

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

August 31, 2018

Honorable Herb Frierson
Commissioner of Revenue
Post Office Box 22828
Jackson, MS 39225

Re: Local and Private Bill, SB 2926 of the 2015 Regular Session

Dear Commissioner Frierson:

Attorney General Jim Hood has received your request for an opinion and has assigned it to me for research and reply. Your letter asks:

1. Was the tax levy authorized in Senate Bill 2926 in the 2015 Regular Session repealed as of July 1, 2018?
2. If the tax levy authorized in Senate Bill 2926 in the 2015 Regular Session was not repealed as of July 1, 2018, what date, if any, is the tax levy repealed?

In response, we are of the opinion that the City's authority to continue to levy the special tax to fund the debt service for the bonds issued pursuant to Section 5 of the bill was not repealed, and that the City may continue to levy and collect the special tax implemented by the election held pursuant to SB 2926, Section 3. See our opinion to Hairston dated August 17, 2018, which is attached for your convenience. However, the City's authority to levy any additional taxes under the bill beyond that necessary to fund the bonded project was repealed effective July 1, 2018.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:

Mike Lanford
Deputy Attorney General

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

August 17, 2018

Tray Hairston, Esq.
Butler Snow LLP
P.O. Box 6010
Ridgeland, MS 39158-6010

Re: City of Vicksburg - Senate Bill 2926 (2015 Regular Session)

Dear Mr. Hairston:

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

Background

Your request states, in part:

Pursuant to Mississippi Senate Bill 2926, 2015 Regular Session, a 2% tax was imposed on the gross proceeds of restaurants and room rentals of hotels and motels in the City of Vicksburg. This levy became effective October 1, 2017, after 60% of the voting electorate of the City voted in favor of the tax on June 6, 2017. The use of the tax was to build a tourism and recreational venue. Senate Bill 2926 outlines the City's authority to levy and utilize these tax proceeds. A copy of SB 2926 is attached.

Section 2 authorizes the City to levy a tax to pay the principal of and interest on bonds issued for the indebtedness incurred under Section 5 of the law. Section 3 outlines the means by which the City may levy the tax, namely through an election. Section 5 authorizes the City to issue general obligation bonds or incur other indebtedness in an aggregate principal amount that is not to exceed the amount for which debt service is capable of being funded by the proceeds of the special sales tax to pay for various costs related to recreation and tourism venues. Section 7 of this Local and Private Act issues a partial repealer. Specifically, Section 7 provides that "Sections 1 through 4 . . . shall be repealed from and after July 1, 2018.

Questions Presented

Your questions concern whether the City may continue to collect the special tax authorized and implemented by election pursuant to SB 2926 (2015 Regular Session) in light of the partial repealer language in Section 7 of the bill.

Applicable Law and Analysis

Senate Bill 2926, Section 2 reads, in part:

(1) For the purposes of providing funds to . . . , and/or pay the principal of and interest on bonds issued on the indebtedness incurred under Section 5 of this act, the governing authorities are authorized in their discretion, to levy and collect from the following persons a tax, which shall be in addition to all of the taxes and assessments imposed. . . .

Section 3 of the bill reads, in part:

Before any tax authorized under this act may be imposed, the governing authorities shall adopt a resolution declaring their intention to levy the tax, setting forth the amount of the tax to be imposed, the date upon which the tax shall become effective and calling for an election to be held on the question. . . . When the results of the election shall have been canvassed and certified, the city may levy the tax if sixty percent (60%) of the qualified electors who vote in the election vote in favor of the tax.

(Emphasis added).

Section 5 of the bill authorizes the governing authorities of the City to issue general obligation bonds or other indebtedness "that is not in excess of an amount for which debt service is capable of being funded by the proceeds of the special sales tax levied under this act." Section 5 further states that the bonds are to be issued in accordance with Sections 21-33-301 through 21-33-329 which authorize the governing authority to issue bonds for a term not to exceed 20 years. Section 7 of the bill reads "Sections 1 through 4 of this act shall be repealed from and after July 1, 2018."

The rules of statutory construction are invoked in the case of a statute which is ambiguous, has conflicting provisions within it, or conflicts with another statute. *Evans v. Boyle Flying Service, Inc.*, 680 So.2d 821 (Miss. 1996). The ambiguity in this instance relates to the repealer in Section 7 and its effect on the City's authority to continue to levy a tax after July 1, 2018 in order to fund bonded indebtedness resulting from bonds issued under Section 5. The repealer generically states that Sections 1 through 4 shall be repealed from and after July 1, 2018. Section 1 defines terms in the bill, Section 2 describes the manner in which the tax shall be levied, Section 3 prescribes the election process by which the tax may be implemented, and Section 4

describes accounting and audit requirements pertaining to the handling of funds "prescribed in this act." Section 5 authorizing the bond issuance and Section 6 authorizing the lease of city-owned property for the construction and operation of a sports complex are not referenced by the repealer.

With regard to statutory interpretation, the Mississippi Supreme Court has stated the following:

In construing statutes, the chief desire of the courts is to reach the real intention of the Legislature, and knowing this to adopt that interpretation which will meet the real meaning, though such interpretation may be beyond or within, wider or narrower, than the mere letter of the statute. Unthought of results must be avoided if possible, especially if injustice follows, and unwise purpose will not be imputed to the Legislature when a reasonable construction is possible.

McCullen v. State ex rel. Alexander for Use of Hinds County, 63 So.2d 856 (Miss. 1953).

[A] statute must receive such a construction that it will, if possible, make all of its parts harmonize with each other and render them consistent with its purpose and scope.

The entire statute must be so read that the whole may have a harmonious and consistent operation. The object is to get at the design and scope of the statute. Only that construction will be justified which evidently carries out the purpose of the law. The entire legislation on the subject must be considered, and when the entire legislation on the subject consists of one statute, any conflicting provisions in the statute must, if reasonably possible, be reconciled so as to make the statute a consistent workable scheme.

Coker v. Wilkinson, 141 Miss. 604, 106 So. 886 (Miss. 1926).

Reading the statute as a whole, SB 2926 authorized a number of actions including the issuance of bonds for the purpose of constructing recreational venues and providing a funding source for repayment thereof. Bonds were issued for a term of 20 years, and to conclude that the authority to collect the special tax implemented to fund the indebtedness would be enacted in 2015 and repealed in 2018 is unreasonable in light of a 20-year debt service period.

Conclusion

We are of the opinion that the City may continue to collect the special tax implemented by the election process set forth in SB 2926.

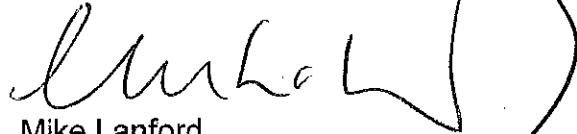
Tray Hairston, Esq.
August 17, 2018
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Please let us know if this office can be of further assistance.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Mike Lanford
Deputy Attorney General

OFFICIAL OPINION