

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

July 10, 2015

Mr. Mark Houston
County Administrator
Madison County Board of Supervisors
Post Office Box 608
Canton, Mississippi 39046

Re: Authority of Board of Supervisors to levy tax for support of fire protection districts

Dear Mr. Houston:

Attorney General Jim Hood is in receipt of your opinion request and has assigned it to me for research and reply.

Questions Presented and Response

On behalf of Madison County, your letter asks the following questions which this opinion will respond to seriatim.

1. Mississippi Code of 1972, Annotated (MCA) Section 19-5-95 appears to place two limits on aid to fire departments. The first is a \$250.00 limit on aid to volunteer fire departments. The second a one-fourth mill on all taxable property within the county limit on aid to municipal fire departments and volunteer fire departments meeting requirements on 83-1-39(2).

Does this limitation apply to fire protection districts organized under 19-5-151 et seq? If not, please skip to item 6, as Madison County supports fire protection districts.

In response, Miss. Code Ann., Section 19-5-95 provides:

The board of supervisors of any county in this state is hereby empowered and authorized to appropriate out of the county treasury annually a sum not in excess of Two Hundred Fifty Dollars (\$250.00) in aid of any fire department for services and protection by such fire department, and, in its discretion, to appropriate out of the county treasury annually a sum not in excess of the amount which would be produced by a levy of one-fourth (1/4)

mill on all taxable property within the county in aid of municipal fire departments in the county, or in aid of volunteer fire departments within the county which meet the requirements set forth in Section 83-1-39(2), but in no event shall the aggregate amount appropriated annually under this section exceed an amount equal to the amount which would be produced by a levy of one-fourth (1/4) mill on all taxable property within the county.

Section 19-5-95 authorizes the expenditure of an amount up to the avails of a 1/4 mill levy for municipal and volunteer fire departments within the county. The \$250.00 expenditure could be to any fire department in or outside the county.

A Fire Protection District is a governmental entity in accordance with Section 19-5-165, Section 11-46-1(g) and (i). However, within each district there could be multiple volunteer fire departments that are also governmental entities. Therefore, volunteer fire departments are distinct entities separate from fire protection districts, and this limitation applies specifically to municipal and volunteer fire departments.

2. When applying the one-fourth mill limitation in 19-5-95, it appears that this would be value determined using all taxable property in the county and not just the property outside of municipalities. Is this a correct interpretation of the limitation?

3. Please define the requirements that a volunteer fire department must meet in 83-1-39(2). Our research indicates that "requirements" may have been removed from the code section as far back as 1991.

4. If any requirements still exist in 83-1-39(2), does this definition include a fire protection district organized under 19-5-151 et seq.?

5. If a county enters into a fire service contract with a fire protection district, does 19-5-95 effectively limit the value of all fire protection contracts, or does this limitation apply only to "aid" other than payment for fire services contracts?

6. MCA Section 83-1-39(5)d allows for the levy of not less than one-quarter mill for countywide fire protection on property not served by municipal fire services. This quarter mill concept appears to be completely different from the quarter-mill concept in 19-5-95. Is this interpretation correct?

Due to the response to your first question, your request for a response to questions two through six is withdrawn.

7. Can a county levy more than a quarter mill, for instance a levy of 1 mill, under 83-1-39(5)d, and the avails of this levy to fund fire services contracts with fire protection districts?

In response, Miss. Code Ann., Section 83-1-39(5) provides that in order for a fire protection district to obtain insurance rebate monies:

(d) Counties shall levy a tax of not less than one-fourth (1/4) mill on all property of the county or appropriate avails of not less than one-fourth (1/4) mill from the county's general fund for fire protection purposes. Municipalities making a written declaration to the county that they fund and provide their own fire services shall be exempted from this levy. This levy shall be used for fire protection purposes which include, but are not limited to, contracting with any provider of fire protection services.

(Emphasis added). Section 83-1-39(5)(d) clearly states the levy shall be not less than one-fourth mill. Thus, a county may levy more than one-fourth (1/4) mill under Section 83-1-39(5)(d) to fund fire services contracts with any provider of fire protection services.

8. Please consider the following: Regardless of your answer to item 1, please assume that one-quarter of a mill on all taxable property in the county would generate \$400,000 in tax revenue, could a county:

1. Levy 2 mills on real property within a fire district under 19-5-189 and
2. Levy 3 mills (generating \$1.5 million in total) on all property outside of municipal fire protection under 83-1-39(5)d and
3. Pay the avails of 2 mills (\$1 million) levied under 83-1-39(5)d and a portion of fire insurance rebates to the various fire protection districts as their compensation for fire protection services?

In response to part one of question eight, Miss. Code Ann., Section 19-5-189(2) provides in pertinent part:

(b) In respect to fire protection purposes, the board of supervisors of the county in which any such district is created after July 1, 1987, may, according to the terms of the resolution of intent to incorporate the district, levy a special tax not to exceed two (2) mills annually on all of the taxable real property in such district, the avails of which shall be paid over to the board of commissioners of the district to be used either for the operation, support and maintenance of the fire protection district or for the retirement of any bonds issued by the district for fire protection purposes, or for both; however, if the district is created pursuant to a mandatory election called by the board of supervisors, in lieu of a petitioned election under Section 19-5-157, the board of supervisors may levy a special tax annually not to exceed an amount to be determined by the board of supervisors and stated in the notice of such election. The mandatory election authorized herein shall be conducted in accordance with paragraph (c) of this subsection. The special tax may be increased if such increase is authorized by the electorate pursuant to an election conducted in accordance with paragraph (c) of this

subsection.

(Emphasis added).

Consequently, for a fire protection district created after July 1, 1987, the board of supervisors may levy a special tax not to exceed two mills annually on all taxable property in such district for the operation, support and maintenance of the fire protection district.

In response to the second part of your question, Miss. Code Ann., Section 83-1-39(5) provides that a county shall levy not less than one-fourth (1/4) mill on all property of the county for fire protection purposes in order to qualify to receive its share of insurance rebate monies available. There is no limitation on the millage that may be levied in this subsection. Thus, pursuant to Section 83-1-39(5)(b) the board of supervisors may levy three mills on all property of the county, excluding property within a municipality providing its own fire services.

In response to the third part of your question, Section 83-1-39(5)(d) provides that the levy authorized "... shall be used for fire protection purposes which include, but are not limited to, contracting with any provider of fire protection services." Therefore, if the board of supervisors assesses a county-wide two mill levy pursuant to Section 83-1-39, the tax revenue generated may be disbursed to the various fire protection districts within the county for the fire protection services provided pursuant to the written contract approved by the Commissioner of Insurance as required in subsection (6)(a). Any avails raised under 19-5-189 must be paid over to the board of commissioners of the district.

Additionally, Section 83-1-39(3) provides that insurance rebate monies shall be expended by the board of supervisors for fire protection purposes of each county for the following categories:

- (a) For training expenses;
- (b) Purchase of equipment, purchase of fire trucks, repair and refurbishing of fire trucks and fire fighting equipment, and capital construction anywhere in the county or pledging as security for a period of not more than ten (10) years for such purchases;
- (c) Purchase of insurance on county-owned fire fighting equipment;
- (d) Fire protection service contracts, including, but not limited to, municipalities, legal fire protection districts, and nonprofit corporations providing or coordinating fire service in or out of the county;
- (e) Appropriations to legal fire protection districts located in counties subject to all restrictions applicable to the use of insurance rebate monies; or
- (f) Training of any county personnel as needed for the adoption of and compliance with the codes established and promulgated by the Mississippi Building Codes Council or for windstorm mitigation programs as approved by the Commissioner of Insurance. These monies shall be apportioned and distributed amongst qualifying counties. Any monies designated under this paragraph (f) that are not expended annually shall be returned to the County

Volunteer Fire Protection Fund to be distributed for fire protection services.
(g) Any county-owned equipment or other property, at the option of the board of supervisors, may be used by any legally created fire department.

Thus, the board of supervisors has the authority, pursuant to the written contract approved by the Commissioner of Insurance required in Section 83-1-39(6)(a), to appropriate insurance rebate monies to the fire protection districts within the county as compensation for fire protection services provided.

9. After reading multiple opinions (Hudson 2005, Mills 2004, Creekmore 2004), it appears that fire insurance rebate funds paid to a fire protection district as part of a fire services contract become exempt from the spending limitations set forth in 83-1-39(2) and can be used for any operating expense of the fire protection district. Do you agree with this interpretation?

We assume for the purposes of this opinion that you inquire as to Subsection 3 regarding the purposes for which insurance rebate monies may be expended. Subsection (d) of Section 83-1-39(3) provides that insurance rebate money may be expended on fire protection service contracts with a fire protection district. A fire protection district can then, if it so chooses, use these funds to pay for necessary operating expenses in accordance with the guidelines set by the Commissioner of Insurance.

10. Does a county have any authority to directly pay expenses of a fire protection district (i.e., fuel, public official bonds, worker's compensation insurance)?

There is no authority for a county board of supervisors to directly pay the expenses incurred by a fire protection district. MS AG Op., Nowak (August 8, 2014). However, pursuant to Miss. Code Ann., Section 83-1-39(3)(d), a fire protection district can use the proceeds of its fire protection contract for its operation, in accordance with the guidelines set by the Commissioner of Insurance, which may include any expenses the district determines are necessary for its operation.

11. Are there any other sources of revenues (i.e. service fees, fund-raisers, donations) that are available for a fire protection district?

In response, a fire protection district has the power "to fix, maintain, collect and revise rates and charges for services rendered by or through the facilities of such district..." Miss. Code Ann., Section 19-5-177(1)(e). Thus, in addition to receiving the ad valorem tax revenue, the fire-protection district can charge a fee for its service.

Additionally, this office has opined that under Section 19-5-177, a fire protection district is authorized to accept donations of real or personal property. This would include donations of money. MS AG Op., Parra (April 25, 1991). The board of commissioners appointed to

Mr. Mark Houston
July 10, 2015
Page 6

govern the district would have the power and authority to decide how to expend funds donated to the district provided. Of course, such expenditures must be made in accordance with State law and specifically to the district. Gifts made directly to a volunteer fire department do not come under the board of commissioners' authority.

If this office may be of any further assistance to you, please let us know.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Avery Mounger Lee
Special Assistant Attorney General

OFFICIAL OPINION