

AVOIDING LIABILITY

Mississippi Association of Supervisors

Fall Conference

Oxford, Mississippi

October 20, 2021

MISSISSIPPI OFFICE OF THE STATE AUDITOR SHAD WHITE, AUDITOR

Presented by Patrick Dendy, CPA

Deputy State Auditor

Technical Assistance

1(800)321-1275

Tech@osa.ms.gov

§ 19-3-5. BOND TO BE EXECUTED BY SUPERVISOR.

Each member of the board of supervisors, before entering upon the duties of his office, shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to five percent (5%) of the sum of all the state and county taxes shown by the assessment rolls and the levies to have been collectible in the county for the year immediately preceding the commencement of the term of office of said member; however, such bond shall not exceed the amount of One Hundred Thousand Dollars (\$100,000.00). Furthermore, any taxpayer of the county may sue on such bond for the use of the county, and such taxpayer shall be liable for all costs in case his suit shall fail. No member of the board shall be surety for any other member.

TRANSACTIONS THAT CREATE POTENTIAL LIABILITY

1. Payments for Contracted Services
 2. Payments for Debt
 3. Payroll
 4. Purchases of Real Property
 5. Emergency Purchases
 6. Payments ordered by a Court
 7. Docket of Claims Payments
- 

§ 19-11-17 - BUDGET ESTIMATES NOT TO BE EXCEEDED

No expenditures shall be made, or liabilities incurred, or warrants issued, in excess of the budget estimates as finally determined by the board of supervisors, or as thereafter revised under the provisions of this chapter. The board of supervisors shall not approve any claim, and the clerk shall not issue any warrant for any expenditures in excess of the budget estimates thus made and approved by the board of supervisors, or as thereafter revised under the provisions of this chapter, except upon the order of a court of competent jurisdiction, or for an emergency as hereinafter provided.

§ 19-11-17 - BUDGET ESTIMATES NOT TO BE EXCEEDED

Any violation of the provisions of this section shall make the members of the board of supervisors voting for same, and the surety upon their official bonds, liable for the full amount of the claim allowed, the contract entered into, or the public work provided for, and the state auditor, as the head of the state department of audit, shall be authorized to sue for the recovery of the sum or sums so voted.

PAYMENTS ORDERED BY A COURT

A proper court order will include the Judge's Signature

The Board of Supervisors should (1) Follow the Order, or (2) Appeal the Order.
Otherwise, the Board could be held in Contempt

A proper order from the Chancery, County Court or Circuit Judge shields the Board of Supervisors from personal liability if the order is followed.

CENTRAL PURCHASING SYSTEM

Designed to provide safeguards to protect the Board of Supervisors

Requires the Purchase Clerk to ensure:

- Only authorized employees may request purchases

- Bid laws were followed

- Purchased items were received

§ 19-13-31 - DISPOSITION OF CLAIMS

(1) At each regular meeting of the board, the claims docket shall be called and all claims then on file, not previously rejected or allowed, shall be passed upon in the order in which they are entered upon the docket. All claims found by the board to be illegal, and which cannot be made legal by amendment, shall be rejected or disallowed. All other claims shall be audited, and all those found proper upon due proof shall be allowed in the order in which they appear on the docket, whether or not there shall then be sufficient money in the several funds on which warrants must be drawn for their payment.

§ 19-13-31 - DISPOSITION OF CLAIMS

.... When any claim is allowed by the board, it shall 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 shall check the claims docket at the close of each day's business and shall verify the correctness of all docket entries made during the day. He shall sign his name at the end of the docket entries covering the day's business, but it shall not be necessary that he sign the claims docket under each claim allowed or otherwise disposed of. The board shall enter an order on its minutes approving the demands and accounts allowed, but it shall only be necessary to refer to such demands and accounts by the numbers as they appear on the claims docket.

§ 19-13-31 - DISPOSITION OF CLAIMS

If the board shall reject any such 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 shall allow the same, and a warrant shall be issued therefor...

(2) Notwithstanding the provisions of this section 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, 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 and provided the payment thereof is otherwise in conformity with law and is the proper amount of a salaried employee and for hourly employees for the number of hours worked at the hourly rate approved on the minutes.

§ 19-13-39 HOW MEMBER MAY AVOID LIABILITY

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.

ATTORNEY GENERAL'S OPINION TO BARRY

Opinion No. 93-0519, September 22, 1993

Re: Signing of Claims Docket by President of Board of Supervisors

Is the president, or vice president in the absence or disability of the president, of the Board required to check the claims docket at the close of each business day and verify the correctness of all docket entries made during that day and, therefore, also required to sign his name at the end of the docket entries covering the day's business as set out in Section 19-13-31 of the Miss.Code of 1972, as amended, in view of the County's current system of handling purchases and the claims docket under the unit system?

We are of the opinion that the president of the board of supervisors must check all of the claims on the claims docket and evidence by his signature that he/she has checked these claims and that they appear to be in order at least once a month and before the meeting at which the claims are considered. We are of the opinion that the president does not have to sign the ledger claims on a daily basis or as often as the claims are entered on the claims docket; it is sufficient if he/she signs the claims docket once a month before the meeting at which the claims are considered.

ATTORNEY GENERAL'S OPINION TO BARRY

Are members of the Board of Supervisors subject to personal liability if they approve the claims docket where the president, or vice president in the absence or disability of the president, has not checked the claims docket at the close of each business day and verified the correctness of all docket entries made during the day as set out in Section 19-13-31 of the Miss.Code of 1972, as amended?

Under Miss.Code Ann. § 19-13-31 (Supp.1993), the board of supervisors is authorized to allow all claims on the claims docket which are found proper upon due proof at each regular meeting of the board. Miss.Code Ann. § 19-3-59 prohibits an appropriation to an object not authorized by law. Members who do not oppose unlawful expenditures are personally liable, individually and on their official bond under Miss.Code Ann. § 31-7-57...

Any member of the board may avoid liability by voting against such unauthorized appropriation if the vote is recorded on the minutes under § 19-13-39.

ATTORNEY GENERAL'S OPINION TO BARRY

The purpose of requiring the president's signature on the claims docket is to establish a procedural safeguard for supervisors for spending county funds. Supervisors incur individual liability for unlawful expenditures pursuant to § 31-7-57 even if the president signed the claims docket as required by § 19-13-31. Supervisors do not incur individual liability under § 31-7-57 for lawful expenditures even if the president failed to sign the claims docket.