

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

August 17, 2018

Michael J. Wolf, Esq.
Attorney, Town of Pelahatchie
101 Highpoint Court, Suite C
Brandon, MS 39042

Re: Drug Forfeiture Funds

Dear Mr. Wolf:

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

Background and Issues Presented

Your request states, in part:

Pelahatchie is currently involved in a dispute regarding the proper use of drug fund money. To be clear, we are not seeking an opinion as to whether the prior use of drug fund money was proper or improper, nor do we seek an opinion regarding the underlying merits of that dispute. We are specifically interested in the opinion of the Attorney General regarding potentially paying the cost, including attorney fees, incurred in litigating, or negotiating, a determination as to whether the use of the funds was proper.

I will frame our request more specifically:

1. Is a letter to the Attorney General by an attorney on behalf of the board, and its police department, seeking an opinion regarding the use of drug fund money payable as a law enforcement purpose within the meaning of Section 41-29-181 and 41-29-185, of the Mississippi Code?

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2. May the Town retain an attorney, using drug forfeiture funds, in a manner consistent with Section 41-29-181 and 41-29-185, of the Mississippi Code, for the purpose of litigating or negotiating the meaning of "law enforcement" purposes?

3. Having read AG Opinion June 20, 1989, (Horne) 1989 WL 503247, which states, in part: "However, the governing authority of the municipality has the authority to prescribe and establish what items will fall within the definition of said law enforcement budget. Therefore, the ultimate decision rests within the governing authority of the municipality as to whether said item falls within the police department's budget and as such, is subject to being funded with the proceeds in issue", we are interested to know if this is still the position of the Attorney General that the Municipal governing authority is the ultimate authority as what falls within a police department budget as a law enforcement expense within the meaning of Section 41-29-181 and 41-29-185, of the Mississippi Code?

Response

OFFICIAL OPINION

Your first and second questions require this office to make a factual determination as to whether attorneys fees are payable as a "law enforcement purpose." Whether a particular expenditure is for a proper "law enforcement purpose" is a factual-based inquiry and determination that must be made in the first instance by the municipality. Miss. Code Ann. Section 7-5-25 authorizes the Attorney General to issue opinions on questions of law for future guidance of those officials entitled to receive them. Therefore, to the extent your request involves a determination of fact, we must decline to respond by way of an official opinion. Since your letter contemplates future litigation, you may want to seek resolution of these issues from the court.

In response to your third question, we do not find any caselaw, statutes or opinions that modify or conflict with our conclusions in MS AG Op., Horne (June 20, 1989).

If we can be of further assistance, do not hesitate to call us.

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By:



Emiko Hemleben
Special Assistant Attorney General