

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

September 21, 2018

Gary M. Yarborough, Jr., Esquire
Hancock County Board of Supervisors
845-B Highway 90
Bay St. Louis, Mississippi 39520

Re: Separation of Powers

Dear Mr. Yarborough:

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

Questions Presented

1. May a member of the Board of Supervisors serve on the Hancock County Utility Authority?
2. If a member of the Board of Supervisors cannot serve on the Hancock County Utility Authority, what impact, if any, does this have on the validity of the statutes creating the Hancock County Utility Authority? Is that statute Constitutional as written?

Response

1. Yes. Pursuant to Miss. Code Ann. Section 49-17-737, the President of the Hancock County Board of Supervisors may serve on the board of directors of the Hancock County Utility Authority.
2. Due to our response to your first question, your second question is deemed moot.

Legal Research and Analysis

We preface our response by stating that pursuant to Section 7-5-25, opinions of the

Attorney General are issued on questions of law for the future guidance of those officials entitled to receive them. An Attorney General's opinion can neither validate nor invalidate past action of an officer or agency.

In your letter, you explain that the Hancock County Utility Authority was created pursuant to Miss. Code Ann. Section 49-17-735 and established a board of directors pursuant to Miss. Code Ann. Section 49-17-737, which provides:

- (1) After consolidation, all powers of the Hancock County Utility Authority shall be exercised by a board consisting of the following:
 - (a) One (1) director who is the Mayor of Bay St. Louis, or his or her designee, for an initial term of two (2) years;
 - (b) One (1) director who is the Mayor of Waveland, or his or her designee, for an initial term of three (3) years;
 - (c) One (1) director who is the President of the Board of Supervisors of Hancock County, or his or her designee, for an initial term of four (4) years;**
 - (d) One (1) director who is the Chairman of the Kiln Utility and Fire District;
 - (e) One (1) director who is the Chairman of the Hancock County Water and Sewer District; and
 - (f) One (1) director who is the Chairman of the Pearlinton Water and Sewer District.

After expiration of the initial terms, the directors in paragraphs (a), (b) and (c) shall serve a term of four (4) years.

(Emphasis added).

The separation of powers doctrine found at Article 1, Sections 1 and 2 of the Mississippi Constitution of 1890, prohibits an individual of one branch of government from performing a function "at the core" of power belonging to either of the other two branches where the acts are "ongoing and are in the upper level of governmental affairs and have substantial policymaking character." The Board of Supervisors is in the judicial branch of government. The directors of the Hancock County Utility Authority serve in the executive branch. MS AG Op., Haas (April 20, 2018). However, Section 49-17-737(1)(c) requires one director to be the President of the Board of Supervisors or his designee, and the statute, the constitutionality of which being a matter for judicial determination, is presumed valid until set aside by a court of competent jurisdiction. See MS AG Op., Goldman (February 2, 1987)(citing *Miss. Power Co. v. Goudy*, 459 So. 2d 257 (Miss. 1984); *Alexander v. State*, 441 So. 2d 1329 (Miss. 1983)). Accordingly, Section 49-17-737(1)(c) shall be the guiding authority in your factual scenario, and the President of the Board of Supervisors¹ may serve on the board of directors and is not prohibited by the separation of powers doctrine.

¹ The issue of separation of powers could be avoided by the supervisor appointing a designee to serve as a director.

Gary M. Yarborough, Jr., Esquire
September 21, 2018
Page 3

Due to our response that the President of the Board of Supervisors may serve on the board of directors of the Hancock County Utility Authority, your second question is deemed moot.

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