

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

August 10, 2018

Robert R. Bailess
Bailess & Rector, LLP
P.O. Box 991
Vicksburg, MS 39181

B. Blake Teller
Teller, Hassell & Hopson, LLP
1201 Cherry St
Vicksburg, MS 39183

Re: Old Mississippi River Bridge at Vicksburg, Mississippi

Dear Mr. Bailess and Mr. Teller:

Attorney General Jim Hood is in receipt of your letter requesting an official opinion on behalf of the Vicksburg Bridge Commission (the Commission) and the Warren County Board of Supervisors.

Your questions concern the Commission's legal authority to reopen the Old Mississippi River Bridge to the public for the purpose of pedestrian and/or bicycle traffic and whether the Commission would have legal authority to expend its funds pursuing the reopening of the bridge for such purposes. Due to the length of background information provided, a copy of your request is attached.

Background

Your letter states, in part:

On or about February 11, 1928, a Bridge Lease was entered into between the Railroad and the company authorized by the Act of Congress to construct the bridge. The Lease anticipated that the bridge company would construct a combined highway and railroad bridge. Expressly excluded from the lease to the railroad are "the portions of said bridge and its approaches which are designed and constructed for pedestrians and/or vehicles other than railroad engines, trains and cars" . . . Warren County eventually assumed the rights of the bridge company while the Kansas City Southern Railway Company and now Meridian Speedway,

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LLC, assumed the rights of the original railroad company tenant on the Lease of the Old Mississippi River Bridge. The road portion of the bridge was opened for public traffic from its completion of construction in approximately 1930 until it was closed to such traffic in 1998. Warren County acquired ownership of the bridge in 1947 and lawfully appointed its operation to a 5-member bridge commission pursuant to Miss. Code Ann. Section 65-25-43, *et seq.* . . .

Along with your request, you have included a copy of the Bridge Lease between Warren County and the Meridian Speedway, LLC.

Please note that our responses to your questions examine only the Commission's authority under Mississippi law.¹ We offer no opinion as to the Commission's rights, and/or limitations thereof, under the Railroad Lease.

Questions Presented

1. Does Warren County and the Vicksburg Bridge Commission have the legal authority to reopen the bridge to the public and permit pedestrian/bicycle traffic on the portion not leased to the railroad?

Yes. Mississippi Code Section 65-25-49 authorizes the governing authority of a county, which has discharged bridge revenue bonds and which no longer assesses vehicular tolls, to create a 5-member commission to manage the affairs of the bridge. Your request states that the portion of the bridge not leased to the railroad has been operated toll free since 1966. That being the case, we presume that there are no outstanding revenue bonds and that the Commission is operating under the authority of Section 65-25-53².

Section 65-25-53 reads, in part:

The commissioners appointed by such governing body or municipality, or the commissioners whose terms are continued in force as above authorized, shall, subject to the approval of such governing body, have the following authority, powers, and rights: **Said commission shall manage and control the affairs of the bridge as a separate proprietary venture**, apart from other public roads and bridges within the county, and shall provide for the regular inspection, repair, maintenance, and upkeep of said bridge and its approaches, which expenses and all liabilities which may exist or later come into being or be claimed to exist shall be wholly borne

¹ We do not opine on the applicability or effect of Louisiana law, or federal law, on any part of the operation of the bridge.

² As opposed to Section 65-25-45 which addresses general powers of the Commission while revenue bonds are outstanding.

from the bridge properties themselves and the revenues received from the lease of such properties to private or public utilities. **In connection with operating the affairs of the said bridge and maintaining the same, said commission is vested with the following powers and authority, subject to the veto power or approval of the governing body owning the said bridge, viz: . . . (5) employ nationally recognized engineers and such other professional assistance as may be deemed necessary, and to pay reasonable compensation for such services;** (6) to have and exercise any other authority and right conferred by existing laws, state or federal, applicable to the operation of such bridge;

(Emphasis added).

We are of the opinion that Section 65-25-53 provides authority under state law for the Commission to reopen the bridge to the public and permit pedestrian/bicycle traffic on the portion not leased to the Railroad. Pedestrian and bicycle traffic on public thoroughfares are legal unless specifically prohibited by statute or regulation. As stated in C.J.S.:

Because the roads and highways of the state belong to the people, the right to make the ordinary, customary, and reasonable use thereof is in the public, there being no such thing as a rightful, private, permanent use of a public highway. It is a right common to all, not confined to citizens or residents but extending to strangers and foreigners. The right to use a public highway rests with the whole people of the state in question.

All persons have an equal right to use highways for purposes of travel by proper means and with due regard for the corresponding rights of others. Further, in the absence of a valid modifying statute or other regulation, pedestrians have the same right as drivers of vehicles.

The public easement in a highway includes all reasonable modes of travel and transportation not incompatible with the proper use of the highway by others.

The State may limit the travel uses of highways to certain forms of use; in other words, the State has the authority to regulate the time, mode, and circumstances under which parties may assert, enjoy, or exercise their rights of highway use. The public easement in a highway is said to include all reasonable modes of travel and transportation not incompatible with the proper use of the highway by others. For instance, a bicycle is a "vehicle" for purposes of laws governing travel on roadways, and a bicycle has a right to a reasonable use of the highway equally with other vehicles. However, ideally, in-line skaters should avoid traveling upon the highway.

40 C.J.S. Highways Section 395 - 396. (Emphasis added).

Although we do not opine on the effect of federal law, we note that the 1906 federal "Act to Regulate the Construction of Bridges over Navigable Waters," pursuant to which the bridge was authorized, specifically contemplated the bridge's use by "...wagons, carriages, vehicles, animals, foot passengers, or other passengers [etc.]." See attached at Section 4.

2. Does Warren County and the Commission have the legal authority to expend funds of the Commission to compensate attorneys, engineers, insurance consultants, actuaries, safety consultants and other consultants as deemed necessary by Warren County and the Commission, and to pay the fees and expenses of those enumerated above, to enable Warren County and the Commission to make informed determinations of whether or not it is reasonable and appropriate to open the eighteen foot wide roadway for pedestrian and bicycle traffic on a daily basis along with such other special events determined to be reasonable and appropriate?

Yes. Section 65-25-53 charges the Commission with managing and controlling the affairs of the bridge, and, in connection therewith, authorizes the Commission to "employ nationally recognized engineers and such other professional assistance as may be deemed necessary, and to pay reasonable compensation for such services" (Emphasis added).

Your third question concerns whether the Commission may bring an action to seek a declaratory judgment regarding the rights of the Commission to reopen the bridge to pedestrians and bicyclists and related legal issues. In our opinion, the authority to manage and control the affairs of the bridge includes the authority to make such court filings as the Commission deems proper. Of course, the substance and merits of any such filings are beyond the scope of an Official Attorney General's Opinion.

Your fourth and fifth questions concern the County's, the Commission's and the railroad tenant's rights to avail themselves of the liability limitations set forth in Miss. Code Ann. Section 89-2-1 *et seq.* This office does not opine on rights of private persons or entities and, therefore, may not address the question concerning the railroad. Section 89-2-1 states:

The purpose of this article is to encourage persons to make available to the public land and water areas for outdoor recreational purposes. A lessee or owner who opens a land or water area to the public for outdoor recreational purposes shall not, by opening such land or water for such use:

- (a) Be presumed to extend any assurance that such land or water area is safe for any purpose;
- (b) Incur any duty of care toward a person who goes on the land or water area; or

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(c) Become liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the land or water area.

The foregoing applies, whether the person going on the land or water area is an invitee, licensee, trespasser or otherwise.

Miss. Code Ann. Section 89-2-1 (emphasis added).

Whether the word "person" includes the State and its subdivisions depends on the language of each statute. *City of Jackson v. State*, 156 Miss. 306, 126 So. 2d (1930) . The purpose of Section 89-2-1 appears to be to encourage landowners to open land to public use whereas the Mississippi River Bridge is, by statute, already public property and designated for public use. As discussed above, such use includes travel by pedestrians and cyclists, and, in our opinion, includes recreational as well as any other type of travel, subject to the regulations of the County and the Commission. In our opinion, the word "person" as used in Section 89-2-1 does not include the Commission or the Board of Supervisors under the facts of your letter.

The Tort Claims Act (Miss. Code Ann. Section 11-46-1 *et seq.*), however, does provide the County and the Commission with limitations from tort liability: It also immunizes their officers and employees from tort liability for actions taken in the course and scope of their duty to manage, control and operate the affairs of the Bridge. See Miss. Code Ann. Section 11-46-7(2). Bridge Commissioners and Supervisors also enjoy "public official immunity" for discretionary acts, i.e., actions and decisions which require personal deliberation, decision and judgment. *Davis v. Little*, 362 So.2d 642 (Miss. 1978).

Please let us know if this office may be of further assistance.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Ricky G. Luke
Assistant Attorney General

Attachments

Liz
7/11/18
18-00210

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July 6, 2018

RECEIVED
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Attorney General Opinions
P.O. Box 220
Jackson, MS 39205-0220

ATTORNEY GENERAL'S OFFICE
OPINIONS DIVISION

Re: Old Mississippi River Bridge at Vicksburg, Mississippi

Dear Attorney General:

As attorney for the Vicksburg Bridge Commission of Warren County, joined by the attorney for the Warren County Board of Supervisors, we request an official opinion of the Attorney General for and on behalf of the Warren County Board of Supervisors and the Vicksburg Bridge Commission with regard to reopening the Old Mississippi River Bridge for pedestrian and/or bicycle traffic and whether the Bridge Commission would have legal authority to expend its funds pursuing the reopening of the bridge for such purposes. In connection with this request, we provide the following background information:

On or about May 3, 1926, the Sixty-Ninth Congress of the United States of America enacted a grant of consent for the construction, maintenance, and operation of a bridge and approaches thereto across the Mississippi River. A copy is enclosed. In Section 5 of the Act, it was contemplated the bridge would be "taken over and acquired by the States or political subdivisions thereof . . ." It would be operated as a toll bridge at rates to be charged so as to maintain, repair, and operate the bridge and its approaches, and "to pay an adequate return on the costs thereof . . ." to eventually be operated free of tolls except for "the amount necessary for the proper care, repair, maintenance, and operation of the bridge and its approaches." With the exception of payments from utilities, the portion of the bridge not leased to the railroad has been operated toll free since 1966.

On or about February 11, 1928, a Bridge Lease was entered into between the Railroad and the company authorized by the Act of Congress to construct the bridge. The Lease anticipated that the bridge company would construct a combined highway and railroad bridge. Expressly excluded from the lease to the railroad are "the portions of said bridge and its approaches which are designed and constructed for pedestrians and/or vehicles other than railroad engines, trains and cars . . ." Pursuant to the lease, the railroad would lease only "the railroad track floor with the railroad track and the appurtenances thereon of all that portion or section designed and constructed for use for railroad purposes . . ."

Warren County eventually assumed the rights of the bridge company while the Kansas City Southern Railway Company and now Meridian Speedway, LLC, assumed the rights of the original railroad company tenant on the lease of the Old Mississippi River Bridge. The road portion of the bridge was opened for public traffic from its completion of construction in approximately 1930 until it was closed to such traffic in 1998. Warren County acquired ownership of the bridge in 1947 and lawfully appointed its operation to a 5-member bridge commission pursuant to Miss. Code Ann. § 65-25-43, et. seq. See also General Session Laws of MS, 1948, Chapter 422, S.B. 477; and General Session Laws of MS, 1966, Chapter 315, H.B. 785. (copies enclosed).

Based on these applicable laws and §65-25-1, et. seq., we ask the following specific questions:

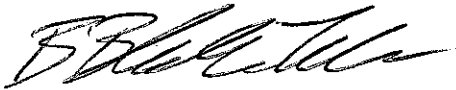
1. Does Warren County and the Vicksburg Bridge Commission have the legal authority to reopen the bridge to the public and permit pedestrians and/or bicycle traffic on the portion of the bridge not leased to the railroad?
2. If the answer to question number one is in the affirmative, does Warren County and the Vicksburg Bridge Commission have the legal authority to expend funds of the Vicksburg Bridge Commission to compensate attorneys, engineers, insurance consultants, actuarials, safety consultants and such other consultants as deemed necessary by Warren County and the Vicksburg Bridge Commission, and to pay the fees and expenses of those enumerated above, to enable Warren County and the Vicksburg Bridge Commission to make informed determinations of whether or not it is reasonable and appropriate to open the eighteen foot wide roadway for pedestrian and bicycle traffic on a daily basis along with such other special events determined to be reasonable and appropriate?
3. If the answer to question number two is in the affirmative, does Warren County and the Vicksburg Bridge Commission have the legal authority to bring an action expending funds of the Vicksburg Bridge Commission, including, but not limited to, fees of experts, legal fees and expenses related to such litigation, to seek a declaratory judgment regarding the right of the Vicksburg Bridge Commission to reopen to the public the Vicksburg Bridge to pedestrians and bicyclists and regarding any related legal issues including, but not limited to, the payment of costs of design and improvements to the bridge to promote safety and the expenses of operation and maintenance under the terms and provisions of the Bridge Lease dated February 11, 1928 and as said Lease has been amended. Copy of Lease and Amendments are enclosed.
4. If the answer to question number one is in the affirmative, would

MCA § 89-2-1, et. seq., provide liability protection to Warren County and the Vicksburg Bridge Commission, provided no fees are charged for entering or using the Bridge, provided no concessions are operated thereon and provided neither Warren County or the Vicksburg Bridge Commission engaged in the exceptions specified in § 89-2-27?

5. If the answer to question number four is in the affirmative, would MCA § 89-2-1, et. seq., provide liability protection to the railroad tenant of the Bridge under the definition of "landowner" specifically referencing § 89-2-21(b)?

Sincerely,

TELLER, HASSELL & HOPSON, LLP



B. BLAKE TELLER
Attorney for Warren County
Board of Supervisors

BAILESS & RECTOR, LLP



ROBERT R. BAILESS
Attorney for Vicksburg
Bridge Commission

be fined in a sum not more than one thousand dollars, or be imprisoned for a period not more than twelve months, or shall suffer both fine and imprisonment, in the discretion of the court.

Approved, March 22, 1906.

March 22, 1906.
[H. R. 15649.]

[Public, No. 63.]

CHAP. 1128.—An Act Extending the time for the construction of the dam across the Mississippi River authorized by the Act of Congress approved March twelfth, nineteen hundred and four.

Mississippi River,
Minn.
Time extended for
constructing dam by
Minnesota Power and
Trolley Company.
Vol. 33, p. 67, amend-
ed.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subject to all the other provisions contained in the Act of Congress entitled "An Act permitting the building of a dam across the Mississippi River between the counties of Wright and Sherburne, in the State of Minnesota," approved March twelfth, nineteen hundred and four, the time limitations for the construction and completion of the dam authorized by said Act are hereby extended until December thirty-first, nineteen hundred and eight.

Approved, March 22, 1906.

March 23, 1906.
[H. R. 4.]

[Public, No. 64.]

CHAP. 1129.—An Act To amend section thirty-six hundred and forty-six, Revised Statutes of the United States, as amended by Act of February sixteenth, eighteen hundred and eighty-five.

Lost, etc., checks.
R. S., sec. 3646, p. 717,
amended.
Post, p. 301.

Authority to issue
duplicates, extended.

Provision.
Checks of fifty dol-
lars, or less.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section thirty-six hundred and forty-six, Revised Statutes of the United States, as amended by Act of February sixteenth, eighteen hundred and eighty-five, be amended so as to read as follows:

"SEC. 3646. Whenever any original check or warrant is lost, stolen, or destroyed, the Secretary of the Treasury may authorize the officer issuing the same, after the expiration of six months and within three years from the date of such check or warrant, to issue a duplicate thereof upon the execution of such bond to indemnify the United States as the Secretary of the Treasury may prescribe: *Provided,* That when such original check or warrant does not exceed in amount the sum of fifty dollars the Secretary of the Treasury may authorize the issuance of a duplicate at any time after the expiration of thirty days and within three years from the date of such check or warrant."

Approved, March 23, 1906.

March 23, 1906.
[H. R. 6009.]

[Public, No. 65.]

Bridges.
General provisions
for constructing over
navigable waters.

Secretary of War to
approve plans, etc.

CHAP. 1130.—An Act To regulate the construction of bridges over navigable waters.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when, hereafter, authority is granted by Congress to any persons to construct and maintain a bridge across or over any of the navigable waters of the United States, such bridge shall not be built or commenced until the plans and specifications for its construction, together with such drawings of the proposed construction and such map of the proposed location as may be required for a full understanding of the subject, have been submitted to the Secretary of War and Chief of Engineers for their approval, nor until

by the Chief of Engineers and by the Secretary of War it shall not be lawful to deviate from such plans, either before or after completion of the structure, unless the modification of such plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War.

Modification of plans restricted.

SEC. 2. That any bridge built in accordance with the provisions of this Act shall be a lawful structure and shall be recognized and known as a post route, upon which no higher charge shall be made for the transmission over the same of the mails, the troops, and the munitions of war of the United States than the rate per mile paid for the transportation over any railroad, street railway, or public highway leading to said bridge; and the United States shall have the right to construct, maintain, and repair, without any charge therefor, telegraph and telephone lines across and upon said bridge and its approaches; and equal privileges in the use of said bridge and its approaches shall be granted to all telegraph and telephone companies.

Lawful structures and post routes.

Telegraph, etc., rights.

SEC. 3. That all railroad companies desiring the use of any railroad bridge built in accordance with the provisions of this Act shall be entitled to equal rights and privileges relative to the passage of railway trains or cars over the same and over the approaches thereto upon payment of a reasonable compensation for such use; and in case of any disagreement between the parties in regard to the terms of such use or the sums to be paid all matters at issue shall be determined by the Secretary of War upon hearing the allegations and proofs submitted to him.

Use by other companies.

Compensation.

SEC. 4. That no bridge erected or maintained under the provisions of this Act shall at any time unreasonably obstruct the free navigation of the waters over which it is constructed, and if any bridge erected in accordance with the provisions of this Act shall, in the opinion of the Secretary of War, at any time unreasonably obstruct such navigation, either on account of insufficient height, width of span, or otherwise, or if there be difficulty in passing the draw opening or the draw-span of such bridge by rafts, steamboats, or other water craft, it shall be the duty of the Secretary of War, after giving the parties interested reasonable opportunity to be heard, to notify the persons owning or controlling such bridge to so alter the same as to render navigation through or under it reasonably free, easy, and unobstructed, stating in such notice the changes required to be made, and prescribing in each case a reasonable time in which to make such changes, and if at the end of the time so specified the changes so required have not been made, the persons owning or controlling such bridge shall be deemed guilty of a violation of this Act; and all such alterations shall be made and all such obstructions shall be removed at the expense of the persons owning or operating said bridge. The persons owning or operating any such bridge shall maintain, at their own expense, such lights and other signals thereon as the Secretary of Commerce and Labor shall prescribe. If the bridge shall be constructed with a draw, then the draw shall be opened promptly by the persons owning or operating such bridge upon reasonable signal for the passage of boats and other water craft. If tolls shall be charged for the transit over any bridge constructed under the provisions of this Act, of engines, cars, street cars, wagons, carriages, vehicles, animals, foot passengers, or other passengers, such tolls shall be reasonable and just, and the Secretary of War may, at any time, and from time to time, prescribe the reasonable rates of toll for such transit over such bridge, and the rates so prescribed

Unobstructed navigation.

Changes.

Lights, etc.

Opening draw.

Tolls

Penalty.

of a violation of this Act, and any persons who shall be guilty of a violation of this Act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished in any court of competent jurisdiction by a fine not exceeding five thousand dollars, and every month such persons shall remain in default shall be deemed a new offense and subject such persons to additional penalties therefor; and in addition to the penalties above described the Secretary of War and the Chief of Engineers may, upon refusal of the persons owning or controlling any such bridge and accessory works to comply with any lawful order issued by the Secretary of War or Chief of Engineers in regard thereto, cause the removal of such bridge and accessory works at the expense of the persons owning or controlling such bridge, and suit for such expense may be brought in the name of the United States against such persons, and recovery had for such expense in any court of competent jurisdiction; and the removal of any structures erected or maintained in violation of the provisions of this Act or the order or direction of the Secretary of War or Chief of Engineers made in pursuance thereof may be enforced by injunction, mandamus, or other summary process, upon application to the circuit court in the district in which such structure may, in whole or in part, exist, and proper proceedings to this end may be instituted under the direction of the Attorney-General of the United States at the request of the Secretary of War; and in case of any litigation arising from any obstruction or alleged obstruction to navigation created by the construction of any bridge under this Act, the cause or question arising may be tried before the circuit court of the United States in any district which any portion of said obstruction or bridge touches.

Litigation.

Time of construction.

SEC. 6. That whenever Congress shall hereafter by law authorize the construction of any bridge over or across any of the navigable waters of the United States, and no time for the commencement and completion of such bridge is named in said Act, the authority thereby granted shall cease and be null and void unless the actual construction of the bridge authorized in such Act be commenced within one year and completed within three years from the date of the passage of such Act.

Meaning of "persons."

SEC. 7. That the word "persons" as used in this Act shall be construed to import both the singular and the plural, as the case demands, and shall include municipalities, quasi municipal corporations, corporations, companies, and associations.

Amendment, etc.

SEC. 8. That the right to alter, amend, or repeal this Act is hereby expressly reserved as to any and all bridges which may be built in accordance with the provisions of this Act, and the United States shall incur no liability for the alteration, amendment, or repeal thereof to the owner or owners or any other persons interested in any bridge which shall have been constructed in accordance with its provisions.

Approved, March 23, 1906.

March 23, 1906.
[H. R. 14515.]

[Public, No. 63.]

CHAP. 1131.—An Act Making it a misdemeanor in the District of Columbia to abandon or willfully neglect to provide for the support and maintenance by any person of his wife or of his or her minor children in destitute or necessitous circumstances.

District of Columbia.
Willful neglect to
support wife or minor
children in, a misde-
meanor

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person in the District of Columbia who shall, without just cause, desert or willfully neglect or refuse to provide for the support and maintenance of his