

[Miss. Code Ann. § 19-3-47](#)

Current through 2022 Regular Session legislation signed by the Governor and effective upon passage through April 26, 2022, not including changes and corrections made by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation. The final official version of the statutes affected by 2022 legislation will appear on Lexis Advance in the fall of 2022.

Mississippi Code 1972 Annotated > Title 19. Counties and County Officers (Chs. 1 — 31) > Chapter 3. Board of Supervisors (§§ 19-3-1 — 19-3-115) > In General (§§ 19-3-1 — 19-3-85)

§ 19-3-47. Employment of counsel.

(1)

(a) The board of supervisors shall have the power, in its discretion, to employ counsel by the year at an annual salary at an amount that it deems proper, not to exceed the maximum annual amount authorized by law for payment to a member of the board.

(b) The board of supervisors shall have the power, in its discretion, to employ counsel in all civil cases in which the county is interested, including eminent domain proceedings, the examination and certification of title to property the county is acquiring and in criminal cases against a county officer for malfeasance or dereliction of duty in office, when by the criminal conduct of the officer the county may be liable to be affected pecuniarily, with the counsel to conduct the proceeding instead of the district attorney, or in conjunction with him, and to pay the counsel out of the county treasury or the road fund that may be involved reasonable compensation, or if counsel so employed is retained on an annual basis as provided in this subsection, reasonable additional compensation for his services.

(c) The board of supervisors shall have the power, in its discretion, to pay reasonable compensation to attorneys who may be employed by it in the matter of the issuance of bonds and the drafting of orders and resolutions in connection therewith. In no instance shall the attorney's fee for the services exceed the following amounts, to wit:

One percent (1%) of the first Five Hundred Thousand Dollars (\$500,000.00) of any one (1) bond issue; one-half percent (½%) of the amount of the issue in excess of Five Hundred Thousand Dollars (\$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 (\$1,000,000.00). The limitations imposed in this paragraph shall not apply to any bond issue for which a declaration to issue the bonds has heretofore been adopted by proper resolution.

(d) This subsection shall not in anyway amend or repeal or otherwise affect subsection (2) of this section, but this subsection shall remain in full force and effect.

(2) The board of supervisors of any county, in addition to the authority conferred upon it in subsection (1) of this section, may employ, in its discretion, a firm of attorneys to represent it as its regular attorneys on the same terms, conditions and compensation as provided for employment of an attorney as its regular attorney. However, there shall not be both an attorney and a firm of attorneys employed at the same time as the regular attorney for the board.

(3) In any county having a 1980 federal census population in excess of one hundred eighteen thousand (118,000), and in which is located a major refinery for the production of petroleum products and a facility for the construction of ships for the United States Navy; in any county which is traversed by an interstate highway and having a 1980 federal census population in excess of sixty-six thousand (66,000), and in which is located a comprehensive university operated by the Board of Trustees of State Institutions of Higher Learning and a National Guard training base; in any county in which is located the State Capitol and

the state's largest municipality; in any county which is traversed by Interstate Highway 55, United States Highway 51 and United States Highway 98; in any county bordering the Gulf of Mexico, having a 1980 federal census population in excess of one hundred fifty-seven thousand (157,000), and in which is located a state-owned port; and in any county which is traversed by Interstate Highway 20, United States Highway 49 and United States Highway 80, and in which is located the State Hospital and an international airport; all of which foregoing criteria the Legislature finds to be conducive to industrial development requiring the issuance of industrial revenue bonds and which counties would gain benefits by employment of counsel in the manner authorized by this subsection, the board of supervisors, as an alternative to the authority conferred upon it in subsections (1) and (2) of this section, may employ annually, in its discretion, an **attorney** as a full-time employee of the county, subject to the following conditions:

- (a) The **attorney** shall maintain an office in the county courthouse or other county-owned building and shall represent the board of supervisors and all county agencies responsible to the board;
- (b) The **attorney** shall be employed by the board of supervisors in the matter of the issuance of all bonds of the county and the drafting of resolutions in connection therewith, and shall represent the board in all state and federal courts. **Attorney's** fees for the services which otherwise would have been paid to an **attorney** under paragraph (1)(c) of this section shall be paid into the county general fund and used to defray the salary of the **attorney** and his necessary office expenses;
- (c) During his employment by the county, the **attorney** shall not engage otherwise in the practice of civil or criminal law and shall not be associated with any other **attorney** or firm of **attorneys**;
- (d) The board of supervisors shall have the power, in its discretion, to pay the **attorney** an annual salary not to exceed the maximum annual salary authorized by law to be paid to the county judge of that county; and
- (e) The board of supervisors may authorize, in its discretion, the employment of special counsel to assist the counsel employed pursuant to this subsection, provided that the board shall determine and spread on its minutes that the employment of the special counsel is necessary and in the best interest of the county and setting forth the duties or responsibilities assigned to the special counsel.

History

Codes, 1857, ch. 59, art 35; 1871, § 1385; 1880, § 2176; 1892, § 293; 1906, § 312; Hemingway's 1917, § 3685; 1930, § 272; 1942, §§ 2958, 3374-95.5; Laws, 1924, ch. 212; Laws, 1936, ch. 308; Laws, 1942, ch. 218; Laws, 1946, chs. 182, 424; Laws, 1948, ch. 263; Laws, 1952, ch. 222; Laws, 1956, ch. 189; Laws, 1958, ch. 220; Laws, 1960, chs. 190, 191; Laws, 1962, chs. 248, 249; Laws, 1964, ch. 275, § 1; Laws, 1962, 2d Ex Sess ch. 25, § 1; Laws, 1966, ch. 296, § 1; Laws, 1968, ch. 285, §§ 1, 2; Laws, 1971, ch. 429, § 1; Laws, 1972, ch. 393, § 1; Laws, 1973, ch. 336, § 1; Laws, 1984, ch. 491; Laws, 1989, ch. 424, § 1; [Laws, 1990, ch. 508, § 1](#); [Laws, 1995, ch. 341, § 1](#), eff from and after passage (approved March 14, 1995).

Annotations

Cross References —

Employment of county prosecuting **attorney** as **attorney** for board of supervisors, see [§ 19-23-15](#).

Appointment and compensation of municipal **attorney** generally, see [§ 21-15-25](#).

Other sections derived from same 1942 code sections, see [§§ 21-15-25, 21-15-27](#).

JUDICIAL DECISIONS

1. In general.**2. Illustrative cases.****1. In general.**

Members of a county board of supervisors are empowered to employ counsel and defend themselves when sued in causes arising out of their official position where they have a colorable defense and present the defense in good faith; however, where there is no reasonable basis for a defense and/or where the board members proceed in bad faith, they act ultra vires and have no power to expend public funds for defense, and, in such cases, the court should order that any such defense be at their own expense and that any public funds expended be reimbursed. [Richardson v. Canton Farm Equipment, Inc., 608 So. 2d 1240, 1992 Miss. LEXIS 596 \(Miss. 1992\).](#)

A county had standing under [§ 21-1-31](#) to object to the annexation of county territory by a city since it was a party interested in, affected by or aggrieved by the annexations. Furthermore, a combined reading of [§§ 11-45-17, 11-45-19](#), and [19-3-47\(1\)\(b\)](#) vested in the county, acting by and through its board of supervisors, authority to exercise its standing and to employ counsel and participate fully in each annexation and confirmation proceeding. [Harrison County v. Gulfport, 557 So. 2d 780, 1990 Miss. LEXIS 44 \(Miss. 1990\).](#)

Where a board of supervisors in issuing refunding bonds as provided by law, engaged in connection therewith the services of an **attorney**, who on declining to proceed further without increased compensation received a settlement for his work done and expenses incurred, and new **attorneys** were engaged to complete the work, and the board of supervisors made appropriations for the payment of such **attorney's** fees under their authority to appropriate money for the payment of the expenses incurred in issuing the bonds, no liability accrued against the board of supervisors, notwithstanding that such appropriation for **attorney's** fees may have exceeded the amount authorized or that they were in violation of constitutional provisions prohibiting extra compensation to public officers, agents, servants or contractors after service rendered or contract made or part payment of any claim under a contract not authorized by law, and against relief of any obligation or liability owing to any county, etc. [Causey v. Gilbert, 193 Miss. 756, 10 So. 2d 451, 1942 Miss. LEXIS 148 \(Miss. 1942\).](#)

Board of supervisors is not authorized to pay traveling expenses of its **attorney** in performance of his duties except those while representing board before state tax collector. [Gully v. Bridges, 170 Miss. 891, 156 So. 511, 1934 Miss. LEXIS 182 \(Miss. 1934\).](#)

Bill against board of supervisors and its **attorney**, alleging illegal payment of **attorney's** traveling expenses, held not subject to general demurrer. [Gully v. Bridges, 170 Miss. 891, 156 So. 511, 1934 Miss. LEXIS 182 \(Miss. 1934\).](#)

An admission of counsel for a defendant county in a suit for damages for abandoning a highway is binding on the county. [Noxubee County v. Long, 141 Miss. 72, 106 So. 83, 1925 Miss. LEXIS 209 \(Miss. 1925\).](#)

Where the revenue agent brought a suit in behalf of the county against a depository the court had the discretion to permit an **attorney** for the board of supervisors to co-operate with the revenue agent in the suit. [Robertson v. Bank of Batesville, 116 Miss. 501, 77 So. 318, 1917 Miss. LEXIS 335 \(Miss. 1917\).](#)

The board of supervisors, under Code 1892, § 293 may employ advisory counsel by the year at an annual salary, and during the employment of such counsel, may employ other counsel in civil cases in which the county is interested and in criminal cases mentioned in the code section. [Board of Sup'rs v. Booth, 81 Miss. 267, 32 So. 1000 \(Miss. 1902\).](#)

The employment by the board of supervisors of counsel by the year as authorized by this section [Code 1942, § 2958], does not deprive it of power to employ a competent person, although he be a lawyer, other than the one previously employed, to investigate the titles to the sixteenth section school lands and to bring suits to confirm titles thereto. [Warren County v. Dabney, 81 Miss. 273, 32 So. 908, 1902 Miss. LEXIS 116 \(Miss. 1902\).](#)

The statute does not authorize the board to pay an **attorney** for procuring to be done what is its duty to have done, such as requiring officers to give new bonds in certain cases. [Marion County v. Taylor, 55 Miss. 184, 1877 Miss. LEXIS 120 \(Miss. 1877\)](#).

2. Illustrative cases.

Sheriff was not entitled to reimbursement for legal fees incurred by him as a party in a federal court lawsuit by employees seeking overtime pay because the statutes allowing the payment of fees were discretionary and did not require that counsel be provided to all employees with a colorable defense who acted in good faith. *Madison County v. Hopkins, 857 So. 2d 43, 2003 Miss. LEXIS 577 (Miss. 2003)*.

Chancellor erred in ordering a county to pay part of the **attorney's** fees a sheriff incurred in federal court litigation, on grounds that a conflict of interest entitled the sheriff to separate representation, as (1) the federal district court had ruled that there was no conflict of interest in the same **attorney's** representing the sheriff in his official capacity and suing him in his individual capacity; and (2) [Miss. Code Ann. § 25-1-47](#) and [Miss. Code Ann. § 19-3-47](#) permitted, but did not require, the county to provide the sheriff legal counsel in the federal action. *Madison County v. Hopkins, 857 So. 2d 43, 2003 Miss. LEXIS 299 (Miss. 2003)*.

OPINIONS OF THE **ATTORNEY** GENERAL

A contract which attempts to "irrevocably" employ private persons "to make the necessary investigations to ascertain the correct amount of the taxes and moneys which may be due and owing to the county of Issaquena and various taxing districts by the State of Mississippi and to collect said moneys," etc., and to pay a sum equal to twenty per cent of all amounts found to be due and collected, held absolutely null and void. Ops Atty Gen, 1933-35, p 44.

The board of supervisors is not authorized to employ counsel for the purposes mentioned in said contract. Ops Atty Gen, 1933-35, p 44.

The board of supervisors is not authorized to employ an auditor to make the investigations mentioned in said contract. Ops Atty Gen, 1933-35, p 44.

Each member of the board of supervisors who votes to allow the claim on account thereof would be liable on his official bond for the amount so paid. Ops Atty Gen, 1933-35, p 44.

The board of supervisors may pay out not exceeding one per cent of the amount of the bonds issued to the **attorney** representing the board in the issuance and sale of said bonds. The amount paid the bond **attorney** for passing on the validity of such bonds would not be included in the amount. Ops Atty Gen, 1937-39, p 87.

This section applies to interest bearing notes issued by the county as well as to bonds. It applies to all notes and bonds issued by the board of supervisors of the county; that is, where the board of supervisors issues bonds for a school district, road district, or other taxing district, they could employ an **attorney** to perform the duties required. In such cases the fee should be paid out of the proceeds of the bond issue rather than the general county fund, or other funds. Ops Atty Gen, 1937-39, p 119.

The board of supervisors would not be authorized to employ additional advisory counsel if the amount paid such extra counsel plus the amount paid the regularly retained **attorney** exceed \$600.00. Ops Atty Gen, 1939-41, p 118.

County board of supervisors has discretionary authority to employ legal counsel in civil cases in which the county is interested. Sanders, Dec. 18, 1991, A.G. Op. #91-0962.

[Miss. Code Section 19-3-47\(1\)\(c\)](#) provides express authority for county boards of supervisors to employ and, subject to limitations enumerated in statute, to compensate one or more **attorneys** in matter of issuance of bonds and drafting of orders and resolutions in connection therewith; **attorney** so employed who in fact provides such services may be **attorney** who is also separately employed as board's regular **attorney**; and, maximum

compensation limitations imposed by [Miss. Code Section 19-3-47\(1\)\(c\)](#) do not apply to payment of professional fees to bond counsel of national repute whose opinion is required by bond buyers or who is retained to promote marketability of bond issue; nor does it apply to professional fees of state bond **attorneys**. Walters, Jan. 14, 1993, A.G. Op. #982-0984.

Additional compensation paid to the board **attorney** should be paid from the county general fund. However, if such additional service performed by the **attorney** involves a road fund, then payment for those services should come from the road fund involved. Hemphill, February 23, 1995, A.G. Op. #95-0068.

[Section 19-3-47](#) requires the board to document on the minutes the necessity and duties of special counsel prior to the making of an appointment. Appointment of the particular person to serve as the special counsel may be delegated to the county administrator. Anderson, September 13, 1996, A.G. Op. #96-0471.

While a county is authorized pursuant to [Section 19-3-47\(1\)\(b\)](#) to employ counsel where it is determined that the matter is one in which the county is interested, there is no authority for a county to donate funds to pay private legal fees. Rather, the county can expend money for legal fees for representation of the county itself when, for instance, it is a party in a legal proceeding. Walters, November 8, 1996, A.G. Op. #96-0738.

Provided the employment was made prior to services being rendered, a board of supervisors could employ counsel and pay the lawful fees and expenses incurred in a particular case. Southerland, May 17, 2002, A.G. Op. #02-0270.

A county board of supervisors may not pay the board **attorney** on an hourly basis for all his services. In the event the board finds that there are special cases or circumstances which are not within the scope of the duties of the regular board **attorney** and that additional legal services are reasonable and necessary for conducting the county's business, it has discretion to hire either the board **attorney** or another **attorney** on an hourly fee contract to attend to those additional legal needs. Flanders, May 7, 2004, A.G. Op. 04-0186.

A county board of supervisors may not pay the expenses of the board **attorney** in providing his services. Flanders, May 7, 2004, A.G. Op. 04-0186.

Termination of a board **attorney** prior to expiration of his or her one-year term may only be for cause and due process must be afforded. Flanders, May 7, 2004, A.G. Op. 04-0186.

Counsel for a board of supervisors is a county employee and not an independent contractor. Flanders, May 7, 2004, A.G. Op. 04-0186.

Subject to the appropriate findings, the county board of supervisors had the authority to provide defense counsel for individual public defender **attorneys** in an action arising from complaints against the public defender system used by the county. Ross, Aug. 27, 2004, A.G. Op. 04-0386.

County boards of supervisors are authorized by [Section 19-3-47\(1\)\(b\)](#) to employ counsel in all civil cases in which the county is interested, which includes employing counsel to represent a county official who has been sued individually. Coleman, Oct. 20, 2006, A.G. Op. 06-0520.

RESEARCH REFERENCES

Am. Jur.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 194 et seq.

Employment of **attorney** to prosecute county claims, 4 Am. Jur. Legal Forms, Counties, Form 4:1158.

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