

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

September 24, 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.

Facts

In your letter, you explain that a regional solid waste authority has been established for Hancock County pursuant to Miss. Code Ann. Section 17-17-307. The Hancock County Regional Solid Waste Authority is located in Hancock County and has a membership of Hancock County and the cities of Bay Saint Louis, Waveland and Diamondhead.

Question Presented

1. May a member of the Board of Supervisors serve on the Hancock County Regional Solid Waste Authority?
2. May two members of the Board of Supervisors serve on the Hancock County Regional Solid Waste Authority?

Response

1. Yes. Pursuant to Section 17-17-313(1)(a)(v), a member of the Hancock County Board of Supervisors may serve on the Board of Commissioners of the Hancock County Regional Solid Waste Authority and is not prohibited by the separation of powers doctrine.
2. Yes. Section 17-17-313(1)(a)(v) permits two members of the Board of Supervisors to

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serve on the Board of Commissioners of the Hancock County Solid Waste Authority if, at least, one other member of the Hancock County Regional Solid Waste Authority has two commissioners on the board.

Legal Research and Analysis

Miss. Code Ann. Section 17-17-313(1)(a)(v) provides:

Upon selection of a site for any municipal solid waste management facility owned and/or operated by the authority, the situs county shall have a minimum representation at least as great as any single member. Such representation shall include a minimum of one (1) commissioner from the supervisor district in which the facility is located. The supervisor of the district or his designee shall serve in this position.

In your letter, you explain that the landfill is located in Hancock County. According to Section 17-17-313(1)(a)(v), a Supervisor or his designee from the host county **“shall have at least as great as one member”** serving as a commissioner. Additionally, such representation **“shall include a minimum of one commissioner from the supervisor district in which the facility is located.”**

OFFICIAL OPINION

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. A regional solid waste management authority is in the executive branch. However, as set forth above, Section 17-17-313(1)(a)(v) requires a minimum of one supervisor or his designee to serve on the board of commissioners for the regional solid waste authority, 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 17-17-313(1)(a)(v) shall be the guiding authority in your factual scenario, and a member of the Board of Supervisors may serve on the board of commissioners and is not prohibited by the separation of powers doctrine.

In response to your second question, Section 17-17-313(1)(a)(v) states that the board of supervisors shall have **at least as great as any one member** represented on the board of commissioners. It also provides that the board of commissioners shall have a **minimum of one commissioner** from the supervisor district in which the facility is located.” This language clearly shows the intent of the Legislature to authorize at least two supervisors or more to serve on the board of commissioners if the other members of the regional solid waste authority also have two commissioners serving on the board of commissioners. Thus, it is the opinion of this office that at least two members of the

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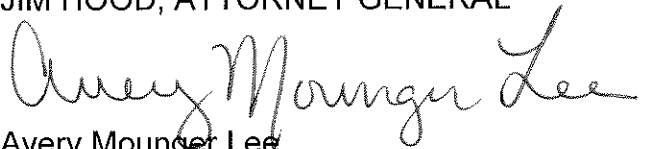
Board of Supervisors¹ may serve on the Board of Commissioners of the Hancock County Solid Waste Authority if any other member of the Hancock County Regional Solid Waste Authority has two commissioners on the board. Additionally, at least one of the commissioners shall be from the supervisor district in which the facility is located.

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

¹ The issue of separation of powers could be avoided in this matter by the supervisor appointing a designee to serve as a commissioner.