a village;
- whether the residents of the proposed area for incorporation have taken initial steps toward incorporation;
- whether a nearby city has initiated preliminary proceedings toward annexation;
- whether there have been any financial commitments toward incorporation or annexation proceedings;
- whether a neighboring city has the prerogative to contest incorporation;

- whether incorporation affects an existing city within three miles;
- whether population of the area shows an increase and continuity of settlement;
- whether a community has a separate identity;
- whether natural geographical boundaries separate an area from other municipalities;
- whether transportation is affected;
- whether incorporation will affect the interest of landowners in the affected area;
- whether cost of operating the municipality is prohibitive;
- whether an estimated tax base of proposed area will support incorporation; and
- whether the overall welfare of residents of the affected area is improved by incorporation.<sup>42</sup>

### **Effective Date**

The decree creating a new municipality becomes effective ten (10) days after it is entered.<sup>43</sup> However, if there is an appeal within that ten (10) day period, the effective date is stayed until the Supreme Court rules.<sup>44</sup>

Annexation may be accomplished in one of two ways with the most common method being initiation by the municipality.<sup>45</sup> However, the citizens of the area sought to be annexed may directly petition the chancery court for inclusion into the municipality.<sup>46</sup>

### **Annexation Ordinance**

In annexations initiated by the municipality, the first step in the process is the passage of the ordinance. The territory to be annexed must be contiguous to the municipality.<sup>47</sup> Obviously, it must not be a part of another city. The ordinance must set out the following: (a) a legal description of the territory sought to be annexed; (b) a legal description of the city as it will exist if the annexation is granted; (c) a description, in general terms, of the proposed improvements to be made in the annexed territory; (d) the manner and extent of the proposed improvements; (e) the approximate time in which the improvements are to be made; and (f) a statement of the public services the municipality proposes to render in the annexation area.

## **ANNEXATION**

### **The Petition**

After the ordinance is adopted, the municipality must file a petition in the chancery court of the county in which the property sought to be annexed is located. The petition must contain the following: a statement of the fact that the ordinance has been adopted, a request for the enlargement of the municipality, a certified copy of the ordinance of annexation, and a map or plat of the municipality as it will exist if the annexation is approved.<sup>48</sup>

## **Notice**

After the petition is filed, notice must be provided in the same time and manner as is required for an incorporation.<sup>49</sup>

## **Hearing**

At the hearing all persons having an objection may appear and present evidence.<sup>50</sup> The chancellor is to hear the case based on the issue of reasonableness.<sup>51</sup> If the chancellor finds the annexation reasonable, a decree is to be entered granting the annexation. As in incorporation cases, if the burden of proof is not met, the annexation should be denied. The chancellor has the option of granting the annexation in part. No territory not described in the ordinance may be added by the chancellor. The decree of the chancellor is effective ten (10) days after entry if no appeal is taken.<sup>52</sup>

## **Reasonableness**

In a series of cases arising since the adoption of the current annexation statutes in 1950 the Mississippi Supreme Court has dealt with the issue of what is a reasonable annexation. The Court has repeatedly summarized the factors as follows:

- the municipality's need for expansion;
- whether the area sought to be annexed is reasonably within a path of growth of the city;
- the potential health hazards from sewage and waste disposal in the annexed areas;
- the municipality's financial ability to make the improvements and furnish municipal services promised;
- the need for zoning and overall planning in the area;
- the need for municipal services in the area sought to be annexed;
- whether there are natural barriers between the city and the proposed annexation area;
- the past performance and time element involved in the city's provision of services to its present residents;
- the impact (economic or otherwise) of the annexation upon those who live in or own property in the area proposed for annexation;
- the impact of the annexation upon the voting strength of protected minority groups;
- whether the property owners and other inhabitants of the areas sought to be annexed have in the past, and for the foreseeable future unless annexed will, because of their reasonable proximity to the corporate limits of the municipality, enjoy the (economic and social) benefits of proximity to the municipality without paying their fair share of the taxes; and
- any other factors that may suggest reasonableness vel non.<sup>53</sup>

## **Appeal**

The same rules apply to annexation appeals as to appeals in incorporation cases.<sup>54</sup>

## **Post Annexation**

If the annexation is successful, a certified copy of the decree must be sent to the secretary of state.<sup>55</sup> A map or plat of the approved boundaries is to be submitted to the chancery clerk for recordation in the official plat book.<sup>56</sup>

## **Citizen Initiated Annexation**

Citizens in unincorporated areas<sup>57</sup> may initiate an annexation under the provisions of *Code*, § 21-1-47. The following requirements must be met:

(a) the territory sought to be included must be contiguous to the municipality and (b) a petition must be filed and signed by two thirds ( $\frac{2}{3}$ ) of the qualified electors of the area sought to be included.<sup>58</sup> A petition cannot be filed within two (2) years of the date of an adverse determination of any proceedings for the inclusion of the same territory.<sup>59</sup>

## **DEANNEXATION**

Contraction of a municipality's boundaries, or "deannexation," can happen in two ways: 1) the governing authorities of a municipality can initiate a proceeding for the contraction of its borders by passage of an ordinance, just as in annexations<sup>60</sup>, or 2) citizens in an existing municipality may petition a court to be excluded from the municipality.<sup>61</sup> The Mississippi Supreme Court has in the last twenty years rendered only two decisions among the already few deannexation cases to arise since the adoption of the 1950 statutes; both cases provide that the same standard for annexations is to be utilized for deannexations – reasonableness.<sup>62</sup>

## **Municipality-Initiated Deannexation**

In one case, the City of Grenada attempted to contract its boundaries to deannex certain territory from its municipal limits, purportedly to remedy federal preclearance issues which arose from its most recent annexation in 1993, eleven years before the Supreme Court decided the deannexation case.<sup>63</sup> The U.S. Attorney General had objected to federal preclearance of Grenada's prior annexation, finding that the 1993 annexation had both a discriminatory purpose and effect; Grenada made a second effort for preclearance, but the U.S. Attorney General declined to withdraw its objection.<sup>64</sup> In response, Grenada then adopted an ordinance for deannexation in an effort to satisfy voting rights concerns; the objectors alleged Grenada's effort was unsupported by sufficient evidence and constituted a "patent racial gerrymander."<sup>65</sup> The Court held the same twelve reasonableness indicators used in annexation cases applies in deannexation efforts and found that the objectors presented evidence on all twelve indicators, and Grenada did not oppose any evidence presented as to eleven of those indicators; Grenada presented evidence on only the final indicatory, and presented only a single issue, the City's inability to obtain preclearance.<sup>66</sup> After briefly reviewing the first eleven indicators, the Court found the indicators disfavored deannexation.<sup>67</sup> The City attempted to argue that its twelfth

factor was sort of a “super factor” which was remedial in nature, and which trumped all other factors because the case was intertwined with voting rights controversies; however, the Court was not convinced and affirmed the trial court’s denial of annexation as unreasonable.<sup>68</sup>

### **Citizen-Initiated Deannexation**

The same statute which grants citizens of an adjoining territory the right to initiate an annexation gives citizens of existing cities the right to seek deannexation, which provides that the citizens of such an area must prepare and file a petition signed by two thirds of the qualified electors in the area, and which contains some other provisions specific to deannexation, e.g., that no territory is subject to deannexation which was annexed within the previous two years or earlier.<sup>69</sup> The procedures are the same as for citizen-initiated annexations and are covered by the same statutes; the petition should describe accurately the metes and bounds of the area sought to be annexed, list the reasons why the public convenience and necessity would be served by the deannexation, and contain a plat of the municipal boundaries as they will exist if the court grants the request.<sup>70</sup> This has been a little used remedy in the state. However, residents of the City of Jackson did successfully deannex from the city.<sup>71</sup> In the *Jackson* case, all of the land sought to be deannexed had been annexed ten years earlier in 1987, since which time, only one residence had been constructed, one building permit had been issued, and one residential permit had been applied for, but not purchased.<sup>72</sup> Only two businesses had existed at the time of annexation, but at the time of the deannexation case, only one remained – a junkyard; no contracts for capital improvements such as water and sewer as promised in the annexation ordinance had been provided in those ten years; and Jackson failed to build the fire station previously promised.<sup>73</sup> The Court there quickly applied the twelve reasonableness indicators, and found the following: Deannexation wouldn’t affect Jackson’s need for expansion or vacant land; population had decreased; the area was not in Jackson’s path of growth; potential health hazards were of no concern; Jackson was unwilling or unable to fund the needed services and infrastructure in the area; Jackson had taken no action to provide those services; there was little need for zoning, planning, or many municipal services as the area was largely rural and agricultural; the cost to provide promised services was high and would be borne by the other citizens; Jackson had extreme delay and very poor past performance in the provision of services; there were no natural barriers; and residents of the area did not receive any benefit from the area to balance their fair share of taxes paid.<sup>74</sup> This case can be a valuable lesson to counties, as well as municipalities, which find themselves in an annexation or deannexation dispute.

### **COMBINATION**

Two (2) or more cities may combine by following the procedures set out in *Code*, § 21-1-43. The following requirements must be met: (a) the municipalities must be adjacent; (b) the governing authorities of each city must adopt an ordinance;<sup>75</sup> (c) a petition must be filed in the chancery court;<sup>76</sup> (d) the ordinance must state the name of the new city; and (e) the chancellor must find the combination reasonable. The decree of the chancellor shall properly classify the new municipality as a town or city.<sup>77</sup>

## Post Combination Operation

After the combination, the governing authorities of both cities continue to serve until the next regular election. The mayor of the larger city becomes the mayor of the new city. Tax assessments and levies continue until the next time they would be set by law. The ordinances of the larger city become effective for the new city.<sup>78</sup>

## ABOLITION

Though a new municipality must have at least 300 persons, existing villages may continue to operate.<sup>79</sup> However, if a municipality drops below fifty (50) inhabitants according to the latest U.S. Census, it will be automatically abolished.<sup>80</sup> Additionally, a municipality is automatically abolished if it fails to hold official meetings for a period of twelve (12) consecutive months or if it fails to hold municipal elections for two (2) consecutive elections.<sup>81</sup>

Municipalities of fewer than 1,000 inhabitants may voluntarily abolish the town or village by **taking the following steps: (a) an ordinance must be adopted setting forth the reasons for dissolution; (b) a petition must be filed in the chancery court seeking to abolish the municipality; (c) a hearing must be set; (d) notice of the hearing must be properly given;**<sup>82</sup> (e) a hearing must be held with those opposed being given the right to appear; and (f) a chancellor must determine that the abolition is reasonable and will serve the public convenience and necessity.<sup>83</sup>

## CITIZEN INITIATED BOUNDARY CHANGES

As set out above several methods of altering municipal boundaries may be initiated by qualified voters living in the affected area. Those include:

- Incorporation
- Inclusion
- Deannexation

Each of these procedures requires the signatures of 2/3 of the area seeking the alteration. The Mississippi Supreme Court has long taken the position that the requirement of whether the two third was determined on the date of filing. An exception was note in Myrick v. Incorporation of a Designated Area into a Mun. Corp. to be Named Stringer, 336 So. 2d 209, 211 (Miss. 1976) where certain signers asked that their name be removed. The Court said.

The individual signers of the petition had a right to apply their best judgment and mature consideration to the matter and after such consideration had a right to advise the court that they had changed their opinion and no longer favored the incorporation. We hold that the chancellor should have, in making his determination as to whether there were two-thirds of the qualified electors as required by the statute, considered the fact that thirty-one of the original signers of the original petition had requested that their names be withdrawn from the petition.

In a recent case, the Mississippi Supreme Court refused to apply this reasoning to an inclusion case. In In re City of Oxford, 142 So. 3d 401 (Miss. 2014) there was only one resident in the area sought to be included. She signed the petition and had moved out the area before trial. Thus, at the time of trial no one resided in the area sought to be included. Despite the objectors claim that all the residents moving out the area destroyed jurisdiction, the Mississippi Supreme Court held:

We also disagree with the Objectors' interpretation of *Myrick*. In *Myrick*, thirty-one of the original petitioners specifically asked that their names be withdrawn from the petition because they no longer favored incorporation. *Myrick*, 336 So.2d at 211. This Court found that the *Myrick* petitioners had a right to advise the court that “they had changed their opinion and no longer favored incorporation,” and this was a fact that the chancellor should have considered in making his determination. *Id.* Unlike the petitioners in *Myrick*, Babb never withdrew her name from either Petition and testified that she wanted the property included within the City of Oxford. We find that this Court's precedent supports the conclusion that the Petitioners met the two-thirds requirement of Section 21-1-45 at the time they filed the Original and Amended Petitions for Inclusion. See *Fletcher*, 77 So.3d at 96-97; \*407 *City of Ridgeland*, 494 So.2d at 348; *In re Exclusion of Certain Territory from City of Jackson*, 698 So.2d at 491; *Boling*, 241 So.2d at 362; *Bridges*, 168 So.2d at 41. Therefore, we affirm the judgment of the chancellor as to this issue. at 406-07

## CONCLUSION

It is highly likely that most board members will be called on to review the county's position in a municipal boundary case within the upcoming term of office. Clearly, the county has the legal authority to object. Before doing so, the reasons for getting involved should be honestly evaluated. A meaningful objection to an annexation will result in substantial expenditures of public funds. Not only will the county make large expenditures, the citizens of the municipality will be forced to expend substantially more to counter the county's opposition. Expenditures that could go to provide needed services and improvements are often made with little to show for it in the end.



## ADDENDUM

### **I. Overview of Annexation**

#### *A. Why Annex*

1. Inadequate Land Resources
2. Control Peripheral
  - a) Sub-standard Development
  - b) Incompatible Land Use
  - c) Traffic Arteries
3. Expansion of Tax Base
4. Need for Municipal Services

#### *B. Overview of Legal Process*

1. Two Ways City Boundary Can Be Expanded
  - a) City Initiated Annexation
  - b) Citizen Initiated Inclusion
2. Deannexation
3. Incorporation
4. “Reasonableness” Is the Common Thread

#### *C. What Is Reasonable?*

1. Twelve Indicia recognized by courts
2. So-called “sub-indicators” sometimes present

### **II. Pre-Annexation Planning**

#### *A. Annexation Study*

1. Formal Written Report
2. Informal Report
3. Type of Annexation
  - a) Incremental
  - b) Phased
  - c) Comprehensive

#### *B. Planning Team*

1. Urban Planners
  - a) In House
  - b) Outside Consultant
2. Attorneys

- a) City Attorney
- b) Special Counsel
- 3. City Staff
- 4. Engineer
- 5. Financial Planner

*C. Indicia of Reasonableness and “sub-indicators”*

- 1. Municipality’s Need for Expansion
  - a) Spillover development into the proposed annexation area;
  - b) Internal growth;
  - c) Population growth;
  - d) City's need for development land;
  - e) Need for planning in the annexation area;
  - f) Increased traffic counts;
  - g) Need to maintain and expand the City's tax base;
  - h) Limitations due to geography and surrounding cities;
  - i) Remaining vacant land within the municipality;
  - j) Environmental influences;
  - k) Need to exercise control over the proposed annexation area;
  - l) Increased new building permit activity
- 2. Path of Growth
  - a) Spillover development in annexation area;
  - b) Annexation area immediately adjacent to City;
  - c) Limited area available for expansion;
  - d) Interconnection by transportation corridors;
  - e) Increased urban development in annexation area;
  - f) Geography;
  - g) Subdivision development
- 3. Potential Health Hazards
  - a) Potential health hazards from sewage and waste disposal;
  - b) Large number of septic tanks in the area;
  - c) Soil conditions which are not conducive to on-site septic systems;
  - d) Open dumping of garbage; and
  - e) Standing water and sewage
- 4. Municipality’s Financial Ability
  - a) Present financial condition of the municipality;
  - b) Sales tax revenue history;
  - c) Recent equipment purchases;

- d) Financial plan and department reports proposed for implementing and fiscally carrying out the annexation;
  - e) Fund balances;
  - f) City's bonding capacity; and
  - g) Expected amount of revenue to be received from taxes in the annexed area
5. Need for Zoning and Overall Planning
  6. Need for Municipal Services
    - a) Requests for water and sewage services;
    - b) Plan of the City to provide first response fire protection;
    - c) Adequacy of existing fire protection;
    - d) Plan of the City to provide police protection;
    - e) Plan of the City to provide increased solid waste collection;
    - f) Use of septic tanks in the proposed annexation area; and
    - g) Population density
  7. Natural Barriers
  8. Past Performance
  9. Social and Economic Impact
  10. Impact on Minority Voting Strength
  11. Fair Share
  12. Other Factors

*D. Need for Expansion*

1. Population Changes
  - a) Inside City
  - b) In Surrounding Area
2. Population Projections
3. Land Use Absorption
  - a) Land Use Patterns
  - b) Household Size
  - c) New Construction
  - d) Demolitions
  - e) Vacant Land
    - (1) *Developable Land*
    - (2) *Undevelopable Land*
    - (3) *Constrained Land*
  - f) Transportation Corridors

*E. Path of Growth*

1. Spillover Growth
  - a) Residential
  - b) Commercial
  - c) Industrial
2. Extension of Public Facilities and Utilities
3. Transportation Corridors
4. Contiguous Nature of Annexation Area
5. Barriers to Paths of Growth
  - a) Natural
  - b) Geopolitical
  - c) Developmental

*F. Potential Health Hazards*

1. Sewerage Disposal
  - a) Existence of Septic Tanks
  - b) Soil Conditions
  - c) Central Sewer
2. Solid Waste Disposal
  - a) Curbside Collection
    - (1) *Frequency of Collection*
  - b) Central Collection (Dumpsters)
  - c) No Collections
  - d) Open Dumping
3. Pest Control
  - a) Mosquito Control
    - (1) *Spraying*
    - (2) *Breeding Site Control*
  - b) Rat Control

*G. Financial Ability*

1. Financial Reserves
2. Bonding Capacity
3. Revenue Structure
4. Capital Improvements Plan for Existing City
5. Capital Improvements Plan for Annexation Area
6. Cost of Providing Additional Services in Annexation Area
7. Revenues from Annexation Area

#### *H. Need for Zoning and Overall Planning*

1. Planning Capability of City
  - a) Personnel
  - b) Ordinances
    - (1) Zoning
    - (2) Subdivision Regulations
    - (3) Standard Codes
2. Planning Capability of County
  - a) Personnel
  - b) Ordinances
    - (1) Zoning
    - (2) Subdivision Regulations
    - (3) Standard Codes
3. Transportation Planning
4. Utility Planning

#### *I. Need for Municipal Services*

1. Level of Urbanization in the Annexation Area
  - a) Existing
  - b) Reasonably Anticipated
2. Level of Existing Services in the Annexation Area
  - a) Services Already Provided by City
  - b) Services Provided by Another Governmental Entity
  - c) Services Provided by Private Entities
3. Cost of Existing Services in the Annexation Area
4. Level of Usage of City Services by Annexation Area Residents
  - a) Parks and Recreation
  - b) Public Facilities

#### *J. Natural Barriers*

1. Natural
  - a) Rivers, Bays, and Other Bodies of Water
  - b) Flood Plains
  - c) Ridge Lines
  - d) Topography
2. Geopolitical
  - a) Another Municipality
  - b) County Line
  - c) Water, Sewer, Garbage Collection, or Fire District Boundaries

- d) Certificated Area
- 3. Man Made
  - a) Limited Access Highways
  - b) Existing Development

*K. Past Performance*

- 1. Time Frame for Providing Services to Areas Annexed in the past
- 2. Promises Made in Prior Annexations
- 3. Excuses for Bad past Performances
  - a) Natural Disasters
    - (1) Hurricane
    - (2) Floods
  - b) Funding
  - c) Changes of Conditions
  - d) War or Military Preparedness

*L. Diminution of Minority Voting Strength*

- 1. The Annexation Should Not Illegally Diminish the Voting Strength of a Protected Minority under Section Five of the Voting Rights Act of 1965
  - a) Applies to the Existing Population of the City and the Annexation Area and the Projected Population as a Result of the Annexation of Uninhabited Areas

*M. The Impact on Those Who Live or Own Property in the Annexation Area*

- 1. Economic Impact
  - a) Tax Increases
  - b) Utility Rate Reduction or Increase
  - c) Reduction in Fire Insurance Rates
  - d) Income Tax Deductions for Property Tax
  - e) Increased or Decreased Value of Land
- 2. Social Impact
  - a) Impact of Increased Regulations
    - (1) Positive or Negative
    - (2) Restrictions on Personal Freedoms (i.e. Animal Control Ordinance)
- 3. Enhanced Governmental Services and Facilities
- 4. Any Other Impact

*N. Fair Share*

- 1. Whether the Property Owners and Other Inhabitants of the Annexation Area

Enjoy the Benefits of Proximity to the City Without Paying Their Fair Share in Taxes

- a) Community of Interest
- b) Dependence on the City for Social and Economic Opportunities
- c) Benefit from Reduced Fire Insurance Rates Because of Proximity to City
- d) Utilization of the City's Public Facilities

*O. Other Factors*

1. "Central City Blues"
2. Anything Else That Impacts "Reasonableness"

*P. Open Meetings Act*

1. Annexation Is "Litigation" Which May Be Discussed in Executive Session on Properly Closing of Meeting

*Q. Public Hearings*

1. A Municipality Is Not Required to Hold a Public Hearing or Give Notice of its Intent to Annex. Jackson v. Flowood, 331 So. 2d 909 (Miss. 1976).
2. Gulfport Decision

*R. Water and Sewer Systems*

1. Certificates of Public Convenience and Necessity
2. Value of System
  - a) Facilities
  - b) Certificate of Public Convenience and Necessity
3. Farmers Home Indebted System
4. Fire Protection vs. Domestic Service
5. Other Municipalities
  - a) One Mile Corridor
  - b) Five Mile Corridor
6. Municipal Utility Commissions

*S. Review and Revision*

1. Fine Tuning
  - a) Financial
  - b) Program of Services and Facilities
  - c) Identity of Opposition
  - d) Discovery
2. Adoption of Five-Year Plan

- a) Plan of Services
- b) Plan for Capital Improvements

*T. Impact of Schools*

1. Code, § 37-7-611
2. Repeal of Code, § 37-7-611 (July 1, 1987)
3. Code, § 21-1-59
4. Greenville Municipal School District v. Western Line Consolidated School District
5. Dupree I
6. Dupree II

**III. Legal Requirements**

*A. Sources of Annexation Law*

1. Section 88 of the Mississippi Constitution
2. Title 21 Chapter 1 of the Code
3. Mississippi Supreme Court Cases
4. Mississippi Rules of Civil Procedure
5. United States Code
6. Federal Court Cases
7. Section Five of the Voting Rights Act of 1965

*B. The Legal Process*

1. Adoption of the Ordinance
2. Petition Filed in the Chancery Court
3. Publication of Notice
4. Summons on Surrounding Cities
5. Application for a Hearing Date
6. Hearing
7. Decision
8. Appeal

*C. The Ordinance – Legal Requirements*

1. Legal Description of the Area to Be Annexed
2. Legal Description of the City as Enlarged
3. Describe the Improvements to be Made
  - a) The Manner and Extent of Improvements
  - b) The Approximate Time in which the Improvements Are to be Made
4. A Statement of the Services to Be Rendered



*D. The Petition – Legal Requirements*

1. Recite the Fact of Adoption of the Ordinance
2. Ask for Enlargement of the City
3. Have Attached a Certified Copy of the Ordinance
4. Have Attached a Map or Plat of the Boundaries as They Will Exist in the Event the Annexation Is Approved

*E. Parties*

1. “. . . All Parties, Interest In, Affected By, or Being Aggrieved By . . .”
  - a) Individuals
  - b) Industry
2. Municipalities Within Three Miles of Any of the Territory Annexed
3. Counties
4. School Board

*F. Process*

1. Publication
  - a) Number of Times
  - b) Where Published
  - c) When Published
2. Posting
  - a) How Many Postings
  - b) Where Posted
    - (1) *Public Place*
    - (2) *What If There Is No Public Place*
3. Summons

**IV. Trial Preparation**

*A. Discovery*

1. Interrogatories
2. Request for Admissions
3. Request for Production of Documents
4. Depositions

*B. Exhibit Preparation*

1. Maps
2. Charts
3. Photos

4. Documents
5. Tables

*C. Potential Settlement*

1. Objectors Identified
2. Deletion of Portions of Annexation Area
  - a) Sperry Rand Decision
  - b) Examples
    - (1) *Gulfport*
      - (a) Mississippi Power – Tax Exemptions
      - (b) North Gulfport – Enhanced Plan
      - (c) HCDC Agreements
    - (2) *Southaven*
      - (a) Utility Agreements – Horn Lake Water Association

*D. Witnesses*

1. Identification
2. Selection
3. Preparation

**V. Trial**

*A. Procedure*

1. Statutory
2. Rule 81, Mississippi Rules of Civil Procedure
  - a) Written Pleadings Not Required
  - b) Appeal Bond of \$500 Stays Proceedings
3. Appeal Time
  - a) Statute – Ten (10) Days after Decree Entered
  - b) Mississippi Supreme Court – Rules 30 Days after Decree Entered

*B. Burden of Proof*

1. The Burden of Proving the Annexation Is Reasonable Is on the City

*C. Path of Growth*

1. Spillover Growth
  - a) Residential
  - b) Commercial
  - c) Industrial

2. Extension of Public Facilities and Utilities
3. Transportation Corridors
4. Contiguous Nature of Annexation Area
5. Barriers to Paths of Growth
  - a) Natural
  - b) Geo-Political
  - c) Developmental

*D. Potential Health Hazards*

1. Sewerage Disposal
  - a) Existence of Septic Tanks
  - b) Soil Conditions
  - c) Central Sewer
2. Solid Waste Disposal
  - a) Curbside Collection
    - (1) *Frequency of Collection*
  - b) Central Collection (Dumpsters)
  - c) No Collections
  - d) Open Dumping
3. Pest Control
  - a) Mosquito Control
    - (1) *Spraying*
    - (2) *Breeding Site Control*
  - b) Rat Control

*E. Financial Ability*

1. Financial Reserves
2. Bonding Capacity
3. Revenue Structure
4. Capital Improvements Plan for Existing City
5. Capital Improvements Plan for Annexation Area
6. Cost of Providing Additional Services in Annexation Area
7. Revenues from Annexation Area

*F. Need for Zoning and Overall Planning*

1. Planning Capability of City
  - a) Personnel
  - b) Ordinances
    - (1) *Zoning*

- (2) *Subdivision Regulations*
- (3) *Standard Codes*
- c) Planning Capability of County
  - (1) *Personnel*
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  - c) Benefit from Reduced Fire Insurance Rates Because of Proximity to

City

d) Utilization of the City's Public Facilities

*M. Witnesses*

1. Mayor
2. Department Heads
  - a) Chief Financial Officer
  - b) Police Chief
  - c) Fire Chief
  - d) City Engineer
  - e) Public Works Directors
3. Urban Planner
4. Financial Consultant
5. Mississippi Rating Bureau Representative
6. Public Health Officer
7. Insurance Agents
8. Private Citizens

*N. Options of the Court*

1. Approve the Annexation in Full
2. Approve a Part of the Annexation and Delete Portions of the Territory
3. Deny the Annexation in Full
4. The Chancery Court Cannot Increase the Size of the Annexation

**VI. Post-Trial**

*A. Effective Date*

1. An Annexation Is Effective
  - a) Ten (10) Days after the Date of the Chancellor's Decree If There Is No Appeal
  - b) Ten (10) Days after the Date of the Final Determination by the Supreme Court If There Is an Appeal
2. Note the Conflict Caused by the Change in the Time for Appeal

*B. Appeal*

1. The Record
2. Briefing
  - a) Appellant's Brief
  - b) Appellee's Brief
  - c) Reply Brief

3. Motion for Expedited Appeal
4. Oral Argument

### C. Tax Liability

1. Subjecting Newly Annexed Citizens to Taxation for Debt of the Existing City Is Not Unconstitutional. *Bridges v. Biloxi*, 253 Miss. 812, 178 So. 683, 180 So. 2d 154, 180 So. 2d 641, App. Dism'd 383 US 574, 16 L.Ed. 2d 106, 86 S. Ct. 1077 (1965)
2. Annexations Completed by June 20 Are Taxed for the Entire Year

### D. Post-Trial Notifications

1. Secretary of State
2. Chancery Clerk
3. United States Census Bureau
4. State Rating Bureau
5. State Tax Commission

### E. Preclearance

1. Annexation
2. Wards
3. Other Affected District

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<sup>1</sup> Legal research and editorial assistance to the 2011-2015 updates was provided by John Scanlon, who is a partner together the author of this Chapter at Pyle, Mills, Dye & Pittman in Ridgeland, , which serves as general counsel for the municipalities of Ridgeland and Byram.

<sup>2</sup> *Code*, §§ 3-3-3 and 19-1-1 through 19-1-163.

<sup>3</sup> This case contains a useful discussion of instances where the issue had been previously addressed in passing in other cases. Because of the landmark nature of the decision, lengthy excerpts follow.

<sup>4</sup> *Harrison County v. City of Gulfport*, 557 So. 2d 780, 782 (Miss. 1990) (internal citations omitted).

<sup>5</sup> *Ibid.* (citing *Code*, § 21-1-31).

<sup>6</sup> *Harrison County*, 782-83.

<sup>7</sup> *Ibid.*, 783 (quoting *In the Matter of Enlargement of Corporate Boundaries of the City of Pascagoula*, 346 So. 2d 904, 905 (Miss. 1977)).

<sup>8</sup> *Ibid.* (quoting *Pascagoula*, 905).

<sup>9</sup> *Ibid.*

<sup>10</sup> *Greenville Public School Dist. v. Western Line Consol. School Dist.*, 575 So. 2d 956, 965-66 (Miss. 1990) (citing *In re City of Booneville, Prentiss Cty.*, 551 So. 2d 890 (Miss. 1989); *Matter of Boundaries of Jackson*, 551 So. 2d 861 (Miss. 1989)).

<sup>11</sup> *City of Picayune v. Southern Regional Corp.*, 916 So. 2d 510 (Miss. 2005).

<sup>12</sup> *Harrison County*, 784 (citing *Use of Lawrence County v. Fortinberry*, 54 Miss. 316 (1877)).

<sup>13</sup> *Ibid.* (citing *Board of Supervisors of Carroll County v. Georgia Pacific Ry. Co.*, 11 So. 471 (Miss. 1892)).

<sup>14</sup> *Ibid.* (citing *Leflore Bank & Trust Co. v. Leflore County*, 202 Miss. 552, 557, 32 So. 2d 744, 746 (1947)).

<sup>15</sup> *Ibid.*, 785.

<sup>16</sup> *Ibid.* (citing *Coahoma County v. Knox*, 173 Miss. 789, 795, 163 So. 451, 452 (1935)).

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<sup>17</sup> Ibid. (quoting *Code*, § 19-7-3 (Supp.1989); *Leigh v. Board of Supervisors of Neshoba County*, 525 So. 2d 1326, 1330 (Miss. 1988)).

<sup>18</sup> Ibid.

<sup>19</sup> Ibid., 786.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid., 786-87.

<sup>22</sup> Ibid., 791 (emphasis added).

<sup>23</sup> *Code*, § 37-7-611.

<sup>24</sup> *In re Extension of Boundaries of City of Hattiesburg* 840 So. 2d 69, 94 (Miss. 2003).

<sup>25</sup> The Attorney General has opined as follows:

The general rules with respect to jurisdiction over streets and highways are stated as follows:

The legislature, as representative of the state, has control and authority over the highways and streets within the borders of the state, and may delegate such power to local governmental authorities. 39 *Am.Jur.2d* § 199, p. 578

County authorities have no power to control municipal streets except where a statute so provides. In most states there are statutes vesting such control in the corporate authorities of cities and incorporated towns, and the usual effect of such statutes is to transfer from the county authorities to the municipality the power to regulate and control highways and streets located therein. Where such control is vested in the municipal authorities, the power of the municipality over its streets is exclusive, and the general power of the county within which the municipality lies, to control the highways within its territory, is thereby divested insofar as such streets are concerned. . . . Upon the annexation of territory to a municipality, highways therein become streets and subject to the control of the municipal authorities. 39 *Am.Jur.2d* § 203, p. 584

Granting municipalities jurisdiction over streets, sidewalks, sewers and parks is § 21-37-3, which provides: The governing authorities of municipalities shall have the power to exercise full jurisdiction in the matter of streets, sidewalks, sewers and parks; to open and lay out and construct the same; and to repair, maintain, pave, sprinkle, adorn, and light the same.

The Mississippi Supreme Court has construed this statute as giving the municipality not only the authority to maintain streets within its corporate limits, but the affirmative duty to do so.

Miss. Att’y Gen. Op. *Slade*, 1988 WL 250075 (June 2, 1988).

<sup>26</sup> Miss. Att’y Gen. Op. *Peranich*, 1992 WL 613990 (June 17, 1992).

<sup>27</sup> *Code*, § 65-15-21 provides in part as follows:

One-half (½) of all ad valorem taxes collected by or for a county or a separate or special road district on property within a municipality (the streets of which are worked at the expense of the municipal treasury, or worked by municipal authority) for road purposes of such county or district, not including taxes for the purposes of paying bonds issued for road purposes or the interest thereon or for creating a bond and interest fund for retiring the same, shall be paid over to the treasurer of such municipality for said municipality.

<sup>28</sup> Annexations are generally of more developed areas. Annexation of heavily developed areas may result in increases in collection costs for the remaining more sparsely populated areas.

<sup>29</sup> *Code*, § 75-76-197.

<sup>30</sup> *Code*, § 21-1-1.

<sup>31</sup> *Code*, § 21-1-3.

<sup>32</sup> *Code*, § 21-1-1.

<sup>33</sup> Ibid.

<sup>34</sup> *Code*, § 21-1-13.

<sup>35</sup> Ibid. This notice must meet the following requirements: be in a newspaper published in or having a general circulation in the area to be incorporated; be published once each week for three consecutive weeks; the first



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publication must be at least 30 days prior to the date of the hearing; and the publication must contain a full legal description of the territory to be incorporated.

<sup>36</sup> *Ibid.*

<sup>37</sup> As a practical matter, if the case is contested, there will usually be a continuance.

<sup>38</sup> *Code*, § 21-1-17. The Chancellor cannot enlarge the area.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *City of Jackson v. Byram Incorporators*, 16 So. 3d 662, 681 (Miss. 2009) (citing *Scheffler*, 487 So. 2d at 200-01).

<sup>42</sup> *City of Jackson v. Byram Incorporators*, 16 So. 3d 662, 675 (Miss. 2009) (citing *Scheffler*, 487 So. 2d at 201-02).

<sup>43</sup> *Code*, § 21-1-17.

<sup>44</sup> See *Code*, § 21-1-21. In both incorporations and annexations, there is a potential inconsistency in the appeal procedures. Section 21-1-21 sets out the manner and time (10 days) in which the appeal is to be taken. However, the Mississippi Supreme Court adopted Rule 4 of the Rules of Appellate Procedures which calls for appeals to be filed “with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from.”

<sup>45</sup> Though the basic concepts related to annexation are relatively simple, the implementation of a successful annexation planning effort requires considerable planning. Attached as an Addendum is a checklist of factors which should be considered prior to undertaking a major annexation.

<sup>46</sup> *Code*, § 21-1-27 *et seq.*; *Code*, § 21-1-45.

<sup>47</sup> There is one exception to this rule related to airports.

<sup>48</sup> *Code*, § 21-1-31.

<sup>49</sup> *Code*, § 21-1-33. See also *Code*, § 21-1-15 [Publication in the newspaper, posting in the annexation area and service of process on municipalities within three (3) miles of the territory to be annexed].

<sup>50</sup> Unlike other litigated matter, it is not necessary that written pleadings be filed to allow a party to object. The Mississippi Supreme Court deliberately chose to preserve this right when they adopted the Mississippi Rules of Civil Procedure. Rule 81 states that all rules apply to all civil proceedings but are subject to limited applicability in the creation of and change in boundaries of municipalities, as well as other matters which are generally governed by statutory procedures.

<sup>51</sup> Section 21-1-33 of the *Code* provides that the chancellor is also to determine the issue of “public convenience and necessity.” The Mississippi Supreme Court struck this requirement down in annexation case in 1953 in the case of *Ritchie v. Brookhaven*, 217 Miss. 860, 65 So. 2d 436, *sugg. of error* overruled 217 Miss. 876, 65 So. 2d 832 (1953). The Court held that the issue of “public convenience and necessity” was legislative in nature and not subject to judicial review. It is important to contrast the Court’s holding in annexations with incorporations. In the case of annexations, the issue of public convenience and necessity is considered by the municipality’s legislative body and a determination is made. In incorporation cases the same is not true. Thus, it would appear that “public convenience and necessity must still be proven in incorporation cases.

<sup>52</sup> *Code*, § 21-1-33.

<sup>53</sup> *City of Jackson v. Byram Incorporators*, 16 So. 3d 662, 683 (Miss. 2009) (quoting *In re Extension of the Boundaries of Winona v. City of Winona*, 879 So. 2d 966, 972 (Miss. 2004)); *Extension of Boundaries of the City of Ridgeland v. City of Ridgeland*, 651 So. 2d 48, 551, (Miss. 1995).

<sup>54</sup> *Code*, § 21-1-17 and *Code*, § 21-1-21.

<sup>55</sup> *Code*, § 21-1-39.

<sup>56</sup> *Code*, § 21-1-41.

<sup>57</sup> Section 21-1-45 of the *Mississippi Code* mistakenly utilizes the word “incorporated.” The Mississippi Supreme Court resolved the issue in *In Re Ridgeland*, 494 So. 2d 348 (Miss. 1986).

<sup>58</sup> The petition must: accurately describe the territory to be included; set forth the reasons the territory should be included; be sworn to by at least one (1) of the petitioners; and have attached a plat of the municipality as it will exist if the territory is added.

<sup>59</sup> *Code*, § 21-1-45.

<sup>60</sup> *Code*, § 21-1-27.

<sup>61</sup> *Code*, § 21-1-45.

<sup>62</sup> See *In re Contraction, Exclusion & Deannexation of City of Grenada*, 876 So. 2d 995, 1000 (Miss. 2004); *In re Exclusion of Certain Territory from City of Jackson*, 698 So. 2d 490, 492 (Miss. 1997).

<sup>63</sup> *In re Contraction, Exclusion & Deannexation of City of Grenada*, 876 So. 2d 995, 998 (Miss. 2004).

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

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<sup>66</sup> Ibid., 1001.

<sup>67</sup> Ibid., 1001-02.

<sup>68</sup> Ibid.

<sup>69</sup> Code, § 21-1-45 provides in part:

No territory may be so excluded from a municipality within two years from the time that such territory was incorporated into such municipality, and no territory may be so excluded if it would wholly separate any territory not so excluded from the remainder of the municipality. No petition for the inclusion or exclusion of any territory under this section shall be filed within two years from the date of any adverse determination of any proceedings originated hereinafter under this chapter for the inclusion or exclusion of the same territory.

<sup>70</sup> Ibid.

<sup>71</sup> *In re Exclusion of Certain Territory from City of Jackson*, 698 So. 2d 490 (Miss. 1997).

<sup>72</sup> Ibid., 491-92.

<sup>73</sup> Ibid., 492.

<sup>74</sup> Ibid., 494-95.

<sup>75</sup> The ordinance must meet the same requirements as an ordinance for annexation.

<sup>76</sup> The petition must meet the same requirements as a petition for annexation.

<sup>77</sup> Code, § 21-1-43. A new village cannot be created in this manner because two villages may not combine unless the combined population is at least 500.

<sup>78</sup> Ibid.

<sup>79</sup> Code, § 21-1-1.

<sup>80</sup> Code, § 21-1-49.

<sup>81</sup> Code, § 21-1-51.

<sup>82</sup> Code, § 21-1-53. Notice is given in the same manner as for annexations or incorporations.

<sup>83</sup> Ibid.

## **CHAPTER 15**

### **THE ELECTORAL PROCESS**

**W. Heath Hillman**

#### **INTRODUCTION**

The electoral process, as it stands, allows citizens to play a part in the makings of our government. A system of rules and procedures are in place to ensure that all elections are fair, honest, and lawful. In order for citizens to feel confident in the election process, it is important that those with the task of overseeing the elections see to it that the candidates are given a fair chance to be elected and ensure that each qualified voter has the opportunity to participate in the election.

This chapter will summarize the election process and give some detail about the duties of election officials. More detailed information on the election process may be obtained from the Office of the Secretary of State.

In primary elections, the “election officials” are the party executive committee members. In all other elections, the “election officials” are the county election commissioners. The circuit clerk is the county registrar and is charged with the responsibility of registering voters and assisting both the party executive committees and the election commission in conducting elections, maintaining accurate voter registration rolls, and preparing accurate poll books.

#### **THE STATUTORY LAW**

##### **State Law**

The statutory law that controls the conduct of elections is contained in Chapter 15, Title 23, (Volume 6) of the *Code*.

##### **Federal Law**

Mississippi is covered by the provisions of the Voting Rights Act of 1965. This act implemented federal oversight to election administration. Prior to 2013, Mississippi had to submit any change affecting voting to the U.S. Department of Justice for preclearance. In 2013, the United States Supreme Court in *Shelby County v. Holder*, held the coverage formula of the Voting Rights Act unconstitutional, and the Department of Justice suspended the preclearance requirement until Congress enacts a new coverage formula.<sup>1</sup> An example is the change brought by redistricting. After census data is received, it is sometime necessary for districts to be redrawn to reflect a population shift. The redrawn districts must be approved by the Department of Justice.

## VOTER REGISTRATION

All residents of a county who are at least eighteen (18) years old and have not been convicted of a disqualifying crime and have not been judicially declared *non compos mentis* (not of sound mind) may register to vote.<sup>2</sup>

The circuit clerk is the registrar for the county. A resident of the county may register to vote in all elections in the municipal clerk's office, the county circuit clerk's office, or by mail.<sup>3</sup> Anyone may assist residents in registering by mail by obtaining forms from the circuit clerk or the Office of the Secretary of State.

The circuit clerk is required to either approve or disapprove each application for registration.<sup>4</sup> The names of residents whose registration is approved by the circuit clerk are required to be placed on the official voter registration records. The applications that are not approved by the circuit clerk are presented to the county election commission which will review the application and make a determination as to whether or not each applicant should be registered.<sup>5</sup>

As a result of The Help America Vote Act of 2002, the State of Mississippi passed Senate Bill 2366 during the 2002 Legislative Session. This bill defined and established a centralized voter registration system for the state. The system, now known as the Statewide Election Management System, allows counties to receive notification of duplicate registrations, deaths, disenfranchising crimes and changes of address quickly and regularly in order to update the county voter rolls. In this centralized system, the state maintains a single, centralized voter file.

The county manages its voter registration database with software provided by the state. The database and software are hosted by the state on two (2) central servers and are accessed through a secure network by the counties. Every county in Mississippi has the same software so data sharing between counties occurs on an instantaneous basis. For example, if a student at Mississippi State University registers to vote in Oktibbeha County today, his home county is notified through the system so that their records can be updated. In this way, more accurate voter rolls can be maintained statewide. Additionally, this system serves the municipalities of the state as well, with the circuit clerk retaining oversight of the system.

## ELECTIONS

### Primary Elections

A primary election is held to select a candidate from each political party to be nominated for the next general election.

The members of a county party executive committee have the same duties and responsibilities in connection with primary elections as county election commissioners have in connection with general and special elections, except that party executive committees do not have any authority to "purge" the registration books and poll books. The election commission has the responsibility of preparing the poll books to be used in primary elections.<sup>6</sup>

The date for the first primary elections is the first Tuesday after the first Monday of August. The runoff will be held three (3) weeks thereafter.<sup>7</sup>

### **General Elections**

The general election will be held on the first Tuesday after the first Monday of November.<sup>8</sup>

The county election commission is responsible for conducting the general election. Each county has an election commission composed of five (5) commissioners duly elected, one (1) from each supervisor district.

### **Special Elections**

The election commission is also responsible for conducting all special elections to fill vacancies in county and county district offices,<sup>9</sup> and all referenda on such issues as the issuance of bonds, beer and liquor local options, etc.

## **CANDIDATE QUALIFYING PROCEDURES**

### **Primary Elections**

Any qualified elector (registered voter) may become a candidate for a political party's nomination for office by filing a statement of intent expressing his intent to be a candidate for nomination to a particular office and paying a filing fee. Filing fees range from \$10.00 to seek a party's nomination for Justice Court Judge to \$300.00 to seek a party's nomination for Governor. The statement of intent and filing fee to be a candidate for a countywide or county district office are filed with the circuit clerk. The statement of intent and filing fee to be a candidate for a state or state district office are filed with the secretary of the state party executive committee with which the candidate is affiliated.<sup>10</sup> The clerk is required to promptly turn the statement of intent and filing fee over to the appropriate party executive committee.<sup>11</sup> (For accounting purposes, it is recommended that the filing fee be paid by check made out to the appropriate party executive committee.) The party executive committee may use the filing fee monies to reimburse its members for travel or other necessary expenses and/or pay the secretary of the committee a salary.<sup>12</sup> The clerk should not accept any statements of intent and/or filing fees without knowing that there is a county party executive committee in place and who are members of the committee.

### **General Elections**

The election commission is required to place the names of party nominees and independent candidates on the general election ballot. However, the commission must first review the qualifications of each candidate before placing any names on the ballot. The election commission must not accept a party executive committee's finding that a particular nominee meets the requisite qualifications to hold a particular office. The commission must make an independent determination on the qualifications of each person who has been certified as the nominee of a political party as well as each person who has qualified as an independent.<sup>13</sup>

To qualify as an independent candidate, one must file a petition signed by the appropriate number of qualified electors requesting that the name of the candidate be placed on the general election ballot. The required number of signatures ranges from fifteen (15) to be a candidate for Supervisor, Justice Court Judge, or Constable, to one thousand (1,000) to be a candidate for Governor or any other statewide office.<sup>14</sup>

### **Special Elections**

Typically, all candidates in a special election qualify as independent candidates in the same manner as in general elections and no party affiliation is indicated on the ballot except in a special election for county election commissioner.<sup>15</sup> However, county party executive committees may opt to hold a primary election to declare nominees of the political party, and these nominees would appear on the special election ballot with party affiliation.<sup>16</sup>

### **PRINTING OF BALLOTS**

The officials in charge of an election, with the assistance of the clerk, must prepare the official ballot taking care that only the names of those candidates who meet the requisite qualifications for the particular office they seek are placed on the ballot and that each name is properly spelled and, to the extent possible, is exactly the way the candidate wishes his name to appear. Professional titles and nicknames should not appear before or after the candidate's name unless the officials in charge of the election determine, consistent with the facts, that such title or nickname is necessary to identify the candidate to the voters.

In primary elections, candidates' names are required to be printed on the ballot in alphabetical order by last name.<sup>17</sup> In general and special elections, the arrangement of the names of candidates is left to the discretion of the chairman of the county election commission.<sup>18</sup> However, for purposes of uniformity, the alphabetical listing of candidates' names is recommended.

Absentee ballots are required to be ready not less than forty-five (45) days prior to any election.<sup>19</sup>

### **APPOINTMENT AND TRAINING OF POLL WORKERS**

Election officials are required to appoint and train a sufficient number of poll workers to insure that the election is properly conducted. Again, the party executive committee appoints and trains the poll workers for party primaries and the election commission appoints and trains the poll workers for general and special elections. The minimum number of poll workers for a voting precinct is three (3).<sup>20</sup> Additional poll workers may be appointed based on the number of registered voters in each precinct in accordance with *Code*, § 23-15-235.

Party executive committees and commissions are required to train poll workers for their respective elections not less than five (5) days prior to each election. No poll worker may work in an election unless he has received proper training during the twelve (12) month period preceding the date of the election.<sup>21</sup>

## **CONDUCT OF ELECTION**

The polls are required to be opened from 7:00 a.m. to 7:00 p.m.<sup>22</sup>

The basic procedure for voting is as follows: 1) the voter is asked to give his name; 2) a poll worker locates the voter's name on the poll book; 3) the poll manager asks the voter to present an acceptable form of photo identification; 4) the poll manager verifies the picture on the presented photo identification fairly depicts the voter; 5) the poll manager verifies the name on the presented photo identification is substantially similar to the voter's name as it appears on the pollbook; 6) the initialing manager initials the ballot (paper and scanner ballots only); 4) the voter is given a ballot (or ticket to vote on a machine); 7) the voter proceeds to cast his ballot; and 8) a poll worker writes the word "voted" by the appropriate voter's name on the poll book.

Each candidate, or his representative designated in writing, has the right to be present at each polling place. The managers are required to assign each such poll watcher a suitable position from which he may observe the process and challenge any voter's qualification to vote.<sup>23</sup>

Only the candidate, properly appointed poll watchers, poll workers, voters in line to vote, and officials in charge of the election may be within thirty (30) feet of where voters are casting their ballots. Each political party who has nominees on the ballot may appoint two (2) poll watchers to observe general elections.<sup>24</sup>

## **VOTER ID**

In 2011, the voters of the State of Mississippi passed constitutional initiative 27 to amend the state constitution to require voters who cast a ballot in person to present government issued photo identification before being allowed to vote. In 2012, the Mississippi Legislature passed the enabling legislation which allowed voters to present one of nine forms of acceptable photo identification. Beginning with the primary election held on June 3, 2014, all voters are required to present an acceptable form of photo identification before casting a ballot in person either in the polling place on Election Day or in the Circuit Clerk's Office during the absentee voting period. The acceptable photo identification must be current and valid. Valid means it does not appear to be a fake or forgery, and current means it either has no expiration date or it was not issued more than 10 years prior to the date it used for voting.<sup>25</sup>

Voters who are unable to present an acceptable form of photo identification or who have a religious objection to being photographed are allowed to vote by casting an affidavit ballot. These voters have five (5) business days after the election to present an acceptable form of photo identification, have a Mississippi Voter ID Card made, or sign an Affidavit of Religious Objection in the circuit clerk's office for the ballot to be counted.

## **CHALLENGES**

Anyone who is entitled to be within thirty (30) feet of where the voting is taking place may challenge any voter's qualifications. When a challenge is made, the poll workers must rule on the challenge. The three (3) possible rulings are as follows:

1. If the poll workers at a particular box unanimously agree that the challenge is valid, the voter is then allowed to mark a ballot. The word “rejected” and the name of the voter is written on the back of the ballot by one of the poll workers and placed in a separate envelope marked “Rejected Ballots.”
2. If a majority, but not all, of the poll workers at a particular box believe that the challenge is valid, the word “challenged” is written on the back of the ballot by one (1) of the poll workers and placed in a separate envelope marked “Challenged Ballots.”
3. If all or a majority of the poll workers at a particular box believe the challenge is not valid, the challenge is disregarded as being frivolous and the voter is allowed to cast his ballot just as if he had never been challenged.

A separate count of the challenged ballots must be made and attached to the challenged ballot envelope. Under no circumstances may any challenged ballots be added to the regular ballot totals.<sup>26</sup>

All challenges must be decided (ruled on) by poll workers. Neither an election commission nor a party executive committee has any authority to rule on whether challenged or rejected ballots should be counted and included in the vote totals of the election.<sup>27</sup>

## **VOTER ASSISTANCE**

Any voter who declares to the poll workers that he requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice other than the voter’s employer, or agent of that employer, or officer or agent of the voter’s union.<sup>28</sup>

No assistance may be lawfully allowed if the proper procedure is not followed. Care must be taken not to destroy the secrecy of the voter’s ballot. The decision to seek assistance must be made by the voter without any coercion or influence from any other person. Ballots marked with assistance are invalid if the proper procedure is not followed.<sup>29</sup>

## **COUNTING BALLOTS**

When the polls close at 7:00 p.m. and preparations are made to count the ballots, the first order of business is to remove all absentee ballots from the boxes. The poll workers must then review each absentee ballot application and ballot envelope to insure compliance with all technical and legal requirements such as signatures and notarization [except for disabled voters’ applications and envelopes which only require the signature of a witness eighteen (18) years of age or older]. The signature of the voter on each application must match the voter’s signature on the corresponding ballot envelope. If all is in order, each ballot is carefully removed from the envelope so as to preserve its secrecy and each such ballot is placed with the regular ballots to be counted.<sup>30</sup>



When the votes have been completely and correctly counted, the poll workers shall publicly proclaim the results.<sup>31</sup> On the day following the election, the officials in charge of the election must meet and canvass the returns, review each affidavit ballot<sup>32</sup> and count those that are determined to be valid, and certify the official results.<sup>33</sup>

## EXAMINATION OF BOXES

While there is no formal “recount” provision in our statutes, each candidate has the right to examine the contents of the ballot boxes and count the ballots themselves, in the presence of the circuit clerk or deputy circuit clerk, provided written notice is given to the other candidates for the office in question at least three (3) days in advance of the examination. The examination must be completed within twelve (12) calendar days of the date of certification of the election.<sup>34</sup>

## CONTEST OF ELECTION

Any losing candidate has the right to formally contest the certified results of an election by filing a petition in the circuit court of the county where the election was conducted.

To contest a primary election, a petition must first be filed with the party executive committee.<sup>35</sup> If the executive committee does not grant the relief sought by the petitioner, he may then file his petition in circuit court.<sup>36</sup>

To contest a general or special election, a losing candidate must file a petition in the circuit court of the county where the election was conducted.<sup>37</sup>

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<sup>1</sup> *Shelby County v. Holder*, 133 S. Ct. 2612 (2013)

<sup>2</sup> *Const.* § 241 and *Code* § 23-15-11.

<sup>3</sup> *Code*, §§ 23-15-35 and 23-15-47.

<sup>4</sup> *Code*, § 23-15-41.

<sup>5</sup> *Code*, § 23-15-43.

<sup>6</sup> *Code*, § 23-15-127.

<sup>7</sup> *Code*, § 23-15-191.

<sup>8</sup> *Const.* § 140 and *Code*, § 23-15-193.

<sup>9</sup> *Code*, § 23-15-839.

<sup>10</sup> *Code*, § 23-15-297.

<sup>11</sup> *Code*, § 23-15-299.

<sup>12</sup> *Powe v. Forrest County Election Commission*, 249 Miss. 757, 163 So. 2d 656(1964).

<sup>13</sup> *Code*, § 25-15-359.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Code*, §§ 23-15-839, 23-15-359 and 23-15-213.

<sup>16</sup> *Code*, §23-15-841.

<sup>17</sup> *Code*, § 23-15-333.

<sup>18</sup> *Code*, § 23-15-367.

<sup>19</sup> *Code*, § 23-15-745.

<sup>20</sup> *Code*, § 23-15-235.

<sup>21</sup> *Code*, § 23-15-239 and 23-15-263.

<sup>22</sup> *Code*, § 23-15-541.

<sup>23</sup> *Code*, § 23-15-577.

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<sup>24</sup> *Code*, § 23-15-245.

<sup>25</sup> *Const.* §249-A, *Code*, §§23-15-135, 23-15-11, 23-15-541, 23-15-631, and 23-15-639.

<sup>26</sup> *Code*, § 23-15-579.

<sup>27</sup> *Misso v. Oliver*, 666 So. 2d 1366(1996).

<sup>28</sup> *Code*, § 23-15-549.

<sup>29</sup> *O'Neal v. Simpson*, 350 So. 2d 998(1997).

<sup>30</sup> *Code*, § 23-15-639.

<sup>31</sup> *Code*, § 23-15-591.

<sup>32</sup> A ballot cast by a person whose name does not appear in the poll book, but who affirms that he or she is entitled to vote or that he or she has been illegally denied registration.

<sup>33</sup> *Code*, §§ 23-15-573, 23-15-597 (Primaries) and 23-15-601 (General and Special).

<sup>34</sup> *Code*, § 23-15-911.

<sup>35</sup> *Code*, § 23-15-921.

<sup>36</sup> *Code*, § 23-15-927.

<sup>37</sup> *Code*, § 23-15-951.

## CHAPTER 16

### THE COURT SYSTEM

**James L. Roberts Jr. and Jonathan M. Shook**

#### INTRODUCTION

Courts must exist for the resolution of disputes in society; hopefully, the speedy and efficient solving of citizens' disputes in a properly functioning court system makes for a more civil society.

The court system in Mississippi has long been described in a variety of sources as antiquated, outdated, and poorly functioning. While our Mississippi court system may lack total perfection, the truth is that it functions fairly well in terms of bottom line results. The further truth is that many changes have occurred in the court system in the last quarter century or so, and these changes have improved the quality of justice received by Mississippi litigants.

The test of the court system (used interchangeable with judicial branch) is how well it serves those who use it - the litigants. If government as a whole is to effectively serve all citizens, then those citizens who wind up in court (for whatever reason) must have a comfortable feeling of fairness, impartiality and confidence in the system. This can be achieved only through the active support and participation of the executive and legislative branches and, further, only with the dedicated, hard work of judges and all persons who serve the courts, such as court clerks, law enforcement officers, administrative personnel, and others.

At first glance, the courts may appear to be confusing, but some study reveals that the overall system of courts is probably less confusing than the operation of the separate courts.

#### OVERALL

The *1890 Mississippi Constitution* created the Justice Courts (formerly known as Justice of the Peace Courts), Chancery Courts, Circuit Courts, and Supreme Court. Created since the *1890 Constitution* by legislation action are the Municipal Courts, one (1) Family Court, nineteen (19) County Courts, and the relatively new Court of Appeals, first seated in January, 1995.

The Chief Justice of the Mississippi Supreme Court is the chief administrative officer of all courts in Mississippi, and the Supreme Court promulgates and/or approves all rules governing the practices and procedures of all courts. While legislative enactments are seen from time to time, it seems to be generally conceded that the Supreme Court controls the procedural rules for courts, and the legislature controls the substantive law. This situation is always subject to change, and one may expect departures from these courses over time.

By observation over nearly thirty years' service in the justice system, it seems that many citizens become interested in the judicial branch of government only when they become involved in a

case in some fashion. That person's interest is understandable, as is the often considerably lessened interest in the court system of those not or never involved.

The importance of other officials to the court system in terms of support and cooperation has been noted, and this is true from the local level of government to the very highest level. Support of each branch for the other is vital, as is respect for the independence of each and the absence of arrogance and heavy handed actions by all.

## **JUSTICE COURT**

Perhaps the best known and most used, the Justice Court exists in all counties, with 72 counties have one court each, and the 10 counties with two county seats (judicial districts) therein having two courts each, for a total of 92 Justice Courts statewide. These 92 courts are served by approximately 197 judges, with the number in each county being determined by county seat and/or population.

Justice Courts handle civil actions under \$3,500, and criminal law misdemeanors. Additionally, these courts determine in felony criminal charges whether or not to bind a person over to await the action of the county grand jury. Justice Court Judges set bail, issue search warrants, and all trials (except preliminary hearings) may be by jury.

Justice Courts are served by clerks (appointed by the board of supervisors) who are required to receive ongoing continuing education and training each year.

Justice Court Judges are elected for four year terms and are paid regular salaries. A high school diploma is mandated, and Judges must complete continuing educational requirements prior to taking office and in each year of service thereafter.

Appeals from the Justice Courts are to the County Courts (if one is available) or the Circuit Courts, and in either event, a completely new trial is had. There is no court reporter employed in the Justice Courts, but litigants may provide their own reporters if a record of any proceeding is desired.

By definition, the Justice Court is one of limited jurisdiction, but it is both busy and important as it provides most citizens their first contact with the justice system in general.

## **MUNICIPAL COURT**

The Municipal Court serves the cities and towns as the Justice Court serves the counties. There are 226 Municipal Courts with approximately 229 judges in the State. These courts hear misdemeanor criminal offenses and the violations of municipal ordinances. The municipal judge may also conduct felony criminal preliminary hearings.

While most municipal judges are lawyers, no law degree is mandated, and mayors no longer serve as judge. Justice Court Judges may serve as the municipal judge in municipalities located in their justice district. Municipal Judges are appointed by the governing authorities of their jurisdiction and their salaries are set by the same authorities.

Municipal Courts are very important at the grassroots level, with many citizens seeing and visiting only this court. While no court reporter is provided, litigants may provide their own.

## **COUNTY COURT**

County Courts exist in 21 counties, with a total of 30 judges, all of whom are required to be lawyers, at least 26 years old with five years experience in law practice. County Judges are elected for four year terms and their salary is determined by their county's population and classification.

County Court Judges hear civil actions under \$200,000, as well as civil appeals from the Justice and Municipal Courts. They try misdemeanor criminal cases and conduct preliminary hearings, in addition to serving as the Youth (juvenile) Court.

Juries are utilized in County Courts and appeals may be taken to the Chancery or Circuit Court, depending upon the nature of the case. The County Court is a court of record (has a court reporter) and it may be assigned cases from the Chancery and Circuit Courts to assist with heavy case loads or judge recusals.

## **YOUTH COURT**

The Family court, formerly existing in Harrison County, was abolished in 1999 and merged into the Harrison County Court. Outside the counties having County Courts, the Youth Court is held as a division of the Chancery Court, generally by a Chancery Court appointed Youth Court Referee. The City of Pearl also has its own municipal Youth Court.

The public is excluded from Youth Court, the proceedings are civil, and the court has a wide range of possible option in dealing with those youth who enter its doors. Appeals are to the Chancery and/or Supreme Court.

Like the Justice, Municipal, and County Courts, the Youth Courts are of limited jurisdiction, but all are busy, vital to the justice system, and in need of cooperation and support of all officials and branches of government.

## **DRUG COURT**

Although the Drug Court title contains the term "Court" it is not what one would traditionally think of as a Court. The Drug Court provides a sentencing alternative similar to probation for individuals addicted to drugs or alcohol. The Drug Court is intended to be a way to rehabilitate drug-using offenders through drug treatment and intense supervision such as drug testing and frequent Court appearances.

To qualify for Drug Court, the offender must plead guilty to the charges before the Court and be screened by the Court before the Drug Court board will determine if the individual qualifies for the Drug Court program. If the offender fails to remain drug-free and in compliance with the program's requirements it is considered a violation and the offender will be returned to Court for

sentencing. If an offender successfully completes the program then a dismissal of the charges, reduced or set aside sentences, lesser penalties, or a combination of any of these will result.

Any Circuit Court, Municipal Court, Justice Court, or Youth Court can utilize the Drug Court procedures, however the correct procedures for setting up the Drug Court must be followed before it can be used as a sentencing alternative. There were 38 Drug Courts in operation within the State of Mississippi.

## **GENERAL JURISDICTION COURTS**

Mississippi throughout its history has had two general jurisdiction trial courts, one of which is Chancery and the other of which is Circuit. Judges in these courts, known as Chancellors and Circuit Judges, are required to be 26 years of age, a practicing attorney for at least five years, and a qualified elector. These judges (Chancellors are also known as judge) are elected for four year terms and their salaries and other benefits are set by the legislature. Judges in these two courts of general jurisdiction handle distinctively different types of cases, but all these judges are considered to be of equal rank. These are courts of record, meaning that a court reporter records all proceedings, or should do so. These courts have increased in number over time to reflect the increase in population and case load.

### **CIRCUIT COURT**

There are presently 22 Circuit Court Districts in Mississippi with 53 judges presiding therein. Districts, created by the legislature and/or the federal courts, vary considerably as to size, population and configuration. The Circuit Court tries felony criminal cases (as well as misdemeanors on appeal) and civil actions involving issues of \$200 and above. Appeals from the Circuit Courts are to the Mississippi Supreme Court.

Juries are widely used in the Circuit Court, with a unanimous vote of 12 required for a criminal conviction, but only 9 of 12 required for a decision in a civil proceeding. The Circuit Court with all its attendant costs is generally the most expensive court in a county, but its work is too important to be compromised or sacrificed, and its work must be supported at an efficient and operable level. While it is valuable to continually study the courts and seek improvement therein, it is noted that the alternative to no courts is not acceptable in a civilized society.

### **CHANCERY COURT**

There are 20 Chancery Court Districts in Mississippi with 49 Chancellors (also known as Judge) presiding therein. These Chancery Judges must possess the same qualifications as Circuit and County Judges, and their districts and salaries are legislatively established. They are elected for four year terms.

The Chancery Court has always been the separate court of equity (as distinguished from the law court circuit) in Mississippi, and the Chancellor generally hears cases without a jury. Juries are permitted only in will contests. An advisory jury is permitted in any case, but as the jury's decision is advisory only and not binding on the Chancellor, this use of a jury seems of little or no use. Advisory juries are rarely utilized but all litigants have the right to request the same.

The Chancery Court handles equity cases involving domestic and family matters such as divorce, child custody and support, property division, adoptions, and all related issues. Additionally, the Chancery Court handles and processes the estates of decedents (without or without a last Will and Testament) and all issues involving minors. This court handles a wide variety of other matters, including issues concerning title to land, contracts, injunctive matters, and commitments of persons impaired through mental disability and/or chemical – substance – alcohol abuse.

In the 61 counties having no County Court, the Chancery Court either hears all youth court proceedings or appoints a Youth Court Referee (Judge) to do so. The Chancery Court is a court of record and its appeals are to the Mississippi Supreme Court.

## **APPELLATE COURTS**

The Mississippi Supreme Court is the court of last resort in the state, and it possesses appellate jurisdiction over all matters. This court has existed throughout statehood (for many years by a separate title and name) and its membership has been increased from three to six to nine members, which is its current size.

In 1993 and 1994, the legislature created a lower Appellate Court, the Mississippi Court of Appeals, and its ten members were seated in January, 1995. This court, an intermediate one, is situated beneath the Supreme Court, but above the Chancery and Circuit Courts. Districts and salaries of justices of the Supreme Court and judges of the Court of Appeals are determined by the legislature.

## **SUPREME COURT**

The nine justices of the Mississippi Supreme Court are elected from three supreme court districts (three from each district), and their qualifications are the same as those for Chancery, Circuit, and county Judges except that the Supreme Court candidate must be 30 years of age. Justices serve eight year terms, the longest of any elected state official. Justices seek election on non-partisan ballots and, as is the case with all judges, are prohibited from engaging in any politically partisan activity.

The Supreme Court operates on the seniority system, meaning that the Chief Justice is the justice having served the longest tenure on the court and so on through number nine. The Supreme Court does not retry cases, but studies and reaches its decisions on the records of trials from the lower courts. The court generally works in three justice panels and all justices are required to participate in all cases unless recused therefrom.

The functioning of the Supreme Court may be likened to the functioning of any nine member committee. A majority vote is required for decisions, which means five votes may win, or lose, a case.

## **COURT OF APPEALS**

This court was created after many years of effort, and it serves a valuable purpose in disposing of certain appellate cases, all of which are assigned to it by the Supreme Court. The ten judges are

elected two from each congressional district as they exist today, and their terms either now are, or will be, eight years. Their chief judge is appointed by the Chief Justice of the Supreme Court for a four year term.

The Supreme Court must retain all cases involving the death penalty, utility rates, annexations, bond issues, election contests, and a statute held unconstitutional by a lower court. Other cases retained by the Supreme Court include attorney discipline, judicial performance, certified questions from a Federal Court, a major question of first impression, as well as others.

The Court of Appeals may be assigned any other matters, and it receives an abundance of cases on all issues. This court has substantially aided in reducing the appellate case backlog in Mississippi. A decision of this court is final, but any litigant aggrieved by any decision may request the Supreme Court to grant discretionary review (known as the certiorari process), and the Supreme Court generally does so in about 20 percent of the reviews sought.

The Supreme Court and Court of Appeals are operating well. Together they have produced vast improvements in the Mississippi justice system.

## **SUPPORT STAFF AND OTHER PERSONNEL**

The judicial branch of government is served at every level by personnel known as officers of the court who play some role or roles in the functioning of the court. Attorneys who practice law are officers of the court even though they may not occupy any official position. Their conduct, activities, obedience to the rules, and quest for justice place them in unique roles, and an overwhelming majority serve honorably, ably and with distinction. Today, all courts have clerks (some have separate administrators) and law enforcement officers, and there are various statewide organizations which serve the courts.

### **Clerks**

The Justice Courts have had clerks since 1984, and these clerks are appointed by the Board of Supervisors and paid salaries by the counties. The Municipal Court Clerks are appointed by the governing authorities of the municipality and their salaries are set by the same.

The Chancery and Circuit Clerks are elected in their respective counties for four year terms and their salaries are paid by their counties pursuant to legislative authorization. The Circuit Clerk also serves as the clerk of the County Court in the 19 counties where such exists, and this service includes the youth court in those 21 counties as well. The Chancery Clerk serves as the Youth Court Clerk in the other 61 counties.

The Supreme Court Clerk also serves as clerk of the Court of Appeals and is appointed by the Supreme Court. The Clerk's salary is set by the legislation. Most of these clerks are assisted by some number of deputy clerks whose qualifications and duties closely parallel the clerk.

The principle function of all court clerks at every level is to receive and file pleadings, documents, and other papers, and to issue certain official documents as required. The clerks charge and collect fees for their services, and some collect fines, past due taxes, and the like.



The clerks keep and maintain official records and minutes of the court, administer the oath to witnesses, assist juries and jurors, attend the courts when in session, and should be generally available to assist the courts as needed.

### **Law Enforcement Officers**

All courts should have a law enforcement officer or officers present at all times as an officer or officers of the court. Their function is to open court, maintain order, and assist as directed by the court.

Municipal courts are served by municipal police, and the Justice Courts are served by constables and/or the Sheriff's department. The County, Chancery and Circuit Courts are generally served by the Sheriff's department, but other law enforcement agencies are also called upon for assistance. The Mississippi Supreme Court has a Marshal, and it and the Court of Appeals may be assisted by the Hinds County Sheriff and the Capitol Police.

### **Administrators**

In relatively recent years, the County, Chancery, and Circuit Courts have obtained staff support generally known as administrators, whose principal duties are the setting and maintaining of dockets and schedules for the courts. These employees are hired by the judges but are deemed to be employees of the Mississippi Administrative Office of Courts. Their duties vary somewhat but overall they are to assist the court as directed. The Supreme Court and Court of Appeals Administrator serves as the administrative officer for both courts and oversees all support functions.

### **Court Reporters**

These officers are state employees, hired by the judges of the County, Chancery, and Circuit Court. Their duties are to accurately transcribe and record all proceedings of the courts in which they serve. These transcripts are required of courts of record for possible appeal purposes.

## **ADMINISTRATIVE OFFICE OF COURTS**

The legislatively-created Mississippi Administrative Office of Courts became effective July 1, 1993. Its mission is to provide for the orderly and efficient handling of all administrative matters in the State court system.

The Administrative Office of Court Director is appointed by the Mississippi Supreme Court, and the duties of the Administrative Office of Courts are varied and wide ranging. Support for the Administrative Office of Courts by all court and judicial personnel is vital for its proper functioning. The interested reader is encouraged to see a current Supreme Court of Mississippi Annual Report for more exhaustive information.

## **COMMISSION ON JUDICIAL PERFORMANCE**

This agency was created in 1979, and it regulates the conduct of judges by enforcing law and ethical canons applicable to them. It receives complaints, conducts hearings, and forwards recommendations concerning judges to the Supreme Court.

## **MISSISSIPPI JUDICIAL COLLEGE**

This agency is charged with the training of all court clerks and their deputies, administrators, all judges and others. Training is mandated for these officials, and the cost is usually borne by the local governments or the court involved. Training generally assists in eliminating mistakes and errors, and local officials are encouraged to be cooperative and supportive.

## **CONFERENCE OF MISSISSIPPI JUDGES**

This organization is composed of judges from the County, Chancery, Circuit, and Court of Appeals, as well as the Supreme Court Justices. Chaired by the Chief Justice, this group traditionally meets twice a year for continuing education and discussion of issues and administrative matters.

## **OTHER**

The State Law Library in Jackson provides law library services to all courts and state officials. It also provides services to the general public.

The Mississippi Bar is an organization all practicing attorneys are required to join and remain a member. The Bar provides services for its members and the general public, including the handling of complaints against attorneys.

The Board of Bar admissions has members appointed by the Supreme Court. Its mission is to govern admissibility of attorneys into law practice in Mississippi. Bar examination are conducted twice a year.

## **CONCLUSION**

This short summary of the court system in Mississippi is not intended to be exhaustive, but is written for the lay person involved in local government and the general public. While all courts appear to be baffling (and often are), study and understanding reveals that the judicial branch in Mississippi had made remarkable progress in recent years. By and large, litigants receive an excellent quality of justice and, if they do not so feel, there are avenues for them to pursue.

Courts are often criticized, as are the other two branches of government, but the Mississippi system operates well and much better than it has in many years. It has been observed that the judicial branch of government is the weakest, most misunderstood, and least studied branch of government. It is further believed by many that litigation (and the court system) is too complex, lengthy, and costly to perform well in any case. Whether these statements are true or not depends

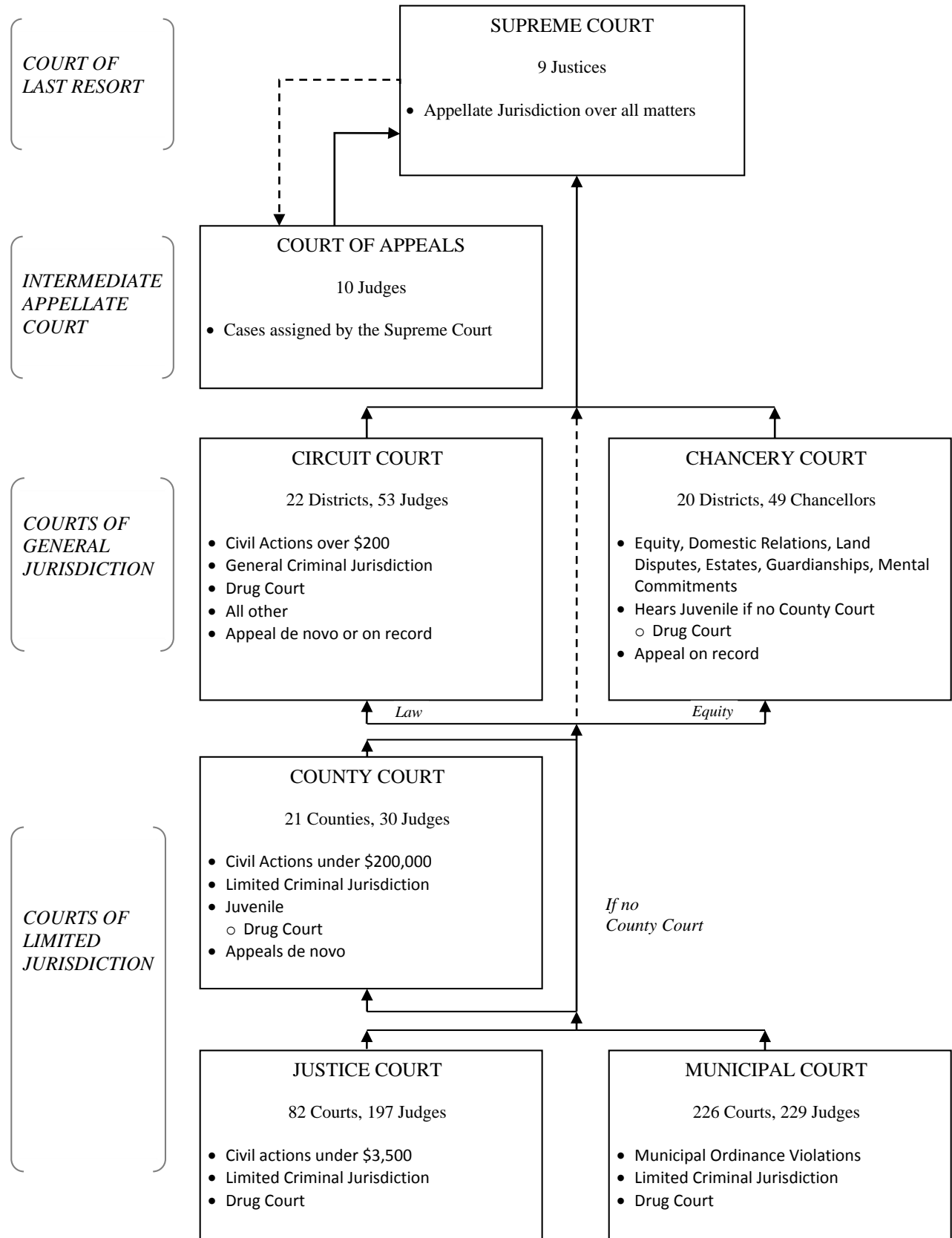
upon the viewpoint of the person involved, but it is important to remember that all citizens have a continuing obligation to improve the courts and the entire justice system.

Courts throughout history have dealt with societal issues, and that will most likely continue to be the pattern. Society (all of us) bears a special responsibility to ensure that society remains civil in its resolution of disputes among its citizens. That responsibility includes an assurance that courts are competent, fair, impartial, and provided with adequate resources for their vital task to society. A civil society must have well-working and smoothly functioning courts, and these courts significantly aid in encouraging a civil society.

Local officials, and the general public are strongly encouraged to read, study, and learn as much as possible about the entire court system. Knowledge and information decrease the uncertainty and apprehension of being in court in a case as a party or witness. In any event, the more knowledge one possesses may avoid that flash of fear and uncertainty when one hears that old saying: "I'll see you in Court!"

## Judicial Route of Appeal

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## CHAPTER 17

# COMMUNITY ECONOMIC DEVELOPMENT: DEFINITION, STRATEGIES, AND ISSUES

Roberto Gallardo, PhD

### INTRODUCTION

Community economic development (CED) is a crucial process for any community regardless of size or location. With globalization continuing to impact communities and the digital age in full-swing, understanding what affects community economic development is critical. Community economic development, when implemented correctly, has the potential to help communities not only remain competitive but more importantly *adapt* to a very complex and dynamic context.

The CED process is analyzed to provide a detailed understanding of what this process includes, what affects it, and how it can be unleashed in your communities. In practice community and economic development go hand in hand and distinguishing them is somewhat difficult; in theory however, it is easier and appropriate to distinguish them. Some key concepts are discussed that collectively affect and result in the community economic development process. The main objectives of this chapter are (1) to distinguish between community and economic development, (2) how both are needed for communities to be sustainable and (3) to provide a general understanding of this important process to community leaders.

### KEY CONCEPTS & DEFINITIONS

Several concepts are related to community economic development. Though the concepts covered here are not intended to be comprehensive, they should provide a better understanding of the dynamics taking place in the community economic development process. Before we discuss these concepts however, a key difference must be understood between *growth* and *development*. Many people equate these two terms and that can have negative consequences for the community and the community economic development process. Growth is a quantitative increase while development is a change aimed at a particular goal (Robinson and Green 2010). In other words, growth is more about quantity while development is more about quality. As a community leader, do you want your community to grow or do you want it to develop? Answering this question is critical before attempting to implement a community economic development process in your community.

Back to the key concepts, let us begin with the most basic: what is a community? The definition of community is usually taken for granted but not truly understood. As an example, ask several of your colleagues how they would define community and you will see that their definition will vary widely. So, what is a community? Though multiple definitions exist, *community* is a geographically defined place where people interact (Robinson and Green 2010). But a community is not only the physical space where people interact, it also provides important activities and *functions* that serve its residents (Warren 1987). These community functions range

from economic (provides goods and services) to socialization (process through which the community transmits its knowledge, values and behavior patterns to its residents) to social control (process through which a group influences the behavior of its members to conform to its norms) to social participation (provide a venue through which residents can participate in their communities) to mutual support (provides help and support in times of need) (Warren 1987).

These functions are not carried out in a vacuum, they rely on *institutions* – defined as rules, including informal norms, and organizations that coordinate human behavior (Anglin 2011). Institutions in a community vary by presence and strength and include family, economic, education, political/government, faith-based/religious, and associations. For example, some communities may have stronger political institutions and weaker education-related institutions. This institutional diversity affects *linkages*, horizontal and vertical, in the community. Horizontal integration refers to linkages between local institutions while vertical integration refers to linkages between local institutions and external (state, regional, or federal) resources. The catch here is that focusing only on vertical integration can compromise community autonomy – relying almost solely on external organizations to move the community forward. A more balanced approach uses horizontal integration to identify community priorities and issues and then secure external resources and expertise tapping on vertical linkages.

In summary, *linkages* are the capacity of *communities* to carry out *functions* that depend on the nature and strength of *institutions* (Robinson and Green 2010). With these key concepts understood and the relationship between them the question becomes: what is community development? Though multiple definitions exist, a good community development definition is:

“Group of people in a locality initiating a social action process – i.e. planned intervention – to change their economic social, cultural, and/or environmental situation.” (Christenson and Robinson 1989) p. 14

If you have a hard time remembering such a long definition remember these key words: people, locality, planned, change, and situation. *Community development is all about people planning to change a specific situation in their communities.* To identify situations, plan, and deploy resources and programs to address the issues results in multiple players ranging from local residents and leaders to private foundations to government to community development corporations.

## **COMMUNITY DEVELOPMENT VS. ECONOMIC DEVELOPMENT**

Now that key concepts have been discussed and community development has been defined, we need to understand what economic development is. Though there is no single definition that can incorporate the full concept, the following can be used:

“Economic development is a process that influences growth and restructuring of an economy to enhance the economic well-being of a community” (International Economic Development Council n.d.) p. 3

Regardless of the definition used, economic development is often associated with two objectives: (1) creation of jobs and wealth and (2) the improvement of the quality of life (International Economic Development Council n.d.). Objective typically leads to objective two but generally the focus is on the business aspects of communities. So, the difference between community and economic development boils down to one approach (community development) focusing on broader community issues *including but broader than* jobs and businesses while the other approach (economic development) focuses mostly on jobs and businesses. Both are processes taking place in a community or region. To summarize concepts, review table 1.

**Table 1. CED Key Concepts & Definitions**

<b>Key Concept</b>	<b>Definition</b>
Growth	Quantitative increase in size
Development	Quality change aimed at a particular goal
Community	Geographically defined place where people interact
Functions	Responsibilities & activities inherent in a community
Institutions	Rules, including informal norms, and organizations that coordinate human behavior
Linkages	Capacity of communities to carry out functions depending on strength of institutions. These can be vertical and horizontal.
Community Development	People in defined location planning to change a situation
Economic Development	Process that influences growth to enhance well-being
Community Economic Development (CED)	Process that allows residents to mobilize and build assets to improve their quality of life in a sustainable way

## **COMMUNITY DEVELOPMENT APPROACHES**

An interesting saying goes something like “the devil is in the details”. If a community identifies a specific situation that needs to change through planning and mobilizing resources, the million-dollar question becomes: how? Over decades of research, the community development literature has identified multiple approaches. This chapter will cover three of them: technical assistance, self-help, and conflict. The majority of the material for this section was obtained from (Robinson and Green 2010).

Technical assistance is broadly speaking a community development approach that relies mostly on experts to assist the community during a planning phase or implementation phase or evaluation phase or all of the above. A typical example of technical assistance as a community development approach plays out when community leaders identify a need – say a feasibility study or coming up with a strategic plan – and bring somebody to help with it. This approach is intended to help communities define their problems, needs, and potential solutions through specific services or programs strengthening a community’s problem-solving capacity.

Several issues exist with this approach however. It is usually top-down. In other words, many times residents aren’t even aware of the need for technical assistance much less included in the decision-making. This approach also assumes situations can be analyzed objectively and that the

scientific method is applicable. More importantly, as a stand-alone approach it rarely achieves effective community development and is generally perceived as generating dependency.

On the other side of the spectrum we find the community development approach of self-help. Unlike technical assistance, this approach is generally perceived as building and increasing capacity, not dependency. Perhaps the most popular self-help community development approach is asset-based. This process consists of engaging residents to identify assets – individual, organizational, and institutional resources and capacities – rather than needs, which can then be mobilized to address community issues. The main objective of the self-help approach is to strengthen the community's capacity to solve problems in the long run.

This approach is not perfect and several issues are worth discussing. First, it assumes residents possess the potential to improve the quality of life and that they are interested and motivated to participate in these efforts. Second, self-help is typically a lengthy process. Remember that time horizons of multiple players vary and because it will more than likely take a while can cause serious issues. For example, if a particular foundation is business-oriented it will expect results in a relatively short period of time and if results are not achieved in this time frame, may pull out leaving the community developer and the community stranded. And finally, this approach relies heavily on an effective local champion(s) to facilitate the process, who at times will push forward and at times will allow residents to deal with issues. If there are no local champion(s) in the community, this approach is almost impossible to implement.

The last community development approach worth discussing is conflict. Yes, that is correct: conflict. Though many people and communities stay away from conflict, it can be seen as a community development approach mainly because it has the potential to redistribute power and influence. First things first. What is conflict? It is an expression of incompatible actions in multiple arenas that range from cognitive to emotional to behavioral (Robinson and Green 2010). In a community development context, conflict should be seen as a process *not* an outcome.

Sources of conflict can include differences in values, interests, and (lack of or poor) communication among other. A community benefits from conflict because it forces to address problems and take action, social networks can be strengthened, better long-term relationships are established, and creativity is stimulated. More importantly, for conflict to result in community development it needs to satisfy substantive (win-win), procedural (fair process), and psychological (heard and respected) aspects. A dual concern management framework is a good tool to use to manage conflicts.

Of course not all is rosy and nice. The conflict approach assumes that it can be managed through an effective and unbiased mediator or negotiator. This conflict manager is crucial for the process to result in community development. It also assumes that the outcomes of the process will outweigh the negative. However, many things can go wrong and negatives can quickly outnumber the positives. Useful to keep in mind is to remember that interests behind conflicts are usually fed by basic human needs.

At this point it should be clear that any of these community development approaches pursued in *isolation* will not have the desired outcomes and will only increase community frustration. As



shown in table 2, each approach has different strengths and weaknesses. The secret is to pursue most – if not all of them – at different times during the process. A comprehensive approach, mixing approaches at different points in time, is the desired strategy for any community pursuing community development.

**Table 2. Community Development Approaches**

<b>CD Approach</b>	<b>Advantages</b>	<b>Disadvantages</b>
Technical Assistance	<ul style="list-style-type: none"> <li>• Provides expert know-how</li> <li>• Solve technical issues</li> </ul>	<ul style="list-style-type: none"> <li>• Can generate dependency</li> <li>• Top-down</li> <li>• Short-term time horizon</li> </ul>
Self-Help	<ul style="list-style-type: none"> <li>• Focuses on assets</li> <li>• Builds community capacity</li> <li>• Strengthens networks</li> </ul>	<ul style="list-style-type: none"> <li>• Lengthy</li> <li>• Complex</li> <li>• Assumes potential and motivation exist</li> </ul>
Conflict	<ul style="list-style-type: none"> <li>• Spurs creativity</li> <li>• Redistributes power and resources</li> </ul>	<ul style="list-style-type: none"> <li>• Requires efficient manager</li> <li>• May make things worse</li> </ul>

These are general approaches, theoretical concepts that help in the understanding but when it comes to where the rubber meets the road seem too broad. What then can help with identifying and actually implementing these approaches? For that, we turn to specific frameworks and strategies that in the practical world blend and become part of the CED process.

## **CED FRAMEWORKS & STRATEGIES**

Now that we have theoretically understood that community and economic development are similar but distinct concepts, we return to joining them into a single CED process. The following CED frameworks and strategies are discussed: community capitals, intelligent community, creative class, CARE model, and cluster-based economic development. Not meant to be comprehensive. Rather, these are just some examples of a large list.

You will note that some frameworks and strategies gravitate more towards community development or economic development or both. In addition, you may have heard of some or have been implementing them without realizing they were part of a broader strategy or theoretical concept. Regardless of the framework or strategy, they all fall under one or more of the broad community development approaches discussed above. Keep in mind we will begin with the more general or frameworks moving into more specific or strategies.

### **Community Capitals Framework**

First up is the community capitals framework. This CED framework is perhaps the broadest and most comprehensive. At its core, this framework describes any community with seven capitals: natural, financial, built, social, political, human, and cultural (Emery and Flora 2006); (Flora and Flora 2012). When properly connected, mobilized, and leveraged these community capitals result in healthy, vibrant, prosperous, and empowered communities.

According to (Emery and Flora 2006), natural capital refers to assets particular to a location or region such as weather, air, soil, biodiversity, etc.; financial capital includes what we traditionally think of when we hear the word capital and that is money, income, wealth, etc.; built capital can be understood as the infrastructure supporting all other capitals and includes water/sewer systems, utilities, etc.; social capital showcases the connections between people and organizations and is reflected on strength of networks, trust, etc.; political capital includes access to power and connections to resources and power brokers such as an influential local/state elected official; human capital describes skills, educational attainment, health, and self-esteem of residents; and lastly cultural capital incorporates traditions, customs, rituals, etc. and influences what voices are heard and listened to and how creativity and innovation emerge.

Ok, so what? For example (Jacobs 2007) describes the following situation: Jane Doe decides she wants a walking trail in her community. She takes a leadership development class to learn new skills (human); she then partners with (1) local hospital that wants to implement a wellness campaign and (2) chairman of local parks and recreation to identify land for the walking trail (social, natural); she then works with the city to secure the land while a state senator informs her of a grant that can be used for the trail and tourism board likes the idea and provides additional funding (political, financial); city builds walking trail and the local historical society adds historic markers (cultural, built).

Though oversimplified, the previous example showcases how the capitals feed off each other to accomplish a greater good that have economic and social impacts on the community. This example can be easily applicable to a specific economic development project, or a day care program, or use them to identify the needs and assets in a community. The point is that when successfully connected and leveraged, the community experiences a “spiraling-up” situation (Emery and Flora 2006) where one capital builds on another which builds on another and so on; on the other hand, these capitals can negatively impact each other to the point of experiencing a “spiraling-down” (Emery and Flora 2006) having an opposite negative effect. This framework also highlights that community capitals can be wasted and hoarded. As community leaders, you need to be aware of which capitals are in your communities, which are not, and how to better mobilize them to benefit the community.

### **Intelligent Community Framework**

Up next is also a comprehensive framework called the Intelligent Community. With the digital age in full swing some argue we are on the verge of a second machine age where digital tools will do for mental power what the steam engine did for muscle power back in the industrial revolution (Brynjolfsson and McAfee 2014). This second machine age is characterized by exponential digital improvements as in computing power, digitalization of mostly everything, the ability to combine and recombine ideas from massive amounts of data (Brynjolfsson and McAfee 2014), and by more frequent and stronger industry disruptions (McQuivey 2013). These characteristics are having tremendous impacts on businesses, governments, and residents alike.

Ok, but what is an intelligent community? According to (Bell, Jung and Zacharilla 2014) an intelligent community understands the challenges of the digital age and takes conscious steps to

prosper in it. This of course is easier said than done but there are some indicators that can be used as a guide including: broadband, knowledge workforce, innovation, digital equality, advocacy, and sustainability. When these indicators are considered in the design and implementation of CED strategies, the community is considered intelligent resulting in prosperous, inclusive, and sustainable communities.

As a quick mental exercise ponder on the following questions: does your community encourage deployment and adoption of broadband?; are programs and policies in place that better prepare the workforce for the digital age such as soft skill development, student-centered learning, teamwork, robotics, programming, etc.?; does your community offer programs and/or incentives for home startups or entrepreneurs?; does your local government interact digitally with its residents through websites, social media, and apps?; do employers and/or schools have telehealth capabilities?; do your businesses understand the different online presence strategies and the availability of capital through crowdfunding?; are teleworking policies in place or incentivized in any way?; what about providing digital literacy and/or access to computers and internet for those that cannot afford it or don't have access to it?; is there a strategy in place to proactively manage the community's online reputation (hint: google your community and see what comes up)?; are agroecology and/or precision agriculture techniques promoted and used; lastly, are efforts being made – water conservation, installation of solar panels and/or windmills – so that natural resources and livable conditions are available for future generations?

Important to clarify is that broadband and its applications are not a silver-bullet. In fact, some broadband applications are perceived as violating privacy and security while the so-called broadband economy is responsible to some for the increasing inequality. Broadband can only enhance an existent community development approach. Community issues will not simply disappear if broadband connectivity or adoption is achieved; rather, community development must be coupled with this new and increasingly changing technology and its applications. For example, a recent study found that resiliency in rural Scottish communities was in part achieved thanks to creative workers relying on broadband connectivity and applications (Roberts and Townsend 2015).

Aside from the negatives and that this framework makes communities aware of the implications and possibilities of the digital age, it can help address an emerging threat: the digital divide. This divide consists of a gap between those that use and understand the technology versus those that don't have access to it, can't afford it, or are not interested. Why is this important? Well, those on the wrong side of the divide are being left further behind as were those that did not know how to read or write. More importantly, situations change quickly and constantly in this digital age and if your plan is to play catch-up, chances are you will have a *very* hard time catching-up. More on this under CED issues.

### **Creative Class**

Shifting gears a bit and more specific, we now focus on what is called the creative class strategy. This strategy boils down to the argument that development depends on novel combinations of knowledge and ideas (Florida 2014). Considering this, communities with a more “creative” labor force are more likely to be prosperous compared to communities with a more “traditional” labor force (Florida 2014). This strategy not only identifies creative occupations, it also includes

service and working occupations. The argument continues in that people that work in creative occupations tend to be attracted to areas with higher tolerance, talent, and technology (Florida 2014) as well as outdoor amenities, active lifestyle opportunities, and tourism (McGranahan, Wojan and Lambert 2011).

As community leaders using this strategy you should try to foster the retention or attraction of these professions and their associated creativity by funding arts and culture, encouraging racial and social tolerance, and promoting technological advancement (Hatcher, Oyer and Gallardo 2011). In fact, rural areas close to metropolitan areas are prime candidates to pursue this strategy given these communities more than likely meet the diverse, tolerant, outdoor amenities, tourism, and active lifestyle opportunities requirements. Criticisms of this strategy include that it focuses mostly in urban areas overlooking rural areas; also, the assumption that more diversity leads to more tolerance in turn attracting more creative workers may not hold, especially in more rural areas, since more diversity may lead to more conflict. In addition, some believe this strategy is elitist in that it focuses almost exclusively on the creative class overlooking working and service occupations.

Regardless of what your thoughts are on this strategy, remember that it is more popular in urban and suburban cities and has yet to be adopted or implemented by more rural communities. The fact that it can be (incorrectly) seen as focusing primarily on art-related professions makes it a hard sell for community and economic developers attempting to pursue this strategy. In fact, a survey of economic developers in Kentucky found that local economic development policy should focus primarily on retaining existent businesses and advocate for infrastructure improvements while creative class-related policies such as increasing a community's art and cultural opportunities ranked last (Hatcher, Oyer and Gallardo 2011).

### **CARE Model**

This specific strategy focuses on economic development. CARE is an acronym that stands for: create, attract, retain, and expand. Generally, local economic development organizations use the CARE model to guide their efforts. Economic development strategies have evolved in stages over time ranging from recruiting external firms or known as smokestack chasing to fostering innovation and entrepreneurship also called the 'third-wave' (Bradshaw and Blakely 1999).

The create component refers primarily to entrepreneurship. For example, did you know that according to the U.S. Census Bureau of the more than 260,000 establishments – single physical location where business is conducted or where services or industrial operations are performed – in Mississippi in 2013, about 77% or three-quarters were non-employers or that they had no paid employment and payroll yet had receipts of \$1,000 or more? Granted, the majority of these could be necessity/lifestyle (start a business to supplement their income) entrepreneurs but nonetheless their sheer numbers is eye-opening. A simple way to jump-start this is to start entrepreneurship programs where potential entrepreneurs are educated through a series of workshops and in the end the winner of the competition receives some funding and/or incentives to actually start their business. Obviously, this component is more effective if tied to entrepreneurship curricula in the schools, availability of capital, and a community embracing entrepreneurs and encouraging them to start businesses removing social stigmas if they fail.

Recruiting external industries to the community is primarily what the attraction component relies on. This was a popular strategy back in the 50s through the early 90s and continues in some rural areas. However, due to globalization this practice is more and more competitive today. Yes, recruiting external industries diversifies the economic base and provides a mechanism for external money to flow into the community. But, not all is rosy and good. A study completed by the New York Times in 2012 found that many communities ended up losing when considering the amount of incentives provided versus the number and quality of jobs generated (Story 2012). In addition, nothing guarantees that companies recruited this way won't leave on a moment's notice seduced by another community and its incentives. This approach is a zero-sum game where a community's gain is another's loss.

The last two components of the CARE model go hand in hand: retention & expansion. This component forces communities to look "inward" instead of chasing smokestacks elsewhere. Back to census figures, did you know that of the same approximately 260,000 establishments in Mississippi in 2013, about 11% had one to four employees and close to 8% had five to nineteen employees? Including those establishments with no paid employment, only 3% of establishments in Mississippi had twenty or more employees; to put it another way, close to 97% Mississippi establishments had no paid employees or less than twenty employees. 97%!! Again, the potential to generate jobs increase vastly if help is provided so they can grow and expand. Economic gardening is a tool that precisely to achieve this: nurture existent businesses and help them grow.

### **Cluster-Based Economic Development**

Last but not least we turn to cluster-based economic development. Right before the 1990s, the development of nations could be explained due to *comparative* advantage. In other words, a specific nation developed or did better because it had specific natural resources that another nation did not explaining the difference in development. But this explanation was less and less convincing by the 1990s when the *competitive* advantage argument was introduced (Porter, The competitive advantage of nations 1990).

The new explanation argues that nations or regions that have a competitive advantage are the ones that prosper. This competitiveness is defined by four factors known as the diamond model: (1) input conditions, (2) demand conditions, (3) firm strategy, structure, and rivalry and (4) related and supporting industries (Porter, Location, competition, and economic development: local clusters in a global economy 2000). All the jargon aside, this competitiveness was not reflected everywhere but rather in pockets or clusters. These clusters were a geographical concentration of related industries and – so the theory argues – were responsible for a region or nation pulling ahead (Porter, Location, competition, and economic development: local clusters in a global economy 2000). The main reason for this was that firms in clusters were not only competing but collaborating and as a result were innovating more than firms that were "isolated" or not in clusters.

Clusters can be identified by calculating location quotients (above 1.25 indicates for sure a potential cluster) that measure the level of concentration of a particular industry in the region compared to the nation. Clusters can be vertical or horizontal. A vertical cluster consists of *one* major exporter along with its suppliers, related, and supportive industries and institutions. A

horizontal cluster on the other hand consists primarily of *multiple* companies in the same industry along with their suppliers, related, and supportive industries and institutions.

The idea is that once a cluster is identified in a particular region, efforts should be made to plug the “leaks” of that cluster and its related industries through creation, attraction, or both. For example, if a shipbuilding cluster is identified say in the Mississippi gulf coast, then efforts should be made to attract additional shipbuilders or additional providers and/or supporting industries of the shipbuilding industry overall. These recruitment efforts are more effective because the cluster is already in place and with it workforce training programs, facilities, and a work ethic related to shipbuilding among many other advantages.

Bad news is that this strategy is becoming outdated for two main reasons. First, innovation – more so in the digital age – is not necessarily more prevalent only in clusters; it is taking place in other locations relying on communications technology that allows efficient competition and collaboration as well. Second, geographic proximity to providers and customers is becoming more and more irrelevant in the digital age as well as the world is more connected, transportation and distribution mechanisms continue to improve, and communications technology become more sophisticated. Nonetheless, the fundamentals of this strategy – collaborate in addition to compete and supporting infrastructure and institutions – are useful for communities when developing CED strategies.

## **COMMUNITY ECONOMIC DEVELOPMENT ISSUES**

As discussed in the previous section, there are multiple community economic development frameworks and strategies ranging from a specific group of occupations that are associated with economic growth (creative class) to a group of related industries that innovate more than those in isolation (cluster-based economic development) to multiple capitals that need to be present in a community to thrive (community capitals). However, what all these frameworks and strategies assume and *need* are certain community characteristics: leadership & education. These characteristics can become major barriers if weak or are lacking.

First off the most important of them all: leadership. Worth noting is that the term leadership is used loosely to include from elected officials to business people to community and economic developers to interested citizens to all of the above. Without leaders, CED strategies are almost impossible to implement effectively. But what is leadership? Leadership is a behavioral process that can influence activities of individuals and groups to accomplish specific objectives or goals (Robinson and Green 2010). But not only that, many times the leader may also have the resources needed to address the specific issue. In the end, a leader should be able to create (influencing other people or groups) and/or tap (via partnerships and collaboration) into resources inside and outside of the community.

Of course there are different types of leaders but for CED, the leader must be able to mobilize multiple resources towards a pre-defined goal. Mobilization takes place through *partnerships* and *collaboration*. Because of the complexity of CED issues, nobody can do it alone. This is why a leader or leaders is critical serving as the glue holding together multiple resources and groups needed throughout the CED process. This applies not only for a self-help approach but also when

requiring technical assistance the leader or leaders will be the gateway to the community's trust and buy-in. External experts will do a better job if a local champion(s) or leader(s) serve as the bridge with the community.

Unfortunately, time and time again leaders are weak, nonexistent, or they simply do not share the specific vision for the community moving forward. Because of the pressing nature of community issues, multiple uncoordinated efforts may emerge but sooner rather than later will not accomplish much resulting in frustration and pointing fingers attitude. Keep in mind that many times, multiple groups in the community may not even agree on what the problem is! A leader or group of leaders are indispensable for any CED process. If your community decides to pursue any CED framework or strategy, identifying the local "shakers and movers" and their networks is a must *before* the planning and/or implementation. Involving different groups of the community may shed light to additional issues (and resources!) and provide legitimacy.

Another community characteristic that if not present or weak can undermine CED frameworks and strategies is education, more specifically the relationship between schools (including higher education) and the communities where they are located. Community and economic developers may focus too narrowly on their tasks overlooking to some degree the importance of schools. In fact, some may even perceive local schools as a drain for scarce local tax revenues that in their mind could be better used say for business incentives. On the other hand, some schools may not be integrated fully in their communities and in some cases, specifically higher education, are perceived as disengaged. This tension, if existent, needs to be addressed prior to engaging in CED efforts. In fact, schools can become a tremendous asset for CED purposes and should not be seen as a separate issue or a "drag" on the community. The bottom line is that communities and schools are part of the same ecosystem: vibrant schools require vibrant communities and vice versa.

Finally, another community economic development issue to keep in mind is the digital divide. As discussed previously, the digital divide refers to those with access to broadband and those who do not have access or do not know how to use the technology. Some research organizations and think-tanks have identified the digital divide as a serious threat to economic growth (Boston Consulting Group 2012) (McKinsey Global Institute 2011). The reason is simple: as more and more resources are only available online – such as searching for and applying for jobs – those on the wrong side of the divide will be left further behind.

The digital divide can impact the CED process mainly in two ways. First, it may undermine the technology's capacity to engage and incorporate diverse groups in the community. Digital platforms make it much easier to communicate and if not being used or is not available can limit engagement efforts. Second, digital applications can provide alternative funding and information mechanisms for communities known as crowdfunding and crowdsourcing. Crowdfunding is a great option for nonprofits and grassroots organizations when raising funds for specific projects; it can also help entrepreneurs and small business owners. Crowdsourcing on the other hand is related to brainstorming. Specific issues or situations can be described and posted to obtain best practices and potential solutions.

## CED AND SUSTAINABILITY

Make no mistake: community and economic development are intertwined. It is important to distinguish them theoretically but in reality both need each other to make a community *sustainable*. In other words, CED allows residents to mobilize and build assets to improve their quality of life in a sustainable way. If too much effort is placed on either at the expense of the other, the community will struggle and will not be sustainable. In this particular context, sustainability refers to engaging in practices that result in availability of resources, services, and quality of life for future generations.

CED is a complex process. Multiple moving parts and players are involved and may take years to bear fruits. However, with committed leaders and a clear vision of where the community wants and needs to be, CED can truly move communities forward in a comprehensive way. Community challenges and opportunities emerge together; it is up to the community to decide if it will focus on the challenges or on the opportunities. CED is a process that allows a community to focus on both but more importantly, adapt.

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## **CHAPTER 18**

### **ENVIRONMENTAL ISSUES**

**Michael Caples**

#### **NATIONAL AMBIENT AIR QUALITY STANDARD**

In order to protect the health and well-being of Americans, the U.S. Environmental Protection Agency (EPA) and state and local governments share the responsibility for regulating air quality under the Clean Air Act (CAA). National Ambient Air Quality Standards (NAAQS) are standards, established by the EPA for pollutants considered harmful to public health and the environment. The CAA established two types of national air quality standards: primary and secondary. Primary standards set limits to protect public health, including the health of “sensitive” populations such as children, asthmatics and the elderly. Secondary standards set limits to protect public welfare including protection against decreased visibility, damage to animals, crops, vegetation, and buildings.

The EPA has set NAAQS for six principal pollutants deemed "criteria" pollutants. These pollutants are Carbon Monoxide (CO), Lead, Nitrogen Dioxide (NO<sub>2</sub>), Ground-Level Ozone, Particulate Matter, and Sulfur Dioxide (SO<sub>2</sub>). If the EPA finds the concentration of one or more criteria pollutants in a geographic area exceeds the regulated level for one or more of the NAAQS, the agency can classify the area as a “nonattainment” area. The EPA does classify areas with concentrations of criteria pollutants that are below the levels established by the NAAQS as “attainment.”

#### **MISSISSIPPI AIR QUALITY REGULATION**

The state of Mississippi has integrated its Air Quality Regulation with its water quality legislation.

The standards for air and water are set out together in the Air and Water Pollution Control Law (AWPCL). (*Code*, §§ 49-17-1 to 49-17-43). The AWPCL establishes that the standards are determined by the Mississippi Commission on Environmental Quality (CEQ) (*Code*, § 49-17-19). The AWPCL sets out guidelines for unlawful actions pertaining to both air and water standards in the state. (*Code*, § 49-17-29). All rules, regulations, and standards relating to air quality and air emissions are consistent with and must not exceed the requirements of federal statutes, regulations, and standards including air pollutants named as air toxics. (*Code*, § 49-17-34).

The Ambient Air Quality Standards for Mississippi are the Primary and Secondary NAAQS as dually promulgated by the U.S. EPA in 40 C.F.R. § 50. Under APC-S-4, “all such standards promulgated by the U.S. EPA as of June 22, 1988, are hereby adopted and incorporated herein by the Commission by reference as the official ambient air quality standards of the State of Mississippi and shall hereafter be enforceable as such.”

EPA must designate areas as meeting (attainment) or failing to meet (nonattainment) the required standards. The CAA requires states to develop a general plan to attain and maintain the NAAQS in all areas of the country and a specific plan to attain the standards for each area designated nonattainment for a NAAQS. State and local air quality management agencies develop these plans, known as State Implementation Plans (SIPs), and submit those plans to the EPA for approval. If a SIP is not acceptable, EPA can take over enforcing the CAA in that state.

## **Nitrogen Dioxide**

NO<sub>2</sub> forms when fuel is burned at high temperatures. The primary manmade sources of NO<sub>2</sub> are motor vehicles (49%) and electric utilities (27%).

In 1971, EPA established the first primary and secondary NO<sub>2</sub> standard at 53 parts per billion (ppb) averaged annually. (40 C.F.R. § 50.11) In 2010, EPA established the first hourly NO<sub>2</sub> standard. This new 1-hr standard is set at 100 ppb. (75 Fed. Reg. 6474)

## **Ozone**

Ozone is primarily formed when nitrogen oxides and volatile organic compounds (VOCs) react in the presence of sunlight. Primary VOC contributors are automobile and industrial exhaust.

Since the 1970's, EPA has periodically revised the ozone NAAQS. In 1971, EPA set the first primary and secondary NAAQS at 0.08 parts per million (ppm) over a 1-hr averaging period. In 1979, the EPA revised the primary and secondary standards upward to 0.12 ppm. (40 C.F.R. § 50.9) In 1997, EPA revised the primary and secondary standards back to 0.08 ppm, but changed the averaging period to an 8-hr average concentration. (40 C.F.R. § 50.10) In 2008, EPA again lowered primary and secondary standards to 0.075 ppm. (40 C.F.R. § 50.15)

## **Sulfur Dioxide**

Sulfur dioxide primarily emitted from stationary sources such as coal-fired power plants, steel mills, refineries, and pulp and paper mills. Electric utilities produce about 70% of all sulfur dioxide.

In 1971, EPA created two sulfur dioxide standards: (1) an annual average and (2) a maximum 24-hour concentration. The annual average standard was set at 30 ppb. (40 C.F.R. § 50.4) The 24-hour standard was set at 140 ppb. (40 C.F.R. § 50.4)

In 2009, EPA proposed to establish a new 1-hr primary standard within the range of 50 to 100 ppb. In 2010, EPA established a new 1-hr standard at a level of 75 ppb. The EPA also revoked both existing 24-hr and annual primary standards. (75 Fed. Reg. 35520)

## **Particulate Matter**

Particulate matter includes emissions from all types of combustion, including motor vehicles, power plants, agricultural burning, and some industrial processes. The EPA regulates only particulate matter with a diameter of 10 microns or less, known as PM10. Particulate matter comes from a wide variety of stationary, mobile, and natural sources.

In 1997, EPA set primary and secondary ambient air quality standards for fine particulate matter (PM2.5). The primary and secondary standards were set at an annual average of 15 µg/m<sup>3</sup> and a 24-hour average of 65 µg/m<sup>3</sup>.

In 2006, the EPA lowered the 24-hour average primary/secondary standards from 65 µg/m<sup>3</sup> to 35 µg/m<sup>3</sup>. The annual average standard remained at 15 µg/m<sup>3</sup>. (40 C.F.R. § 50.13)

## **Monitoring Ozone and Air Quality in Mississippi**

MDEQ monitors eight (8) locations in eight (8) counties in Mississippi, focusing on the population centers of Jackson, Tupelo, the Gulf Coast, and DeSoto County. The (8) locations include: Adams, Bolivar, DeSoto, Harrison, Hinds, Jackson, Lauderdale, and Lee counties. In 2004, the EPA designated all counties as “attainment,” based on 2001-2003 air monitoring data. The EPA has recently revised standards for ground-level ozone. These revisions present new challenges for the state so that the EPA will continue to designate all counties as attainment.

A “nonattainment” designation would not directly impact economic development, but there can be indirect consequences due to the designation. For example, industrial facilities could be required to install pollution control equipment, take limits on their production, or otherwise find reductions in emissions by “offsetting” in order to expand. In addition, new facilities wanting to locate in a nonattainment area will most likely be required to install pollution controls or take stringent operational limits.

The 1990 Clean Air Act Amendments (CAAA) requires that, in areas experiencing air quality problems, transportation planning must be consistent with air quality goals. This is determined through the transportation conformity process. Transportation conformity is a way to ensure that Federal funding and approval goes to those transportation activities that are consistent with air quality goals. Conformity applies to transportation plans, transportation improvement programs (TIPs), and projects funded or approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) in areas that do not meet or previously have not met air quality standards for ozone, carbon monoxide, particulate matter, or NO<sub>2</sub>. The EPA labels these areas as “nonattainment areas.”

Section 176 of the CAAA defines conformity to a SIP to mean conformity to the plan’s purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the standards. Designated Metropolitan Planning Organizations are required to perform conformity determinations by ozone nonattainment area for their Transportation Plans and TIPs.

## **GREENHOUSE GAS AND CLIMATE CHANGE**

### **Greenhouse Gas**

In 2010, the EPA published its final rule to control green house gas emissions (GHGs) from stationary sources under the two major CAA permitting programs. (75 Fed. Reg. 31514) Beginning January 2, 2011, GHG became a regulated pollutant and thus became subject to the air pollution permitting programs.

Mississippi has adopted the “Tailoring Rule” for GHG’s which set thresholds for emissions that define when permits under the New Source Review Prevention of Significant Deterioration (PSD) and Title V Operating Permit programs are required for new and existing industrial facilities. The tailoring rule increases the GHG applicability threshold so that only the larger emitting sources will be subject to regulation.

To be subject to GHG permitting, facility emissions must trigger GHG’s on both a mass and a Global Warming Potential basis. GHG’s refer to a group of six pollutants: Carbon Dioxide, Methane, Nitrous Oxide, Hydro Fluorocarbons, Per Fluorocarbons, and Sulfur Hexafluoride.

According to MDEQ, the agency will implement the GHG regulations in two initial phases:

### **PSD Construction Program**

#### *Step 1 (January 2, 2011 – June 30, 2011)*

Only sources currently subject to the PSD permitting program (i.e., those that are newly constructed or modified that significantly increases emissions of traditional pollutants) could be subject to PSD for GHG emissions. PSD permitting for GHGs would be required if emissions exceed the significant threshold of 75,000 tpy total GHG on a CO<sub>2</sub> equivalent (CO<sub>2</sub>e) basis and have a net mass increase (>0 tpy) of total individual GHGs. If MDEQ issued a facility a PSD permit prior to January 1, 2011 and that facility has not begun actual construction until after January 1, 2011, the facility does not have to go back and include GHGs in their PSD permit.

#### *Step 2 (July 1, 2011 to June 30, 2013)*

PSD permitting can now be triggered if GHGs exceed the major source threshold for GHGs even if they do not exceed the PSD permitting thresholds for any other pollutant (i.e. PSD major if emissions are 100,000 tpy CO<sub>2</sub>e or more and 100/250 tpy GHGs on a mass basis). Modifications at existing major facilities that increase GHG emissions by at least 75,000 tpy of CO<sub>2</sub>e will be subject to permitting requirements, even if they do not significantly increase emissions of any other pollutant. If MDEQ issues a facility a permit prior to July 1, 2011, and that facility has NOT begun “actual” construction, they must address GHGs before beginning construction.

### **Title V Operating Program**

#### *Step 1 (January 2, 2011 – June 30, 2011)*

Only sources currently subject to the program (i.e., newly constructed or existing major sources for a pollutant other than GHGs) would be subject to Title V requirements for GHGs. Sources

will have to address GHG emissions and any applicable requirements in their Title V applications.

*Step 2 (July 1, 2011 to June 30, 2013)*

Title V will apply to sources based on their GHG emissions even if they would not apply based on emissions of any other pollutant. Facilities that emit at least 100,000 tpy CO<sub>2</sub>e and 100 tpy GHGs on a mass basis will be subject to title V permitting requirements. Upon becoming subject to the Title V program, sources will have 12 months to submit a Title V application.

### **EPA's Future Plans**

In Step 3, EPA has committed to undertake another rulemaking, to begin in 2011 and conclude no later than July 1, 2012. That action will take comment on an additional step for phasing in GHG permitting. Step 3, if established, will not require permitting for sources with greenhouse gas emissions below 50,000 tpy. EPA will not require permits for smaller sources in step three or through any other action until at least April 30, 2016.

### **Climate Change**

The Federal government is using voluntary and incentive-based programs to reduce emissions and has established programs, such as the Climate Change Technology Program (CCTP), to promote climate technology and science. CCTP is a multi-agency, planning and coordination entity that assists the government in carrying out the President's National Climate Change Technology Initiative. The Department of Energy (DOE) manages and organizes the CCTP around five technology areas for which the DOE established working groups.

## **SMART GROWTH AND FARM LAND PROTECTION**

### **Smart Growth**

“Smart growth” covers a range of development and conservation strategies that help protect the natural environment. Smart growth is a movement to protect farmland and open space, revitalize neighborhoods, and provide more transportation services.

Proponents of Smart Growth are most active at the local level, where local governments usually make land use decisions. Still, national and state policy is a significant part of the equation, as it can provide incentives or disincentives for local governments and set standards. Democratic and Republican governors in states across the country are coordinating with local jurisdictions to reinvigorate existing communities and promote transportation planning and more environmentally sound land use.

One of the core principles of Smart Growth is the recognition that all levels of government play an important role in creating and implementing policies that support Smart Growth. Local governments have long been the principal stewards of land and infrastructure resources through implementation of land use policies. Smart Growth respects that tradition, yet recognizes the

important roles that federal and state governments play as leaders and partners in advancing Smart Growth principles at the local level.

### **Farmland Protection**

In 1981, the National Agricultural Land Study found that the nation was converting millions of acres of farmland in the United States each year. This study identified the need for Congress to implement programs and policies to protect farmland and combat urban sprawl and the waste of energy and resources that accompanies sprawling development. Congress passed the Agriculture and Food Act of 1981 containing the Farmland Protection Policy Act (FPPA). (75 C.F.R. § 658)

The purpose of the FPPA is to minimize the impact Federal programs have on the unnecessary conversion of farmland to nonagricultural uses. To the extent possible, it assures that the federal government administers its programs to be compatible with state, local units of government, and private programs and policies to protect farmland. Federal agencies are required to develop and review their policies and procedures to implement the FPPA every two years.

The FPPA does not authorize the Federal Government to regulate the use of private or nonfederal land. For the purpose of FPPA, farmland includes prime farmland, unique farmland, and land of statewide or local importance. Farmland subject to FPPA requirements does not have to be currently used for cropland. It can be forestland, pastureland, cropland, or other land, but not water or urban built-up land.

### **Mississippi Farmland Preservation**

In Mississippi, the state allows local county and city governments to regulate activities on land as long as the regulation promotes the health, safety, morals, or general welfare of the area. Additionally, any county or city government has the authority to divide areas into zones to further the purpose of government business. However, a local government cannot regulate the zoning of agricultural lands concerning the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. (*Code*, § 17-1-7)

In addition, the state prohibits local and county governments from requiring permits with reference to land used for agricultural purposes or for the erection, maintenance, repair, or extension of farm buildings or farm structures outside the corporate limits of municipalities. (*Code*, § 17-1-3)

## **ENVIRONMENTAL JUSTICE**

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. The achievement of environmental justice within counties and municipalities hinges on providing residents with opportunities for meaningful public involvement regarding local environmental decisions.

## **Environmental Justice Small Grants Program**

The Environmental Justice Small Grants Program supports and empowers communities working on solutions to local environmental and public health issues. The program assists recipients in building collaborative partnerships to help them understand and address environmental and public health issues in their communities. Successful collaborative partnerships involve not only well-designed strategic plans to build, maintain, and sustain the partnerships, but also working towards addressing the local environmental and public health issues. Recipients may use funds for projects supporting the improvement of air quality, the management of chemical risks, the cleaning of hazardous-waste disposal sites, the reduction of greenhouse gas emissions, or the protection of water sources.

## **BROWNFIELD REDEVELOPMENT**

Government agencies define a brownfield as, under certain legal exclusions and additions, real property that the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Brownfield property means any property where use is limited by actual or potential environmental contamination, or the perception of environmental contamination, and that is or may be subject to remediation under any state environmental law, regulation or program or under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USCS 9601, et seq. (1997) (CERCLA). In 2002, the government implemented the Small Business Liability Relief and Brownfields Revitalization Act (Pub.L.No. 107-118, 115 stat. 2356, "the Brownfields Law") which amended the CERCLA by providing funds to assess and clean up brownfields, clarified CERCLA liability protections, and provided funds to enhance state response programs. Other related laws and regulations impact brownfields cleanup and reuse through financial incentives and regulatory requirements. The Mississippi Brownfields Voluntary Cleanup and Redevelopment Act, *Code*, § 49-35-1, details brownfield activity in Mississippi and establishes regulations to redevelop the properties without use of taxpayer funds.

The purpose of these policies is to promote the voluntary remediation of contaminated sites within the state. The regulations establish remediation requirements based on public health and environmental risks specific to the Brownfield Agreement Site. The regulations set forth formats and procedures designed to advise a person, prior to submitting an application, of the information necessary to achieve the adequate and cost-effective characterization and remediation of a Brownfield Agreement Site.

### **MDEQ's Targeted Brownfield Assessment**

MDEQ's Targeted Brownfield Assessment (TBA) Program attempts to help cities and counties, among others, minimize the uncertainties of contamination often associated with brownfields. Under the TBA program, MDEQ provides assessment and planning services at brownfield sites throughout the State. A TBA may encompass one or more of the following activities:

- A screening or "all appropriate inquiry" (Phase I) assessment, including a background and historical investigation of the brownfield site;



- A full environmental assessment, including sampling activities to identify the types and concentrations of contaminants and the areas of contamination to be remediated; and
- Establishment of cleanup options (Corrective Action Plan) and cost estimates based on future uses and redevelopment plans.

### **Local Governments Capital Improvements Revolving Loan Program**

Additionally, local governments are eligible under the Mississippi Development Authority (MDA) to access the Local Government Capital Improvements Revolving Loan Program to help finance the remediation of brownfield agreement sites. MDA designed the program to make loans to counties or municipalities to finance capital improvements in Mississippi. Applicants are encouraged to use these loans in connection with state and federal programs. To apply for this program, the local government should contact MDA for additional program information. *Code*, § 57-1-301.

### **Environmental Protection Agency Programs**

There are several channels for brownfield redevelopment offered through the EPA. These opportunities include assessment grants, revolving loans, cleanup grants, environmental workforce development and job training grants, and targeted brownfields assessments.

#### **Brownfield Assessment Grant**

An EPA Brownfield Assessment Grant provides funding to inventory, characterize, assess, and conduct planning and community involvement related to brownfield sites. An eligible entity may apply for up to \$200,000 to assess a site contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) and up to \$200,000 to address a site contaminated by petroleum. Applicants may seek a waiver of the \$200,000 limit and request up to \$350,000 for a site contaminated by hazardous substances, pollutants, or contaminants and up to \$350,000 to assess a site contaminated by petroleum. The EPA bases these waivers on the anticipated level of hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) at a single site. A coalition of three or more eligible applicants can submit one grant proposal under the name of one of the coalition members for up to \$1,000,000. The performance period for these grants is three years and all local governments are eligible.

#### **Area Wide Brownfield Planning Program Grant**

Brownfields area-wide planning (BF AWP) is a grant program which provides funding to conduct activities that will enable the recipient to develop an area-wide plan (including plan implementation strategies) for assessing, cleaning up and reusing catalyst/high priority brownfield sites. Funding is directed to a specific project area, such as a neighborhood, downtown district, local commercial corridor, old industrial corridor, community waterfront or city block, affected by a single large or multiple brownfield sites. EPA currently offers the BF AWP grant funding opportunity every other year, as funding is available. Most recently, EPA solicited proposals for the FY15 BF AWP funding opportunity, and anticipates making the grant

selection announcements in late winter 2015. EPA expects the next BF AWP funding opportunity will be for FY17.

### **Brownfields Revolving Loan Fund**

An EPA Brownfields Revolving Loan Fund (RLF) Grant provides funding to capitalize a revolving loan fund that provides subgrants to carry out assessment and/or cleanup activities at brownfield sites. The grants provide up to \$1MM per eligible entry and recipients may use the funds to address sites contaminated by petroleum and/or hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum). An RLF award requires a 20% cost share, which may be in the form of a contribution of money, labor, material, or services. The performance period for a RLF grant is five years and all local governments are eligible to apply to this program.

### **Brownfields Cleanup Grants**

The EPA Brownfields Cleanup Grants provide funding to conduct cleanup activities at brownfield sites. Recipients of the grants may use the funds to address sites contaminated by petroleum and/or hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum). The Cleanup Grant will fund up to \$200,000 per site – but no entity may apply for funding cleanup activities at more than five sites. The Cleanup Grants also require a 20% cost share, which may be in the form of a contribution of money, labor, material, or services. The performance period for a RLF grant is three years and all local governments are eligible to apply to this program.

### **Environmental Workforce Development and Job Training Grants**

The EPA designed the Environmental Workforce Development and Job Training Grants to provide funding to recruit, train, and place predominantly low-income and minority, unemployed and under-employed residents of solid and hazardous waste-impacted communities with the skills needed to secure full-time, sustainable employment in the environmental field and in the assessment and cleanup work taking place in their communities. Residents learn the skills needed to secure full-time, sustainable, employment in the environmental field, including a focus on assessment and cleanup activities. The use of grant funds is wide and varied. All local governments are eligible to apply. These grants help to create green jobs that reduce environmental contamination and build more sustainable futures for communities.

### **EPA's Targeted Brownfields Assessment**

The EPA designed the Targeted Brownfields Assessment (TBA) program to help municipalities – especially those without EPA Brownfields Assessment Grants – minimize the uncertainties of contamination often associated with brownfields. The TBA program is not a grant program, but a service provided through an EPA contract in which the EPA directs a contractor to conduct environmental assessment activities to address the requestor's needs. Unlike grants, the EPA does not provide funding directly to the entity requesting the services. TBA assistance is available through the EPA directly, or through MDEQ. The goals of the EPA program mirror

those of the similar MDEQ program. Targeted Brownfields Assessments supplement and work with other efforts under EPA's Brownfields Program to promote the cleanup and redevelopment of brownfields. All local governments are eligible to apply for a TBA.

## **ENVIRONMENTAL COVENANTS**

The Mississippi Uniform Environmental Covenants Act (MUECA), *Code*, § 89-23-1, et seq., is one of the uniform acts drafted by the National Conference of Commissioners on Uniform State Laws. The act provides clear rules for perpetual real estate interests – an environmental covenant – to regulate the use of brownfield land when parties transfer real estate from one owner to another.

When contaminated properties are remediated under the supervision of a governmental agency, there are occasionally issues requiring a long-term Land Use Control (LUC) or Activity Use Limitation (AUL) which regulatory officials seek to have recorded on the property title or deed prior to clearing it for reuse. These LUCs or AULs may list prohibitions on future uses (i.e. no residential housing, childcare facilities, wells, drilling), requirements for ongoing monitoring and remediation (i.e. monitoring and vapor extraction wells) or note protective structures and engineered controls. The purpose of MUECA is to ensure that future LUCs, which have been created for a particular site, are not invalidated by conflicts or misunderstandings with other local, state or federal regulations. MUECA seeks to make sure environmental covenants are preserved and enforceable over a long term against successive owners by applying traditional real estate law. Part of the philosophy is that if all parties to the covenant are confident MDEQ will enforce site-appropriate activity and use limitations in the covenant, it is more likely that environmental regulators and the owners of contaminated real property will allow those properties to be developed, rather than continue to stand as abandoned and dangerous areas. The goal is that redevelopment of the property will help revitalize those areas and serve the economic and social interests of the nearby residents.

MDEQ and the CEQ enforce the covenants and any amendment or termination of the covenant must be pursuant to *Code*, § 89-23-1, et seq.

## **UNDERGROUND STORAGE TANKS (GASOLINE & DIESEL)**

In environmental law, an underground storage tank (UST) means any one or combination of tanks (including any connected underground pipes) that is designed to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten percent or more beneath the surface of the ground. This category does not include any farm or residential tank with capacity of 1,100 gallons or less that an owner uses for storing motor fuel for noncommercial purposes, tanks used for storing heating oil for consumptive use on the premises, or septic tanks.

The EPA charges the Office of Underground Storage Tanks with implementing the regulatory program for USTs. However, in Mississippi the Underground Storage Tank Branch of the Office of Pollution control of MDEQ carries out the implementation of the program. The UST Assessment and Remediation Program investigates petroleum releases from USTs and oversees

the initial response, assessment, monitoring, risk evaluation, and remediation of petroleum contamination to remove risks to human health and the environment. The legal authority derives from Mississippi's Underground Storage Tank Act of 1988, *Code*, § 49-17-405, which also created the Mississippi Groundwater Protection Trust Fund. Through the Mississippi Groundwater Protection Trust Fund, the Assessment and Remediation Program reimburses eligible tank owners for the reasonable and just costs associated with assessment and remediation activities.

When tank owners report a release at the facility, they are the responsible parties for all assessment and remediation activities. After the report, MDEQ assigns the site to a project manager Division of Owners per Project Manager. MDEQ requires information from the tank owner, performs a site visit, and if necessary, determines if the site is eligible for the Mississippi Groundwater Protection Trust Fund. In order to be eligible for reimbursement from the trust fund, a release at an underground storage tank site must:

- be confirmed;
- be a motor fuel;
- be in use on or after July 1, 1988;
- be in substantial compliance with UST regulations; and
- pose a threat to the environment or public health or welfare.

If the site is Trust Fund Eligible, the tank owner will be responsible for hiring either an Environmental Response Action Contractor or an Immediate Response Action Contractor. The tank owner will also need to complete a Trust Fund application, forms required to receive reimbursement, and a certification affidavit.

## **PUBLIC WATER SUPPLY**

“Water supply system” refers to pipelines, conduits, pumping stations and all other structures, devices and appliances used in transporting water to public agencies or to a point of ultimate use (*Code*, § 51-9-191). Mississippi has three types of public water systems (PWS). The largest is a community PWS used to distribute water throughout towns. The second type of PWS is a nontransient, noncommunity that schools or factories utilize. The last type is a transient noncommunity system that is located at rest stops or parks. Mississippi currently has 1,211 community PWSs, 109 nontransient noncommunity PWSs, and 140 transient noncommunity PWSs.

### **Safe Drinking Water Standards**

The EPA requires that PWSs monitor their water systems in order to detect unregulated contaminants. Currently, the EPA only approves certain methods for the analysis of drinking water samples.

The Federal Safe Drinking Water Act requires water quality analysis and the revenue comes from the state's Drinking Water Quality Analysis Fund. A full description and further stipulations can be found in the Mississippi Safe Drinking Water Act of 1997 (*Code*, § 41-26-

23). This fund may receive monies from any available public or private source, including fees, proceeds, and grants. The fund uses the fees and other revenue streams to pay all reasonable direct and indirect costs of water quality analysis.

The National Primary Drinking Water Regulations, as published under 40 C.F.R. § 141.21, stipulates that it is the responsibility of each supplier of water to comply with the monitoring and analytical requirements under the act. The required frequency of monitoring and reporting depends on the size of the population that the water systems serve. The larger the population, the more frequently PWSs must monitor and report their findings. The Division of Water Supply compiles data for the calendar year and sends the information to all community water systems in Mississippi. This allows PWSs to report the data to customers served by that water supply. Every Community Water System is required to deliver to its customers a brief, annual water quality report.

Once the samples are gathered, the PWS monitors the public drinking water by checking for contaminants using two different control processes: Maximum Contaminant Levels (MCLs) and Treatment Techniques (TT). The EPA establishes these MCLs, which are national limits on the specific amount of contaminants in drinking water. When the amount of a specific contaminant is below the MCL, the PWS deems the water safe for human consumption. However when the contaminant levels exceed the MCLs, the PWS will be found to be in violation of the required standards. Mississippi's maximum contaminant levels are consistent with the contaminant levels stipulated in the National Primary Drinking Water Regulations published under 40 C.F.R. § 141.

When the EPA finds the PWS to be in violation of regulations or standards, the EPA requires the PWS operator to notify the consumers. Federal law requires this notification to include a clear and understandable explanation of the nature of the violation, its potential adverse health effects, steps that the PWS is undertaking to correct the violation, and the possibility of alternative water supplies during the violation.

## **WASTEWATER TREATMENT PLANTS**

All highway roadside parks, rest areas, weigh stations, or welcome centers with wastewater treatment facilities shall hold a valid permit issued by the MDEQ in accordance with guidelines set forth by the EPA. The Roadway Design Division is responsible for obtaining the initial permit(s) for the construction or reconstruction of a wastewater treatment facility. The Maintenance Division is responsible for permit renewals for all wastewater treatment facilities. The Maintenance Division must keep all permit renewals on file with copies made available to the District Wastewater Treatment Operators. No source shall discharge treated or untreated wastewater into any public stream without a valid permit. The wastewater treatment plants shall be operated at all times in strict accordance with permit requirements (*Miss. Admin. Code 37-1-13:17001*).

### **Total Maximum Daily Loads (TMDL)**

Mississippi's TMDL program, a branch of the Surface Water Division, is responsible for developing TMDLs. A TMDL reports the acceptable amount of a specific pollutant a stream can

handle without a violation of water quality standards. § 303(d) of the Clean Water Act requires the identification of water bodies not meeting their designated use and the development of TMDLs. Under this act states, territories, and authorized tribes are required to develop lists of impaired waters every two years (i.e., § 303(d) list). The states identify all waters where required pollution controls are not sufficient to attain or maintain applicable water quality standards. States are required to establish priorities for development of TMDLs for waters on the 303(d) List (40 C.F.R. §130.7(b)(4)). Many times, nonprofit statewide environmental groups or watershed organizations have taken on significant responsibility in the development of the TMDL document and supporting analysis

**National Pollutant Discharge Elimination System (NPDES)**

§ 402 of the CWA specifically required EPA to develop and implement the NPDES program.

National Pollutant Discharge Elimination System (NPDES) permit program controls water pollution by regulating point sources that discharge pollutants into waters of the U.S. Point sources are discrete conveyances such as pipes or manufactured ditches. Individual homes that are connected to a municipal system, use a septic system, or do not have a surface discharge do not need an NPDES permit. However, industrial, municipal, and other facilities must obtain permits if their discharges go directly to surface waters. In most cases, authorized states administer the NPDES permit program. The chart below shows Mississippi’s program:

State	Approved State NPDES Permit Program	Approved to Regulate Federal Facilities	Approved State Pretreatment Program	Approved General Permits Program	Approved Biosolids (Sludge) Program
Mississippi	✓	✓	✓	✓	

The Clean Water Act § 402 (b) and 40 C.F.R. § 123 authorizes Mississippi through a specially defined process. Municipal staff is responsible for meeting NPDES permit obligations. They rely on assistance from other partners, such as industry, developers, and homeowners, to ensure that they can meet the requirements contained in their municipal NPDES permits.

The regulations pertaining to the pretreatment program are found in 40 C.F.R. § 403. This includes the pretreatment standards and limits, prohibited discharge standards, categorical pretreatment standards, and local limits.

**ON-SITE WASTEWATER DISPOSAL SYSTEMS (SEPTIC TANKS)**

Title 41, Chapter 67 of the Mississippi *Code* governs on-site wastewater disposal in Mississippi. Mississippi relies on septic systems and other types of individual onsite waste disposal systems (IOWDS) to process wastewater. If the controlling authority improperly installs or maintains these systems, they can sometimes cause polluted runoff.

The Mississippi Department of Health (MDH) has primary responsibility over onsite wastewater treatment systems in the state. MDH regulates individual wastewater systems such as those used

in small commercial buildings, restaurants, and single dwellings (*Code*, § 41-67-6). The department requires wastewater to remain on the property that was responsible for creating it. When septic systems are improperly maintained, or built in areas where soil will not absorb the wastewater or filter out its impurities, sewage may emerge at the surface and rainfall can wash it into streams and lakes.

MDEQ regulates all other wastewater systems. This includes municipal, districts, private, industrial, individual systems, and subdivision review.

MDH's Regulation Governing Individual Onsite Wastewater Disposal Systems (IOWDS) is found in *Code*, § 41-67-6(4). This section prohibits any individual from constructing or installing an on-site wastewater disposal system that does not comply with the rules and regulations set forth by the board. The board may require the owner to repair a wastewater disposal system that is on that owner's property. The repair requirements and penalties are addressed in *Code*, § 41-67-21. When a person knowingly violates a rule or regulation they are guilty of a misdemeanor (*Code*, § 41-67-28).

Regulations for the 82 counties in Mississippi can be found in *Code*, § 41-67-15. Regulations found within that section do not limit the authority of municipalities who chose to adopt stricter local ordinances. If the ordinance is more restrictive, that ordinance will govern and the Department will not be responsible for enforcing the stricter ordinance. Although these stricter ordinances are acceptable, the health department cannot approve a system if it does not comply with the Board of Supervisors ordinance, rule, or regulations.

*Code*, § 41-67-5 requires any owner, lessee or developer that shall construct or place any mobile, modular or permanently constructed residence, building or facility, which may require the installation of an individual on-site wastewater disposal system submit a notice of intent to the Department of Health. Upon receipt of a notice of intent, the department shall provide the owner, lessee or developer with complete information on individual on-site wastewater disposal systems, including, but not limited to, applicable rules and regulations regarding the design, installation, operation and maintenance of individual on-site wastewater disposal systems and known requirements of lending institutions for approval of the systems.

No public utility supplying water shall make connection to any dwelling, house, mobile home or residence without the prior written approval of the department certifying that the plan for the sewage treatment and disposal system at the location of the property complies with *Code*, §41-67-5. Connections of water utilities may be made during construction if MDH has approved a plan for a sewage treatment and disposal system and the owner of the property has agreed to have the system inspected and approved by the department before the use or occupancy of the property.

## **STORMWATER PERMITTING**

Beginning in 2003, Phase II of the EPA stormwater program expanded to regulate additional operators of municipal separate storm sewer systems (MS4s) in urbanized areas and operators of small construction sites, as well as large construction sites. Using National Pollutant Discharge Elimination System (NPDES) permits, Phase II regulations thus required the counties of DeSoto,

Madison, Rankin, Hinds, Forrest, Lamar, Hancock, Harrison, and Jackson to develop and implement comprehensive stormwater management programs. Phase II also extended the requirement of stormwater permitting and the subsequent implementation of stormwater management programs for certain types of construction and industrial activities to all counties in Mississippi and lowered the regulatory threshold from five acres to one acre.

In Mississippi, MDEQ regulates the stormwater permitting process. The General Permits Branch of the Environmental Permits Division (EPD) oversees the development, issuance, and maintenance of the general permits issued by EPD. Permits must be issued in accordance with the provisions of the Mississippi Water Pollution Control Law (*Code*, § 49-17-1) and pursuant to § 402(b) of the Federal Water Pollution Control Act (33 U.S.C. 1251-1376).

Construction activities covering one to five acres within a county or municipality require the Small Construction General Permit. Construction activities disturbing five or more acres require the Large Construction Permit. Under either permit, construction may begin after the completion of a Construction Notice of Intent (CNOI) to the MDEQ and the development and implementation of the required Storm Water Pollution Prevention Plan (SWPPP). It is important to note that MDEQ does not consider routine ditch and road maintenance as constituting “construction” for the purposes of the permit.

The MDEQ reissued the Large Construction Storm Water General Permit (MSR10) for construction activities on January 11, 2011. This general permit authorizes the discharge of storm water from construction sites that disturb five or more acres by clearing, grading, excavating, or other land disturbing activities. This permit replaces the previous general permit that expired on May 31, 2010 and MDEQ administratively extended it. MDEQ’s reissue of the permit for a five-year period will end on December 31, 2015.

### **Municipal Separate Storm Sewer Systems (MS4s)**

An MS4 is a conveyance or system of conveyances that a public entity owns and uses to collect or convey stormwater. MS4s include municipal or county owned storm drains, pipes, and ditches, provided they are not part of a public sewage treatment plant.

The MS4 general permit authorizes a discharge or emission within a geographical area. The permitting of selected storm sewer systems is required because of the EPA's Phase II Storm Water Rule. This permit authorizes discharges of storm water from small municipal Separate Storm Sewer Systems (MS4s), as defined in 40 C.F.R. § 122.26(b)(16).

Small MS4s within Mississippi are authorized to discharge under the terms and conditions of the general MS4 permit provided they are either located in one of the aforementioned urbanized counties as determined by the latest census and pursuant to 40 C.F.R. § 122.32 or have been designated by the MDEQ pursuant to 40 C.F.R. §§ 122.32(a)(2), 122.32(b), or 123.35(b)(3) or (4).

For the Mississippi Department of Transportation, permit coverage must be obtained for the entire counties (including cities within) of DeSoto, Forrest, Hancock, Harrison, Hinds, Jackson,



Lamar, Madison and Rankin and any other county containing an urbanized area as determined by the latest census conducted by the U.S. Census Bureau.

An MS4 is eligible for coverage under this permit for discharges of pollutants of concern to water bodies for which there is a TMDL established or approved by EPA if measures and controls are incorporated that are consistent with the assumptions and requirements of such TMDL. To be eligible for coverage under this permit, the facility must incorporate in the Storm Water Pollution Prevention Plan or runoff limitation any conditions applicable to any discharge(s) necessary for consistency with the assumptions and requirements of such TMDL. If, after coverage issuance, the EPA establishes a specific waste load allocation that would apply to the facility's discharge, the facility must implement steps necessary to meet that allocation.

## **SOLID WASTE**

### **Planning and Updates**

In order to protect the public health, safety, and well-being of its citizens and to protect and enhance the quality of its environment, Mississippi adopted the Nonhazardous Solid Waste Planning Act. The act, *Code*, § 17-17-201, et seq., requires that local governments prepare, adopt, and submit a local nonhazardous solid waste management plan to the CEQ. The law also provides that local governments shall comprehensively update the local nonhazardous solid waste management plans (SWM Plans) at a frequency determined by the CEQ no more than once every five years. In addition, *Code*, § 17-17-5 requires that the Board of Supervisors of each county and that each municipality in the state provide for the collection and disposal of garbage and the disposal of rubbish. Municipalities may provide for collection and disposal of garbage under *Code*, § 19-5-17, but are not required to do so. Other requirements for the Board of Supervisors under these code sections include provisions that it:

- shall establish, maintain, and collect rates, fees, and charges for collecting and disposing of such garbage and/or rubbish;
- may acquire property, real or personal, by contract, gift, or purchase, necessary or proper for the maintenance and operation of such system;
- may make all necessary rules and regulations for the collection and disposal of garbage; and
- may require all person in the county generating garbage to utilize a garbage collection and disposal system.

All local governments should, at a minimum, be a part of a local solid waste management plan and should participate and contribute to the local planning process. These local governments may include counties, cities, regional solid waste management authorities, and/or solid waste management districts. Generally, county governments, by law and in practice, have taken the lead in developing these plans and municipalities have joined that planning process with the county. However, some communities have incorporated solid waste management authorities or solid waste management districts to facilitate long-term solid waste planning. Some municipalities have elected to develop and adopt their own solid waste management plans separate from the county or regional planning process. The manner in which these plans are

developed is a decision of the local government(s), based on which planning concept offers the most opportunities, advantages, and benefits to the community.

This paper discusses government funds available for solid waste plans and projects in the section titled “Grants.”

## **Garbage**

Once the plan is in place, the question becomes how a local government pays for garbage collection. The government can obtain operating revenue from three sources: tax financing, user fees, and selected grants. The Mississippi Code regulates rates, fees and charges for actual costs to collect and dispose of garbage under *Code*, § 19-5-17. Under *Code*, § 19-5-21(1)(a), the code allows for Ad Valorem tax and fees that is 4 mills on all property (it may be higher in some counties i.e. Hinds, Tunica and Leake). However, a fee from each residence may be collected and the local government may assess fees for industrial, commercial, and multi-family homes if they do not already have a contract with the waste hauler. Tax financing is the option most used to finance nonhazardous solid waste management systems from property taxes, and/or special tax levies. User fees provide funds through three methods, uniform rate user fees, variable rate user fees, and disposal fees. Uniform rate user fees allocate costs equally to all users in the area served. Variable rate user fees allocate the costs based on the amount of nonhazardous solid waste generated. Disposal fees, commonly referred to as tipping fees, are charges levied at a management facility and the state bases these on the amount of waste accepted for disposal.

All county residents are required to pay for cost of residential solid waste collection and disposal, even though they dispose of the garbage they generate without using the county’s system. For renters and property owners, *Code*, § 19-5-22 contends the fees shall be assessed jointly and severally against the generator and against the owner of the property furnished the collection service. The Board of Supervisors shall not hold liable any person who pays, as a part of a rental or lease agreement, an amount for garbage or rubbish collection or disposal services upon the failure of the property owner to pay those fees. Failure to pay the fees by the property owner shall be a lien upon the real property offered garbage or rubbish collection or disposal service. Should the Board of Supervisors increase the fees for garbage collection and disposal, *Code*, § 19-5-21 requires that the government shall give actual notice by mail to every generator.

The collection of garbage fees is authorized under *Code*, § 19-5-17 which allows the local government to initiate civil action to recover delinquent fees and administrative and legal costs associated with collecting the delinquent fees. The county may designate a county official to collect fees as allowed under *Code*, § 19-5-18, and the sheriff shall assist with the collection, as needed. If the local government chooses not to designate a county official, another option is to hire a private attorney or collection agency to collect garbage fees. This practice is authorized under *Code*, § 19-5-21(2) and permits a 25% penalty for in-state collections and a 50% penalty for out-of-state collections. Another option under *Code*, § 19-5-22(4) is to authorize the tax collector to hold car tags of the delinquent account. In order to pursue this line of collection, the account must be 90 days past due and the local government must give notice and opportunity for a hearing. An important factor to remember is that if the local government holds a car tag, the entity forfeits the ability to charge a 25% penalty in addition to the delinquent fee.

## **Rubbish (Class I & II)**

Rubbish is nonputrescible solid wastes (excluding ashes) consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves, and similar material. Noncombustible rubbish includes glass, crockery, metal cans, metal furniture and like material that will not burn at ordinary incinerator temperatures (not less than 1600 degrees F.).

For any rubbish disposal sites, it is the responsibility of the operator to remove and properly dispose of any prohibited wastes that were inadvertently or illegally disposed at the site. If the operator has any doubts as to the acceptability of a certain waste, the operator should contact the Office of Pollution Control (OPC), Solid Waste Management Branch for assistance.

### **Acceptable Wastes (Rubbish Class I):**

- Construction and demolition debris, such as wood, metal, etc.
- Brick, mortar, concrete, stone, and asphalt
- Cardboard boxes
- Natural vegetation, such as tree limbs, stumps, and leaves
- Appliances that have had the motor removed, except for refrigerators
- Furniture
- Plastic, glass, crockery, and metal, except containers
- Sawdust, wood shavings, and wood chips

### **Prohibited Wastes (Rubbish Class I):**

- Any waste listed above contaminated by a possible pollutant, such as a food or chemical
- Household garbage
- Food or drink waste
- Industrial waste, unless specifically approved by the OPC
- Liquids
- Sludges
- Contaminated soils
- Paint or paint buckets
- Oil containers and chemical containers
- Any metal, glass, plastic, or paper container, unless specifically approved by the OPC
- Fabric, unless specifically approved by the OPC
- Paper wastes, unless specifically approved by the OPC
- Engines or motors
- Refrigerators
- Whole tires
- Cut or shredded tires, unless specifically approved by the OPC
- Batteries
- Toxic or hazardous waste

- Asbestos and asbestos containing material
- Medical Waste
- Other waste that may have an adverse effect on the environment

**Acceptable Wastes (Rubbish Class II):**

- Natural vegetation, such as tree limbs, stumps, and leaves
- Brick, mortar, concrete, stone, and asphalt

**Prohibited Wastes (Rubbish Class II):**

- Any waste listed above contaminated by a possible pollutant, such as a food or chemical
- Household garbage
- Food or drink waste
- Metal, glass, plastic, paper
- Paint, paint buckets, oil containers, and chemical containers
- Construction and demolition debris
- Shingles
- Furniture
- Cardboard Boxes
- Sawdust, wood shavings, and wood chips generated by an industry
- Industrial waste
- Liquids
- Sludges
- Contaminated soils
- Fabric
- Engines or motors
- Appliances
- Tires in any form
- Batteries
- Toxic or hazardous waste
- Asbestos and asbestos containing material
- Medical Waste
- Other waste that may have an adverse effect on the environment

## **Hazardous Waste**

The Resource Conservation and Recovery Act (RCRA) is our nation's primary law governing the disposal of solid and hazardous waste. The RCRA provides general guidelines for the waste management program. It includes a Congressional mandate directing EPA to develop a comprehensive set of regulations to implement the law. Under RCRA Subtitle C, the hazardous waste program establishes a system for controlling hazardous waste from the time it is generated until its ultimate disposal. This program regulates commercial businesses as well as federal, State, and local government facilities that generate, transport, treat, store, or dispose of hazardous

waste. 40 C.F.R. § 260 contains all of the RCRA regulations governing hazardous waste identification, classification, generation, management, and disposal.

Hazardous wastes are a class of wastes specifically defined in the RCRA. Hazardous wastes contain certain toxic chemicals or have certain characteristics that cause them to be a significant risk to the environment and/or human health. EPA encourages States to assume primary responsibility for implementing a hazardous waste program through State adoption, authorization, and implementation of the regulations. In Mississippi, MDEQ enforces hazardous waste.

Mississippi's Solid Waste Disposal Law of 1974 is in *Code*, §17-7-1 through *Code*, § 17-17-507. The MDEQ is responsible for creating and enforcing rules and regulations regarding solid waste disposal.

Mississippi's Hazardous Waste Management Regulations are found in HW-1:

- Generators of hazardous waste in Mississippi shall meet the requirements of Part 262 as published in the EPA Hazardous Waste Regulations. (40 C.F.R. § 262)
- Each generator of greater than two hundred twenty (220) pounds of hazardous waste in any calendar month during the previous calendar year shall report annually by March 1 of each calendar year to the MDEQ, on forms provided by the MDEQ, the type and amount of hazardous waste generated during the preceding calendar year.
- Transporters of hazardous waste in and through Mississippi shall meet all the requirements of Part 263 of the EPA Hazardous Waste Regulations. (40 C.F.R. § 263)
- Owners and operators of hazardous waste treatment, storage, and disposal facilities in Mississippi shall design, construct, operate, close, and maintain such facilities in accordance with the requirements found in Part 264 of the EPA Hazardous Waste Regulations. (40 C.F.R. § 264)

The Environmental Compliance & Enforcement Division (ECED) implements and oversees the majority of the compliance and enforcement programs for MDEQ. ECED is responsible for regulating over 15,000 sites for compliance with applicable air, water, hazardous waste, and nonhazardous waste permits and regulations. When a site fails to comply with the permit(s) or regulations, ECED takes appropriate enforcement action to return the site to compliance. ECED, in conjunction with the Field Services Division, is also responsible for responding to citizen complaints regarding air pollution, water pollution, solid waste issues, and hazardous waste issues.

## **Tire Disposal**

In response to growing problems with proper waste tire management and disposal, Mississippi adopted the Waste Tire Law. This law authorized the CEQ to establish regulations for the collection, transportation, storage, processing, and disposal of waste tires. According to *Code*, § 17-17-409 each county, regional solid waste management authority or municipality must plan and provide an adequate number of waste tire collection sites within its jurisdiction. These sites are for the deposit of waste tires from small quantity waste tire generators and to ensure the

delivery of these tires to an authorized waste tire processing/disposal facility operated by the county, regional solid waste authority or private entity. Counties may establish, own, and/or operate their own waste collection site, or may enter into leases or other contractual arrangements with other counties or private entities for the operation of waste tire collection sites. Nothing in this section of the code prevents a county or regional solid waste authority from providing a more expansive waste tire management service.

The local government can consider different options for their collection sites. A fixed collection site is a location where generators may deposit tires. Generally, these sites should be located adjacent to or on the property of a facility where the local government manages other solid wastes such as a dumpster location, transfer station, rubbish disposal site, or municipal solid waste landfill. The sites should also be easily accessible for the general public and for large collection vehicles retrieving the tires. In addition, the sites should be developed and maintained in a manner that would prevent contamination of the waste tires with dirt, mud, rocks, etc. A second option is a mobile collection unit where a mobile trailer or other unit moves between different fixed locations of the county or city to provide all residents an equal opportunity to dispose of their tires through the program. Generally, the station of the collection unit may be at one fixed location as previously described, throughout much of the year. A third option for the local government entities is waste tire collection days. This is better suited for smaller communities where the local government collects tires at a location and on a date that the government publicly advertises, in conjunction with another collection day for household hazardous wastes or other wastes. This type of program could be conducted quarterly or semiannually depending upon the need. Lastly, any combination of the above described programs or any other innovative programs that the local government may develop. Such programs might involve public/private partnership with local waste service companies.

## **GRANT PROGRAMS**

### **Solid Waste Planning**

The Solid Waste Policy, Planning, and Grants Branch of MDEQ conducts a variety of policy, planning, regulatory and financial assistance activities involving the management and disposal of nonhazardous solid wastes in the state of Mississippi. The solid waste planning grants fund is used to make grants to counties, municipalities, regional solid waste management authorities, or other multi-county entities to assist in defraying the cost of preparing solid waste management plans as required by *Code*, § 17-17-227. Recipients may use the grants to defray the costs of preparing and developing a local solid waste management plan, where the employee, person, contractor, or organization developing the plan has obtained approval from MDEQ to prepare such comprehensive solid waste plans in Mississippi. These costs include personnel/contractual costs, travel related to the planning process, public notice/hearing, and publication/survey costs. A grant applicant may select an approved person or organization to conduct the local planning efforts from a listing maintained by MDEQ.

In addition to the MDEQ solid waste planning grant, the U.S. Department of Agriculture (USDA) has a Solid Waste Management Grant Program listed under Federal Regulation 7 C.F.R. § 1775. The goals of this program are to reduce or eliminate pollution of water resources in rural

areas, and improve planning and management of solid waste sites in rural areas (USDA defines rural areas as any area not in a city or town with a population in excess of 10,000, according to the latest decennial census of the United States). These grants may be used to evaluate current landfill conditions to determine threats to water resources, provide technical assistance and/or training to enhance operator skills in the operation and maintenance of active landfills, provide technical assistance and/or training to help communities reduce the solid waste stream, or provide technical assistance and/or training for operators of landfills which are closed or will be closed in the near future with the development and implementation of closure plans, future land use plans, safety and maintenance planning, and closure scheduling within permit requirements.

The USDA also has a grant program for Technical Assistance and Training. This grant program is designed to identify and evaluate solutions to water and waste disposal problems in rural areas, assist applicants in preparing applications for water and waste grants made at the State level offices, and improve operation and maintenance of existing water and waste disposal facilities in rural areas (USDA defines rural areas as any area not in a city or town with a population in excess of 10,000, according to the latest decennial census of the United States). Specifically regarding solid waste planning, the recipients may use these grants to identify and evaluate solutions to waste problems of associations in rural areas relating to collection, treatment, and disposal. Additionally, the recipient of the grant may use the funds to assist associations that have filed a pre-application with the USDA in the preparation of a waste loan and/or grant applications, and provide training to association personnel that will improve the management, operation, and maintenance of waste disposal facilities.

### **Hazardous Waste**

MDEQ offers a Household Hazardous Waste (HHW) Grant promulgated by the DEQ under the authority of *Code*, §§ 49-17-17, 49-17-29, and 17-17-441. These grants are for use in collection and proper treatment, storage or disposal of HHW, transportation costs, administration and dissemination of public information, and other costs for a successful HHW program.

### **Nonhazardous Solid Waste Corrective Action Trust Fund (CATF)**

The Mississippi legislature established CATF in accordance with *Code*, § 17-17-63. CATF provides financial assistance to site owners for corrective actions at closed or abandoned municipal solid waste (MSW) landfills that closed prior to the effective date of the Federal Subtitle D Regulations. The recipient can use the funds for preventive or corrective actions due to a real – or potential – release of contaminants from the landfill, or for monitoring/abating other problem conditions at an eligible closed landfill. The recipient can utilize CATF to assess the impacts (onsite or offsite) from potential groundwater contamination and landfill gas migration. CATF can also remediate contaminants at an old closed landfill.

Under current Mississippi law, the state considers only closed sanitary or municipal landfills that accepted household garbage during the life of the landfill eligible for funding assistance from CATF. In addition, only those closed landfills that ceased receiving waste prior to the effective dates of Federal Subtitle D Regulations: October 9, 1993 (>100 tons per day) or April 9, 1994 (<100 tons per day) are eligible for funding consideration through the CATF.

MDEQ has assisted various landfill owners with corrective action projects related to groundwater and surface water impacts, methane gas migration, repair of erosion and subsidence and restoration of the final cover system at a number of old closed MSW landfills. If MDEQ or a site owner determines that corrective actions appear necessary for an eligible closed or abandoned landfill site, the site owner or MDEQ should arrange a preproject meeting to discuss the specifics of a proposed corrective action project and the eligibility of expected project costs. Upon determining which correction actions are eligible for funding assistance, the site owner should complete a funding assistance application form (CATF-1) in order to receive formal consideration for funding assistance through the CATF Program. A complete application shall include a written narrative justifying the eligibility of the proposed project for funding assistance, appropriate maps and drawings, engineering and remediation work plans, and other pertinent information.

### **Solid Waste Assistance Grant**

The Local Governments Solid Waste Assistance Fund shall be used to provide grants to counties, municipalities, regional solid waste management authorities or multi-county entities for one or more of the following purposes: (a) clean-up of existing and future unauthorized dumps on public or private property, subject to the limitation of *Code*, § 17-17-65(3); (b) establishment of a collection center or program for white goods, recyclables or other bulky rubbish waste not managed by local residential solid waste collection programs; (c) provision of public notice and education related to the proper management of solid waste, including recycling; (d) payment of a maximum of fifty percent (50%) of the cost of employing a local solid waste enforcement officer; (e) payment of a maximum of seventy-five percent (75%) of the cost of conducting household hazardous waste collection day programs in accordance with *Code* § 17-17-249 through 17-17-445 and the Mississippi “Right-Way to throw away Program” Regulations; and (f) development of other local solid waste management program activities associated with the prevention, enforcement or abatement of unauthorized dumps, as approved by the Commission.

### **Waste Tire Abatement Program**

MDEQ has a solid waste assistance program with the purpose of cleaning up illegal waste tire dumps. The Waste Tire Abatement Program is open to those municipalities and counties for providing a waste tire collection site for small quantity waste tire generators and for use in clean up of unauthorized waste tire dumps. Applicants may submit grants to the MDEQ at any time, and the entire cost of the local community waste tire collection and clean-up program may be eligible for the grant award. Recipients can use the grant money for collection sites, transportation costs, storage trailers/units, contractual disposal costs, and public education programs.

### **Diesel Engine Replacement**

The Energy Policy Act of 2005 created the Diesel Emissions Reduction Program (DERA). DERA gave the EPA new grant and loan authority for promoting diesel emission reductions. DERA is required to use 70% of their funds for national competitive grants. Using these



guidelines, the EPA developed programs that include the National Funding Assistance Program (NFAP), Clean Diesel Emerging Technologies Program (CDETP), and SmartWay Clean Diesel Finance Program (SWCDFP).

The NFAP provides funding to reduce emissions from existing diesel engines through a variety of strategies, including add-on emission control retrofit technologies, idle reduction technologies, cleaner fuel use, engine repowers, engine upgrades, and/or vehicle or equipment replacement, and the creation of innovative finance programs to fund diesel emissions reduction projects. All local governments with jurisdiction over transportation or air quality are eligible to apply for this grant. The NFAP funds will be for the benefit of public fleets. This includes private fleets contracted or leased for public purpose, such as private school buses, refuse haulers, or equipment at public ports. However, only eligible entities can apply directly to the EPA for funding (e.g., a local government would apply and administer a project on behalf of the private refuse hauler contractor). The types of fleets that qualify for funding include buses, medium or heavy trucks, marine engines, and nonroad engines used in construction, handling of cargo, agriculture, and energy production (stationary generators and pumps).

The CDETP is an opportunity to advance new technologies capable of diesel emission reduction from existing fleets. Under this competitive grant program, the EPA provides funding assistance to eligible entities for the deployment of diesel emission reduction technologies the EPA has not yet verified or certified. To qualify as an emerging technology, the manufacturer of the technology must be in the initial stages of the verification process with EPA and listed on EPA's Emerging Technology List. All local governments with jurisdiction over transportation or air quality are eligible to apply for this grant. Recipients of a project funded through the CDETP can only use technologies on the Emerging Technologies List. Recipients may use funding to monitor and evaluate performance of the emerging technology.

The SWCDFP uses cooperative agreements to establish innovative finance programs for buyers of eligible diesel or alternatively fueled vehicles and equipment. Innovative finance projects include those where the loan recipient receives a specific financial incentive (i.e., better than current market rates or conditions) for the purchase of eligible vehicles or equipment. Particular emphasis is on establishing low cost loan programs for the retrofit of used pre-2007 highway vehicles and nonroad equipment with EPA verified emission control technologies. All local governments with jurisdiction over transportation or air quality are eligible to apply for this grant. The financing must lower costs to the buyer by providing lower interest rates, longer repayment terms, greater likelihood of loan approval, or some other financial incentive. Finance proposals may include, but are not limited to, the issuance of loan guarantees, the issuance of tax exempt or taxable bonds to create a low-cost loan program, or revolving loan funds.

## **Energy Grants**

The USDA offers a Rural Energy for America Program Grants/Energy Audit and Renewable Energy Development Assist (REAP/EA/REDA). This program will provide grants up to \$100,000 for energy audits and renewable energy development assistance. The USDA awards the grants on a competitive basis and recipients are required to pay at least 25% of the cost of the audit. All local governments are eligible entities. The grants will allow agriculture producers and

rural small businesses to become more energy efficient and use renewable technologies. For all projects, the system must be located in a rural area, must be technically feasible, and the applicant must own the system.

The Bureau of Ocean Energy Management, Regulation and Enforcement offers the Coastal Impact Assistance Program (CIAP) for Construction. Funds are available only to the State of Mississippi and eligible Coastal Counties within Mississippi. The CIAP aims to mitigate the impacts of Outer Continental Shelf oil and gas activities (based upon allocation formulas prescribed by the Energy Policy Act). The purpose of the CIAP is to disburse funding (\$1,000-\$10MM) to eligible producing counties for the purpose of conservation, protection, or restoration of coastal areas including: wetlands, mitigation of damage to fish, wildlife, or natural resources, planning assistance and the administrative costs of complying with these objectives, implementation of a federally-approved marine, coastal, or comprehensive conservation management plan, and mitigation of the impact of Outer Continental Shelf activities through funding of onshore infrastructure projects and public service needs.

### **Multimedia State and Tribal Assistance Grants (STAG)**

EPA provides grants to states, local governments, Tribes, and others through the STAG program. To strengthen the EPA's compliance assurance efforts and build relationships with states and tribes, the EPA provides these grants to enhance the capacity of the recipients to carry out compliance assurance activities within their respective jurisdictions. Since 1999, the EPA has selected 124 proposals for funding making over \$19MM available to 53 different states, tribes, universities, or organizations. These projects have addressed data quality, public access, Tribal and state inspector training, program planning and performance measurement, data management, outcomes measurement, and environmental enforcement training.

The projects selected cover a wide range of activities that have and will continue to enable states to demonstrate compliance assurance and enforcement outcomes from their activities, while serving as models for other states. These capacity-building activities include training, studies, surveys, and investigations. Grant funds are available to regulatory partners to strengthen their ability to address environmental and public health threats, while furthering the art and science of environmental compliance.

## APPENDIX A

### ANNUAL AGENDA FOR MEETINGS OF BOARDS OF SUPERVISORS

**Samuel W. Keyes, Jr.**

This sample annual agenda for meetings of boards of supervisors is intended as a reminder of many, but not all, of the items of business the boards will have the occasion to address. Some actions listed are required and others are discretionary. The specifics will vary from county to county.

#### JANUARY

Elect president and vice-president of board (at first meeting in January next succeeding the election). *Code*, § 19-3-7

Approve bonds of all newly-elected and appointed officials (meeting next succeeding election). *Code*, § 25-1-19

Approve and adopt minutes or confirm president has read and signed them. *Code*, § 19-3-27

Order publication of board proceedings. *Code*, §§ 19-3-33 or 19-3-35

Employ, re-employ or appoint: board attorney (*Code*, § 19-3-47), county administrator (*Code*, §§ 19-4-1 *et seq.*), comptroller or bookkeeper (*Code*, § 19-3-61), county engineer (*Code*, §§ 65-9-13, 65-9-15, and 65-17-201), county road manager (*Code*, § 65-17-1), county prosecutor [only in certain counties that do not have elected county prosecutor] (*Code*, § 19-3-49), and county fire coordinator *Code*, § 19-3-71).

Employ, appoint, or approve appointment of purchase clerk and receiving clerk (*Code*, § 31-7-101) and inventory control clerk (*Code*, § 31-7-107).

Adopt a four (4) year road plan on or before February 1 each year (required in those counties operating under a countywide system of road administration). *Code*, § 65-7-117

Receive and open bids for county depository [may be done annually or every two (2)years]. *Code*, § 27-105-305

Authorize publication soliciting bids for term contracts for purchase of commodities. *Code*, § 31-7-13

Amend budget as necessary. *Code*, § 19-11-19. See also *Code*, § 19-25-19

Provide for second quarter appropriation for the sheriff's department. *Code*, § 19-25-13

Provide for second quarter appropriation for the tax assessor/collector. *Code*, § 27-1-9

Disposition of claims docket. *Code*, § 19-13-31

Receive clerk's report of receipts, expenditures and fund balances. *Code*, § 19-11-23

Receive sheriff's report of expenses incurred during the preceding month. *Code*, § 19-25-13

Receive tax assessor/collector's report of expenses incurred during the preceding month.  
*Code*, § 27-1-9

Clerk to file with the auditor of public accounts certain reports for additional assessments, reductions in assessments, and erroneous assessments on real and personal property rolls.  
*Code*, § 27-29-5

Legal holidays in January: January 1 (New Years Day) and the third (3rd) Monday of January (Robert E. Lee's and Dr. Martin Luther King, Jr.'s Birthday). *Code*, § 3-3-7

## **FEBRUARY**

Approve and adopt minutes or confirm president has read and signed them. *Code*, § 19-3-27

Order publication of board proceedings. *Code*, §§ 19-3-33 and 19-3-35

Amend budget as necessary. *Code*, § 19-11-19. See also *Code*, § 19-25-19

Disposition of claims docket. *Code*, § 19-13-31

Receive clerk's report of receipts, expenditures, and fund balances. *Code*, § 19-11-23

Receive sheriff's report of expenses incurred during the preceding month. *Code*, § 19-25-13

Receive tax assessor/collector's report of expenses incurred during the preceding month.  
*Code*, § 27-1-9

At discretion of tax collector, advertise notice of optional April tax sale. *Code*, §§ 27-41-55 and 27-41-59

Legal Holidays in February: Third (3rd) Monday of February (Washington's Birthday).  
*Code*, § 3-3-7

## **MARCH**

Approve and adopt minutes or confirm president has read and signed them. *Code*, § 19-3-27

Order publication of board proceedings. *Code*, §§ 19-3-33 and 19-3-35

Amend budget as necessary. *Code*, § 19-11-19. See also *Code*, § 19-25-19

Disposition of claims docket. *Code*, § 19-13-31

Receive clerk's report of receipts, expenditures and fund balances. *Code*, § 19-11-23

Receive sheriff's report of expenses incurred during the preceding month. *Code*, § 19-25-13

Receive tax assessor/collector's report of expenses incurred during the preceding month.  
*Code*, § 27-1-9

Legal Holidays in March: None

### **APRIL**

Approve and adopt minutes or confirm president has read and signed them. *Code*, § 19-3-27

Order publication of board proceedings. *Code*, §§ 19-3-33 and 19-3-35

Amend budget as necessary. *Code*, § 19-11-19. See also *Code*, § 19-25-19

Disposition of claims docket. *Code*, § 19-13-31

Receive clerk's report of receipts, expenditures and fund balances. *Code*, § 19-11-23

Receive sheriff's report of expenses incurred during the preceding month. *Code*, § 19-25-13

Receive tax assessor/collector's report of expenses incurred during the preceding month.  
*Code*, § 27-1-9

Receive constable's fee Earning Report. *Code*, § 7-3-45

Provide for third quarter appropriation for the sheriff's department. *Code*, § 19-25-13

Provide for third quarter appropriation for the tax assessor/collector. *Code*, § 27-1-9

Legal Holidays in April: Last Monday of April (Confederate Memorial Day). *Code*, § 3-3-7

### **MAY**

Approve and adopt minutes or confirm president has read and signed them. *Code*, § 19-3-27

Order publication of board proceedings. *Code*, §§ 19-3-33 and 19-3-35

Amend budget as necessary. *Code*, § 19-11-19. See also *Code*, § 19-25-19

Disposition of claims docket. *Code*, § 19-13-31

Receive clerk's report of receipts and expenditures. *Code*, § 19-11-23

Receive sheriff's report of expenses incurred during the preceding month. *Code*, § 19-25-13

Receive the assessor/collector's report of expenses incurred during the preceding month.  
*Code*, § 27-1-9

Review payroll limitations (only for those years in which a general primary election was held for the nomination and election of members of the State Highway Commission and members of the Boards of Supervisors). *Code*, § 23-15-881

Legal Holidays in May: Last Monday of May (National Memorial Day and Jefferson Davis' Birthday). *Code*, § 3-3-7

## **JUNE**

Approve and adopt minutes or confirm president has read and signed them. *Code*, § 19-3-27

Order publication of board proceedings. *Code*, §§ 19-3-33 and 19-3-35

Amend budget as necessary. *Code*, § 19-11-19. See also *Code*, § 19-25-19

Disposition of claims docket. *Code*, § 19-13-31

Receive clerk's report of receipts, expenditures and fund balances. *Code*, § 19-11-23

Receive sheriff's report of expenses incurred during the preceding month. *Code*, § 19-25-13

Receive tax assessor/collector's report of expenses incurred during the preceding month.  
*Code*, § 27-1-9

Notify county officers and department heads to submit proposed budgets. *Code*, § 19-11-7

Certain road equipment notes to be paid by June 15. *Code*, § 19-13-17

Last month to buy certain machinery or equipment unless approved by unanimous vote of the Board (applies only to last six months of term in office). *Code*, § 19-11-27

Review payroll limitations (only for those years in which a general primary election was held for the nomination and election of members of the State Highway Commission and members of the Boards of Supervisors). *Code*, § 23-15-881

Last month to make certain repairs of road equipment and machinery in excess of \$5,000.00 without a majority affirmative vote of the board (applies to last year of term in office only). *Code*, § 19-13-21

Make necessary revisions and updates to the official county road system, register and map (must, as minimum, be performed on or before July 1 of each year). *Code*, § 65-7-4

Legal Holidays in June: None

## **JULY**

Approve and adopt minutes or confirm president has read and signed them. *Code*, § 19-3-27

Order publication of board proceedings. *Code*, §§ 19-3-33 and 19-3-35

Amend budget as necessary. *Code*, § 19-11-19. See also *Code*, § 19-25-19

Disposition of claims docket. *Code*, § 19-13-31

Receive clerk's report of receipts, expenditures and fund balances. *Code*, § 19-11-23

Receive sheriff's report of expenses incurred during the preceding month. *Code*, § 19-25-13

Receive tax assessor/collector's report of expenses incurred during the preceding month. *Code*, § 27-1-9

Real and personal property assessment rolls due from the tax assessor on or before the first Monday of the month. *Code*, § 27-35-81

Provide for fourth quarter appropriation for the sheriff's department. *Code*, § 19-25-13

Provide fourth quarter appropriate for tax assessor/collector. *Code*, § 27-1-9

Receive from sheriff proposed sheriff's office budget for ensuing fiscal year. *Code*, § 19-25-13

Receive from tax assessor/collector proposed tax assessor/collector's office budget for ensuing fiscal year. *Code*, § 27-1-9

Review payroll limitations (only for those years in which a general primary election was held for the nomination and election of members of the State Highway Commission and members of the Boards of Supervisors). *Code*, § 23-15-881

Preparation of budget for next fiscal year. *Code*, § 19-11-7

Proceed with equalization of the tax rolls and publish notice that the rolls are ready for public inspection. *Code*, § 27-35-83

Legal Holidays in July: Fourth of July (Independence Day). *Code*, § 3-3-7

## **AUGUST**

Approve and adopt minutes or confirm president has read and signed them. *Code*, § 19-3-27

Order publication of board proceedings. *Code*, §§ 19-3-33 and 19-3-35

Amend budget as necessary. *Code*, § 19-11-19. See also *Code*, § 19-25-19

Disposition of claims docket. *Code*, § 19-13-31

Receive clerk's report of receipts, expenditures and fund balances. *Code*, § 19-11-23

Receive sheriff's report of expenses incurred during the preceding month. *Code*, § 19-25-13

Receive tax assessor/collector's report of expenses incurred during the preceding month.  
*Code*, § 27-1-9

Review payroll limitations (only for those years in which a general primary election was held for the nomination and election of members of the State Highway Commission and members of the Boards of Supervisors). *Code*, § 23-15-881

Present proposed budget and tax levy for new fiscal year and cause same to be published with notice of public hearing of proposed budget and tax levy.  
*Code*, §§ 19-11-7, 27-39-203 and 27-39-203

Hear objections to assessments. *Code*, § 27-35-89

Publish notice of mandatory August tax sale. *Code*, §§ 27-41-55 and 27-41-59

Legal Holidays in August: None

## **SEPTEMBER**

Approve and adopt minutes or confirm president has read and signed them. *Code*, § 19-3-27

Order publication of board proceedings. *Code*, §§ 19-3-33 and 19-3-35

Amend budget as necessary. *Code*, § 19-11-19. See also *Code*, § 19-25-19.

Disposition of claims docket. *Code*, § 19-13-31

Receive clerk's report of receipts, expenditures and fund balances. *Code*, § 19-11-23

Receive sheriff's report of expenses incurred during the preceding month. *Code*, § 19-25-13



Receive tax assessor/collector's report of expenses incurred during the preceding month. *Code*, § 27-1-9

Set the tax levy for the fiscal year. *Code*, § 27-39-317

Consider applications for Homestead Exemption. *Code*, §§ 27-33-35 and 27-33-37

Deadline for holding public hearing and adopting the county budget for ensuing fiscal year is September 15, and the deadline for causing same to be published is September 30. *Code*, §§ 19-11-7 and 19-11-11

Clear claims docket as fiscal year draws to an end. *Code*, § 19-11-25

Receive and review for approval proposed budget for community hospital. *Code*, § 41-13-47

Clerk to file with the auditor of public accounts certain reports for additional assessments, reductions in assessments, and erroneous assessments on real and personal property rolls. *Code*, § 27-29-5

File recapitulation of assessment rolls, as equalized, with Department of Revenue (file within ten days after adjournment of term at which taxpayer objections are heard). *Code*, §§ 27-35-111 through 27-35-123

Legal Holidays in September: First Monday of September (Labor Day). *Code*, § 3-3-7

## **OCTOBER**

Approve and adopt minutes or confirm president has read and signed them. *Code*, § 19-3-27

Order publication of board proceedings. *Code*, §§ 19-3-33 and 19-3-35

Receive report of annual inventory of assets and forward a copy to the State Department of Audit no later than October 15. *Code*, § 31-7-107

Amend budget as necessary. *Code*, § 19-11-19

Disposition of claims docket. *Code*, § 19-13-31

Receive clerk's report of receipts, expenditures and fund balances. *Code*, § 19-11-23

Receive sheriff's report of expenses incurred during the preceding month. *Code*, § 19-25-13

Receive tax assessor/collector's report of expenses incurred during the preceding month. *Code*, § 27-1-9

Provide first quarter appropriation for sheriff's department. *Code*, § 19-25-13

Provide first quarter appropriation for tax assessor/collector. *Code*, § 27-1-9

Review and act on tax collector's insolvency list. *Code*, § 27-49-1

Review first quarter limitations on expenditures for road and bridge construction, maintenance and equipment (applicable last year of term in office). *Code*, § 19-11-27

Legal Holidays in October: None.

## **NOVEMBER**

Approve and adopt minutes or confirm president has read and signed them. *Code*, § 19-3-27

Order publication of board proceedings. *Code*, §§ 19-3-33 and 19-3-35

Amend budget as necessary. *Code*, § 19-11-19. See also *Code*, §19-25-19

Disposition of claims docket. *Code*, § 19-13-31

Receive clerk's report of receipts, expenditures and fund balances. *Code*, § 19-11-23

Receive sheriff's report of expenses incurred during the preceding month. *Code*, § 19-25-13

Receive tax assessor/collector's report of expenses incurred during the preceding month. *Code*, § 27-1-9

Review first quarter limitations on expenditures for road and bridge construction, maintenance and equipment (applicable last year of term in office). *Code*, § 19-11-27

Legal Holidays in November: Eleventh day of November (Armistice or Veteran's Day) and the day fixed by proclamation of the Governor of Mississippi as a day of Thanksgiving (Thanksgiving Day). *Code*, § 3-3-7

## **DECEMBER**

Approve and adopt minutes or confirm president has read and signed them. *Code*, § 19-3-27

Order publication of board proceedings. *Code*, §§ 19-3-33 and 19-3-35

Amend budget as necessary. *Code*, § 19-11-19. See also *Code*, §19-25-19

Disposition of claims docket. *Code*, § 19-13-31

Receive clerk's report of receipts, expenditures and fund balances. *Code*, § 19-11-23

Receive sheriff's report of expenses incurred during the preceding month. *Code*, § 19-25-13

Receive tax assessor/collector's report of expenses incurred during the preceding month. *Code*, § 27-1-9

Authorize publication soliciting competitive bids for county depository may (may be done annually or every two years). *Code*, § 27-105-305

Certain road equipment and machinery notes due by December 15. *Code*, § 19-13-17

Review first quarter limitations on expenditures for road and bridge construction, maintenance and equipment (applicable last year of term in office). *Code*, § 19-11-27

Legal Holidays in December: December 25 (Christmas Day). *Code*, § 3-3-7

### **OTHER MATTERS**

Note that each year the board is required to inspect the jail (*Code*, § 19-5-1) and inspect the county roads and bridges (*Code*, § 65-7-117). These inspections will need to be scheduled and the resulting reports submitted for review at a meeting during the year and documented in the board minutes.

## **APPENDIX B**

### **THE STATE AID ROAD PROGRAM**

#### **H. Carey Webb, P.E. State Aid Engineer**

In addition to county funds, there are two sources of funding available to the counties for the construction, reconstruction, and/or maintenance of the system of roads under the jurisdiction of the county boards of supervisors. These additional funding sources are the State of Mississippi and the federal government. These funds are administered by the Office of State Aid Road Construction.

State Aid Road Funds are made available to the counties through the state legislature. At present, the eighty-two (82) counties receive a minimum of fifty-one million dollars (\$51,000,000), which is distributed to the counties according to a formula approved by the legislature. These funds may be used for the construction, reconstruction, and/or maintenance of any road in a county which has been approved by the State Aid Engineer as part of the State Aid Road System for that county. The maximum number of miles each county may designate to be on the State Aid System has been set by the legislature.

Road and bridge projects are "programmed" by the board on a form furnished by the State Aid Engineer and are limited by the funds made available to the county. State Aid funds may be used to fund one hundred percent (100%) of the cost of the construction and engineering. Under certain conditions, State Aid law allows a county to make use of the funds available for a four year term by advancing credits to use anticipated revenues. This feature of State Aid law gives the board more flexibility in planning road and bridge projects in the county. Once a project has been approved by the State Aid Engineer, the plans and specifications will be prepared by the county's engineer in accordance with the rules and regulations adopted by the Office of State Aid Road Construction.

#### **LOCAL SYSTEM ROAD PROGRAM**

The legislature enacted the Local System Road Program (LSRP) in 2001. This program allows the counties to utilize up to twenty-five percent (25%) of their allocated State Aid funds to address the problem of sub-standard roads not eligible for the original State Aid Road Program. Projects constructed under this program must conform to the same rules and regulations that apply to State Aid projects.

#### **LOCAL SYSTEM BRIDGE PROGRAM**

In 1994, the legislature made available to the counties twenty-five million dollars (\$25,000,000) a year to address the problem of deficient bridges on roads where, aside from county funds, no other source of funding was available. This is known as the Local System Bridge Program (LSBP). The funding is distributed to each of the eighty-two (82) counties according to a

formula designated by the legislature, and may be used to fund one hundred percent (100%) of the contract cost and engineering on approved projects. The same rules and regulations that apply to State Aid projects are applied in a similar manor to LSBP projects. At the current time the program is being funded by bond issues at twenty million dollars (\$20,000,000) per year.

## **BRIDGE REPLACEMENT, SURFACE TRANSPORTATION PLAN, AND HIGHWAY SAFETY FUNDS**

The Federal Highway Administration (FHWA) makes federal dollars available to each state for the construction and reconstruction of various systems of roads. Approximately twenty million dollars (\$20,000,000) of these funds are made available to the eighty-two (82) counties in Mississippi each year. These funds are Surface Transportation Plan (STP) funds and Highway Safety (HRRR) funds. STP and HRRR funds are made available based on a project's necessity, rather than distributed according to a formula.

### **FEDERAL HIGHWAY ADMINISTRATION**

The agency responsible for the administration of federal highway programs is the Federal Highway Administration (FHWA). FHWA is limited to distributing highway funds to one state agency, the Mississippi Department of Transportation (MDOT). All federal funds available to the counties must be designated by the Transportation Commission of MDOT. At present, FHWA's level of participation in a contract is eighty percent (80%). The remaining twenty percent (20%) is to be financed with local funds (state or county funds). FHWA "authorizes" the use of federal funds only when certain regulations are complied with concerning locations, right- of-way acquisition, environmental considerations, and geometric design guidelines.

### **OTHER FHWA PROJECT FUNDING**

Other federal funds are available through FHWA on a project by project application. These include but are not necessarily limited to the following types of funds. The Appalachian Regional Commission (ARC) makes road construction funds available to certain counties in the northeast section of Mississippi. Public Lands Highway (PLH) funds have been made available to several counties through FHWA. The level of Federal Funds participation varies: but it is basically (80%/20%), depending on the approved application.

### **REGULATIONS**

In the use of state or federal funds available to the counties through the Office of State Aid Road Construction, the following regulations apply:

1. The programs, plans, and specifications must be prepared by a registered professional engineer employed by the county and approved by the State Aid Engineer.
2. Contract specifications will be those approved and adopted by the Office of State Aid Road Construction.

3. Satisfactory maintenance of the projects completed using state or federal funds will be the responsibility of the board of supervisors of the county in which the funds were expended. There are state and federal funds available to the counties that may be used for certain maintenance work; however, the responsibility for the maintenance belongs to the board of supervisors.

For additional information about State Aid, please visit our website at:

<http://www.msstateaidroads.us>

## APPENDIX C

### SELECTED INFORMATION ON MISSISSIPPI COUNTIES

**David Brinton and Nelson McGough**

The following listing contains population, system of organization, date of formation, Supreme Court district, total area, county seat, and assessed value data on each county in Mississippi. After the passage of “The County Reorganization Act of 1988,” each county not exempted was required to operate as a countywide (unit) system of road administration. All those counties not required to operate as a countywide system of road administration may continue to operate as a beat system. (For more information on beat and unit systems of organization, see Chapter 4 of this book.) Supreme Court districts also correspond to Public Service Commission and Transportation Commission Districts.<sup>1</sup> The area of counties given in the table includes both water and land area. Due to the division of court districts, ten of Mississippi’s 82 counties have two county seats.

#### Mississippi Counties

County	2013 Population <sup>2</sup>	Beat/Unit	Date of Formation	Supreme Court District	Area (square miles)	County Seat	Assessed Value <sup>3</sup>
Adams	32,043	Unit	1817	2	487.5	Natchez	\$247,482,300
Alcorn	37,364	Beat	1870	3	401.4	Corinth	\$224,300,825
Amite	12,895	Beat	1817	2	731.6	Liberty	\$94,502,597
Attala	19,338	Beat	1833	3	736.7	Kosciusko	\$185,946,019
Benton	8,506	Beat	1870	3	408.7	Ashland	\$70,982,341
Bolivar	34,019	Unit	1836	1	905.8	Cleveland/ Rosedale	\$321,272,272
Calhoun	14,739	Beat	1852	3	588.0	Pittsboro	\$83,205,582
Carroll	10,353	Beat	1833	3	634.6	Carrollton/ Vaiden	\$74,132,079
Chickasaw	17,317	Unit	1836	3	504.2	Houston/ Okolona	\$92,901,759
Choctaw	8,390	Beat	1833	3	419.9	Ackerman	\$257,934,325
Claiborne	9,177	Unit	1817	1	501.2	Port Gibson	\$72,176,335
Clarke	16,389	Unit	1833	2	693.5	Quitman	\$183,548,696
Clay	20,395	Beat	1871	3	416.0	West Point	\$138,784,290
Coahoma	25,165	Unit	1836	3	583.2	Clarksdale	\$205,997,825

<b>County</b>	<b>2013 Population<sup>2</sup></b>	<b>Beat/Unit</b>	<b>Date of Formation</b>	<b>Supreme Court District</b>	<b>Area (square miles)</b>	<b>County Seat</b>	<b>Assessed Value<sup>3</sup></b>
Copiah	28,795	Unit	1823	1	779.5	Hazlehurst	\$208,037,674
Covington	19,426	Beat	1819	2	414.9	Collins	\$222,105,648
DeSoto	168,364	Unit	1836	3	497.0	Hernando	\$1,643,505,682
Forrest	76,745	Unit	1908	2	470.2	Hattiesburg	\$637,774,611
Franklin	7,901	Beat	1817	2	566.8	Meadville	\$58,540,862
George	23,154	Beat	1910	2	483.7	Lucedale	\$160,797,910
Greene	14,241	Beat	1817	3	718.7	Leakesville	\$105,798,931
Grenada	21,552	Beat	1870	2	449.4	Grenada	\$216,330,081
Hancock	45,587	Unit	1817	2	552.5	Bay St. Louis	\$540,343,114
Harrison	196,597	Unit	1841	1	976.2	Biloxi/ Gulfport	\$2,015,020,294
Hinds	245,616	Unit	1821	1	877.3	Jackson/ Raymond	\$1,890,989,151
Holmes	18,746	Beat	1833	1	764.6	Lexington	\$116,602,478
Humphreys	8,918	Beat	1918	1	431.2	Belzoni	\$78,894,648
Issaquena	1,416	Beat	1844	1	441.4	Mayersville	\$24,789,702
Itawamba	23,461	Unit	1836	3	540.5	Fulton	\$129,855,924
Jackson	140,274	Unit	1812	2	1,043.4	Pascagoula	\$1,657,296,431
Jasper	16,517	Beat	1833	2	677.5	Bay Springs/ Paulding	\$198,642,994
Jefferson	7,632	Unit	1799	1	527.3	Fayette	\$43,440,860
Jefferson Davis	11,948	Beat	1906	2	409.1	Prentiss	\$97,553,724
Jones	68,886	Beat	1826	2	699.7	Laurel/ Ellisville	\$517,167,208
Kemper	10,276	Unit	1833	1	767.0	DeKalb	\$134,499,038
Lafayette	51,993	Unit	1836	3	679.2	Oxford	\$525,198,695
Lamar	58,983	Unit	1904	2	500.4	Purvis	\$521,957,700
Lauderdale	80,332	Unit	1833	1	715.2	Meridian	\$610,797,876
Lawrence	12,512	Beat	1817	2	435.8	Monticello	\$131,013,282



<b>County</b>	<b>2013 Population<sup>2</sup></b>	<b>Beat/Unit</b>	<b>Date of Formation</b>	<b>Supreme Court District</b>	<b>Area (square miles)</b>	<b>County Seat</b>	<b>Assessed Value<sup>3</sup></b>
Leake	23,309	Unit	1833	1	585.5	Carthage	\$119,494,241
Lee	85,440	Unit	1866	3	453.2	Tupelo	\$834,344,437
Leflore	31,592	Unit	1871	3	606.4	Greenwood	\$248,275,884
Lincoln	34,750	Beat	1870	2	588.2	Brookhaven	\$271,938,608
Lowndes	59,901	Unit	1830	3	516.5	Columbus	\$1,009,533,390
Madison	100,241	Unit	1828	1	741.8	Canton	\$1,440,387,164
Marion	26,173	Beat	1817	2	548.6	Columbia	\$157,582,816
Marshall	36,520	Unit	1836	3	709.8	Holly Springs	\$236,964,780
Monroe	36,112	Unit	1821	3	772.1	Aberdeen	\$315,289,829
Montgomery	10,550	Unit	1871	3	407.9	Winona	\$62,519,532
Neshoba	29,461	Unit	1833	1	571.6	Philadelphia	\$164,163,057
Newton	21,709	Beat	1836	1	579.6	Decatur	\$115,439,513
Noxubee	11,069	Unit	1833	1	700.0	Macon	\$66,837,187
Oktibbeha	49,284	Unit	1833	3	461.9	Starkville	\$342,468,610
Panola	34,439	Unit	1836	3	705.1	Batesville/ Sardis	\$251,600,781
Pearl River	54,957	Unit	1890	2	818.9	Poplarville	\$366,106,027
Perry	12,118	Beat	1820	2	650.2	New Augusta	\$104,449,025
Pike	40,015	Unit	1817	2	410.7	Magnolia	\$285,961,329
Pontotoc	30,770	Beat	1836	3	501.0	Pontotoc	\$170,246,843
Prentiss	25,426	Beat	1870	3	418.2	Booneville	\$131,806,367
Quitman	7,824	Unit	1877	3	406.4	Marks	\$70,343,765
Rankin	147,135	Unit	1828	1	806.1	Brandon	\$1,490,206,167
Scott	28,241	Beat	1833	1	610.4	Forest	\$176,402,673
Sharkey	4,684	Beat	1876	1	435.1	Rolling Fork	\$44,113,162
Simpson	27,477	Unit	1824	2	590.5	Mendenhall	\$240,007,908
Smith	16,216	Beat	1833	2	637.3	Raleigh	\$137,580,602
Stone	17,962	Unit	1916	2	448.1	Wiggins	\$111,167,478

County	2013 Population <sup>2</sup>	Beat/Unit	Date of Formation	Supreme Court District	Area (square miles)	County Seat	Assessed Value <sup>3</sup>
Sunflower	28,003	Unit	1844	1	706.9	Indianola	\$176,510,521
Tallahatchie	15,051	Unit	1833	3	652.1	Charleston/ Sumner	\$108,044,759
Tate	28,349	Beat	1873	3	411.0	Senatobia	\$167,036,786
Tippah	22,086	Unit	1836	3	460.0	Ripley	\$119,881,841
Tishomingo	19,461	Beat	1836	3	444.5	Iuka	\$153,144,530
Tunica	10,512	Unit	1836	3	480.7	Tunica	\$255,867,526
Union	27,745	Unit	1870	3	416.9	New Albany	\$273,127,870
Walthall	14,903	Beat	1910	2	404.4	Tylertown	\$95,342,772
Warren	48,286	Unit	1817	1	618.6	Vicksburg	\$599,869,379
Washington	49,638	Unit	1827	1	761.2	Greenville	\$409,336,027
Wayne	20,508	Beat	1817	2	813.5	Waynesboro	\$153,120,993
Webster	9,949	Beat	1874	3	423.2	Walthall	\$62,403,445
Wilkinson	9,338	Beat	1817	2	687.8	Woodville	\$56,606,711
Winston	18,727	Beat	1833	3	610.1	Louisville	\$124,899,704
Yalobusha	12,358	Beat	1833	3	495.0	Coffeeville/ Water Valley	\$78,865,064
Yazoo	27,955	Unit	1823	1	934.3	Yazoo City	\$190,749,480

<sup>1</sup> Supreme Court Districts also determine election districts for Public Service Commissioners and Transportation Commissioners. Supreme Court District 1 is equivalent to Public Service and Transportation Commissioners Central District. Supreme Court District 2 is equivalent to Public Service and Transportation Commissioners Southern District. Supreme Court District 3 is equivalent to Public Service and Transportation Commissioners Northern District. Mississippi, Secretary of State, *Mississippi: Official and Statistical Register 2008-2012*, p.67, 156.

<sup>2</sup> U.S. Census Bureau: Population Estimates.

<sup>3</sup> Mississippi Department of Revenue. 2014 Annual Report [www.dor.ms.gov](http://www.dor.ms.gov). Figures include oil and gas production, where applicable.

## **APPENDIX D**

### **THE MISSISSIPPI ASSOCIATION OF SUPERVISORS, INC.**

#### **Derrick Surette, Executive Director**

The Mississippi Association of Supervisors (“MAS” or the “Association”) is a 501(c)(6) nonprofit support association for Mississippi’s 82 counties. Since its inception in 1908, MAS has been committed to the improvement of county government across our state. MAS members have been instrumental in implementing efficient and effective grassroots government that serves the general welfare not only of the counties themselves, but of the entire state.

#### **PURPOSE**

As stated in the Amended Bylaws of the Association, the objectives of MAS are:

- (a) To develop and maintain an organizational structure within which ideas can be presented and a unified policy developed enabling the Association to speak with a unified voice;
- (b) To ensure that the legal basis of counties is such that public services may be provided in a cost-effective manner;
- (c) To ensure that an adequate revenue base for counties is established and defended against special interests;
- (d) To provide opportunities to county government officials for the interchange of ideas and experiences and to obtain expert advice;
- (e) To provide Congress and the state legislature with information necessary for the development of sound legislation of benefit to the nation, state and counties;
- (f) To establish a dialogue and relationship with the Governor and his several departments and agency heads and with all other state executive branch officials to facilitate on an ongoing basis the exchange of ideas on the administration of programs which involve or affect county government and county residents;
- (g) To better inform and educate county officials as to their respective powers and duties;
- (h) To investigate, study and discuss the application of more efficient and effective methods of public administration and to provide or sponsor the training programs necessary for the implementation of the foregoing;
- (i) To collect, compile and distribute to county officials information about county government and the administration of county affairs through publications, meetings and seminars;
- (j) To develop and provide a program of direct services to counties;
- (k) To serve as liaison between the state’s counties and other levels of government;
- (l) To achieve an increased public understanding of the role of counties in the intergovernmental system; and
- (m) To do any and all things necessary, proper and convenient for the benefit of counties in the administration of their affairs.

## OFFICE

The Association's headquarters is located two blocks north of the State Capitol at 793 North President Street in Jackson (Hinds County). The Association's normal office hours are Monday – Friday from 8:00 a.m. to 4:30 p.m. The office is closed for state holidays and during MAS conferences.

## STAFF

The MAS Bylaws authorize the Executive Director to employ all necessary staff to carry out its functions. MAS currently has eight staff members.

Phone: (601) 353-2741

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## MEMBERSHIP

The current Amended Bylaws of the Association, adopted by the membership in June 2014, set out the membership structure for the Association.

**Active Members** include each of the 410 county supervisors as representatives of “the county governments in the State of Mississippi.” Counties are assessed dues based on the county’s assessed value. Counties are authorized by *Code* § 9-3-65 of the *Code* to pay these dues.

**Associate Members** include duly elected or appointed and serving county officials, such as chancery clerks, county board attorneys, county administrators, county engineers, county road managers, circuit clerks, tax assessors and tax collectors. Associate Members do not hold office or serve on MAS committees, and are not eligible to vote in MAS elections.

**Affiliate Members** are the statewide associations of county employees or officials. Affiliate Members do not hold office or serve on MAS committees, and are not eligible to vote in MAS elections.

**Affiliate Partners** are individuals, corporations, organizations, agencies or associations with an interest in supporting county government and MAS. Affiliate Partners do not hold office or serve on MAS committees, and are not eligible to vote in MAS elections.

## ORGANIZATION

MAS is governed by five officers (President, First Vice President, Second Vice President, Third Vice President, Secretary-Treasurer and Sergeant-at-Arms) and a 22-member board of directors (the “MAS Board”). There are four standing committees – Education, Finance, Legislative and Nominating. The MAS President may appoint special committees as needed for specific purposes.

***Board of Directors.*** Formerly known as the Executive Committee, the MAS Board has general management oversight over MAS activities. Eleven members are elected at the annual Spring Regional Statewide Meetings (one from each Planning and Development District (PDD) except the Southern PDD, which elects two members). The other eleven members are nominated by the Nominating Committee (two from the Southern PDD and one from each of the other PDDs). These nominees are elected at the MAS Annual Convention in June. Each director serves a one-year term.

***Education Committee.*** The Education Committee is responsible for planning and coordinating the educational programs of the Association. The 12 members are nominated by the MAS President after his or her election at the Annual Convention each June, and are elected upon approval of a majority vote of the MAS Board present and voting at the Fall Workshop (October) each year. Four committee members are selected from each of the three Mississippi Supreme Court Districts. The Third Vice President serves as Chair and is a voting member of the Education Committee, while the MAS President is an ex officio, nonvoting member.

***Finance Committee.*** The four-member Finance Committee is chaired by the Secretary-Treasurer. One supervisor from each of the Mississippi Supreme Court districts is nominated by the outgoing MAS President and are ratified by the membership at the Annual Convention. The Finance Committee approves the annual budget for MAS and works with the MAS Board to oversee the Association’s operations.

***Legislative Committee.*** The Legislative Committee is responsible for the preparation and recommendation of a proposed legislative program for consideration of the membership and works directly with the MAS Director of Governmental Affairs to help coordinate member involvement during each legislative session. The 11 members are elected at the Spring Regional Statewide Meetings (one from each Planning and Development District (PDD) except the Southern PDD, which elects two members).

***Nominating Committee.*** The Nominating Committee is responsible for nominating the officers and one-half of the Directors (11) for the MAS Board. Members are elected at the Spring Regional Statewide Meetings (one from each Planning and Development District (PDD) except the Southern PDD, which elects two members).

## MEMBER SERVICES

In addition to the various educational meetings held throughout the year, MAS provides numerous services and benefits to counties. Several programs are summarized below. For details on all MAS Member Services, visit the MAS website at [www.mssupervisors.org](http://www.mssupervisors.org).

***Legislative Advocacy.*** MAS spends the majority of its lobbying efforts protecting county government from harmful legislation (such as unfunded mandates that reduce county revenue

and/or mandate expenses to counties), with the balance of efforts towards advocacy of legislation that helps and advances the core duties of county government.

***MAS Insurance Trust (“MASIT”).*** In April 2014, MAS formed the MAS Insurance Trust to provide low-cost, broad property and casualty insurance coverage along with a range of risk management services to Mississippi counties. MASIT is a nonprofit entity that is owned solely by its member counties. The program is run by and for county government. In its first year of operation, MASIT saved Mississippi taxpayers in excess of \$2.5 million in insurance premiums.

***Communication.*** Information management is critical in fulfilling the overall goals of MAS. Staff members are dedicated to providing accurate and timely information to all MAS members. This is accomplished through publications such as the bimonthly *Mississippi Supervisor* magazine, the *Directory of County Officials*, MAS’ website [www.mssupervisors.org](http://www.mssupervisors.org), publicly available material explaining county government, press releases, newsletters, text messaging, research and other means.

## **APPENDIX E**

### **MISSISSIPPI ASSOCIATION OF SUPERVISORS INSURANCE TRUST**

County governments are responsible for millions of dollars' worth of public property. Routine county government activities such as road maintenance, law enforcement and jail operations expose counties to frequent and sometimes large liability claims. Recognizing these risks, MAS formed and administers a program of property and casualty self-insurance. The MAS Insurance Trust ("MASIT"), formed in April 2014, provides low-cost, broad insurance coverage along with a range of risk management services to Mississippi counties. MASIT provides all of this in the form of a nonprofit entity that is owned solely by its county members. In addition to upfront savings and member ownership, surplus funds will be returned to county government members in future program years in the form of dividends or premium reductions, as determined by the MASIT Board of Trustees. This program is run for and by county government, and in its first year of operation saved Mississippi taxpayers in excess of \$2.5 million.

MASIT currently has 40 member counties across the State. MASIT is governed by a 15-member Board of Trustees who are elected at the MAS Annual Convention in June each year. Members serve staggered four year terms. Only supervisors from MASIT member counties may serve as a Trustee.

The 2015-2016 MASIT Board of Trustee members are:

Johnny Rowell, Chair, Jasper County

William Banks, Jr., Warren County

Chad Bridges, Grenada County

Steven Crotwell, Scott County

Paul Griffin, Madison County

Faye Hodges, Pike County

David Hogan, Forrest County

Perry Hood, Copiah County

Mike Mangum, Jackson County

Chris McIntire, Choctaw County

Darrel McQuirter, Hinds County

Calvin Newsom, Marion County

Bobby Rushing, Jefferson Davis County

Orlando Trainer, Oktibbeha County

Barney Wade, Calhoun County

## **APPENDIX F**

### **MISSISSIPPI PUBLIC ENTITY WORKERS' COMPENSATION TRUST**

#### **Judy Mooney**

In the late 1980's the Executive Committee of the Mississippi Association of Supervisors (MAS), took it upon themselves to help alleviate some of the cost burden placed on counties due to workers' compensation benefits. After much research, due diligence, and investment of association resources, in 1990 the Mississippi Public Entity Workers' Compensation Trust (MPEWCT), a self-funded workers' compensation coverage program, was born. The program is available to eligible political subdivisions to help reduce expenses related to securing workers' compensation benefits for public employees.

Over the course of the program's existence, every county in the state has been in the program, saving millions of taxpayers millions dollars in workers' compensation premiums.

Governing the program is an eight member Board of Trustees made up of two county supervisors from each congressional district.

The program is a valuable asset to the Mississippi Association of Supervisors in more ways than one. It gives counties an alternative in their workers' comp coverage and it is a revenue source for MAS. The association receives royalty fees which enables MAS to offer numerous programs and benefits to member counties.

Mississippi Public Entity (MPE) is located at 307 Warwick Place, Ridgeland, MS 39157; telephone number, 601-605-8150 or toll free 866-331-5682; fax number, 601-605-8161



## **APPENDIX G**

### **THE CENTER FOR GOVERNMENT & COMMUNITY DEVELOPMENT**

**Sumner Davis**

#### **PURPOSE**

The state of Mississippi has approximately 5,000 elected and appointed local government officials. These individuals are tasked with creating and implementing public policy in the state's 82 counties and 298 municipalities. For these officials to be both efficient and effective in the delivery of services to their constituents, information about their duties and responsibilities is needed. As local government law and practice changes with each session of the Legislature, continuing education and technical assistance is a requirement throughout an individual's tenure in local government service.

The Mississippi State University Extension Center for Government and Community Development (GCD) is a unit of the Mississippi State University Extension Service. For some forty years the GCD has been a leader in the development and implementation of educational programs for county and municipal officials, has provided technical assistance to local units of government, and has provided specialized publications for local government officials.

The Center currently works in conjunction with the following associations of local government officials to help meet and fulfill their educational needs: Mississippi Association of Supervisors, Mississippi Municipal League, Mississippi Association of County Board Attorneys, Mississippi Municipal Clerks and Tax Collectors Association, Mississippi Chancery Clerks Association, Mississippi Association of County Administrators/Comptrollers, Mississippi Assessors and Collectors Association, Mississippi Chapter of International Association of Assessing Officers, and the Mississippi Civil Defense & Emergency Management Association. The Center works with these associations to plan and implement a variety of educational programs, seminars, and workshops.

In cooperation with the State Department of Audit and the Mississippi Department of Revenue, the GCD manages legislatively-mandated certification programs for county purchase clerks, receiving clerks, inventory control clerks, tax assessors, and tax collectors and manages professional education programs for county supervisors and county administrators. The GCD's Certification Program for Municipal Clerks and Tax Collectors and Certified Appraiser School are nationally-recognized. The GCD assists the Office of the Secretary of State in implementing a training program for municipal clerks and municipal election officials. Active in training in the areas of homeland security and emergency preparedness and management, the GCD works with the Mississippi Emergency Management Agency, the Mississippi Office of Homeland Security, the Mississippi State Department of Health, and the Mississippi Board of Animal Health to

provide training, seminars, and workshops for local government and emergency management officials.

Technical assistance is provided by the Center to counties and municipalities in such areas as general management, financial administration, personnel administration, leadership development, economic development, and community facilities and services. Technical assistance is provided on a “time available” basis.

Through these activities, the GCD assists local government officials, local units of government, and associations of local government in their efforts to improve governance at the grassroots and delivery of services to the citizens of Mississippi. The Center does not take an advocacy role in the business, legislative, or political affairs of the local governments or local government associations with which it works.

## **EDUCATIONAL EFFORTS**

Annual educational efforts of the GCD include:

- Conduct some 50 different programs, which vary from half-day workshops to two-week schools, in some 75 separate locations. The combined attendance at these programs exceeds 10,000 local government officials.
- Conduct special orientation programs for newly-elected county and municipal officials, which included distribution of the GCD’s publications on county and municipal government.
- Award, in cooperation with the Mississippi Municipal Clerks and Collectors Association, the Certified Municipal Clerk designation to some municipal clerks, tax collectors, and deputies who complete the exam-based Certification Program for Municipal Clerks and Collectors. At any given time some 125 municipal clerks, tax collectors, and deputy municipal clerks, representing over 75 different municipalities, will be working toward certification. (See section on the Certification Program)
- Award advanced professional designations to Assessor and Appraiser Education Program participants entitling them to annual salary supplements of up to \$3,500. Currently, some 400 County Assessors and staff members are active in this program with combined salary supplements exceeding \$850,000.
- Award professional certification to county purchase clerks, receiving clerks, or inventory control clerks who successfully complete the Professional Certification Program for County Purchase, Receiving, and Inventory Control Clerks which is conducted in cooperation with the Office of the State Auditor.
- Conduct the Master Municipal Clerks Program, an advanced education/certification program for graduates of the Certification Program for Municipal Clerks and Collectors.

- Assist the Office of the Secretary of State with implementation of training programs for county and municipal election officials.
- Conduct workshops for tax collectors in collaboration with the Mississippi Department of Revenue, the Office of the State Auditor, and the Mississippi Assessors and Collectors Association.
- Develop and conduct specialized educational programs to address current issues important to local governments.
- Provide continuing education and professional development certifications for local emergency managers in partnership with the Mississippi Civil Defense Emergency Management Association.
- Conduct workshops that provide small basic information on how to start a small business from the idea phase to actually opening the business.
- Provide workshops that inform private well owners about their wells, how to sample their water supply, how to interpret sample results, and what they can do to protect their wells and source water from contamination.”
- GCD personnel help plan and facilitate educational events for tourism professionals and work with individual communities to develop plans to improve their festivals and other local tourism events.
- Conduct National Incident Management System training in Incident Command System for elected and appointed local and state officials.

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