

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

August 31, 2018

Joyce I. Chiles, Esquire
Leflore County Board of Supervisors
Post Office Box 250
Greenwood, Mississippi 38935-0250

Re: Improvements to Private Property Due to Local Natural Disaster

Dear Mrs. Chiles:

Attorney General Jim Hood has received your opinion request and has assigned it to me for research and response. In your letter, you explain that portions of Leflore County experienced a windstorm with winds up to 83 miles per hour causing power outages, uprooted and fallen trees on county roads, private homes, and blocking ingresses and egresses. You also state that there were snake and rodent infestations on private property. Homes suffered broken windows and caved in roofs from fallen trees and branches. Additionally, trash and other debris were heavily strewn on both county and private property. Your letter states that the storm occurred on July 21, 2018 and that, on July 23, 2018 the Leflore County Board of Supervisors (the "Board") declared a "local disaster emergency for portions of Leflore County." Notwithstanding the disaster declaration, no work has been performed as authorized by the July 23, 2018 declaration. By letter dated August 9, 2018, the Board sought an official opinion from this office which we received via mail on August 13, 2018.

Question Presented

Upon a finding of facts, may Leflore County declare a local disaster emergency and authorize county equipment and employees to venture onto private property, with the permission of the owner, to assist in the removal of debris, trash, fallen trees or any other impediment that may cause a health or safety risk?

Legal Research and Response

Official opinions of this office may be requested only with regard to prospective acts of the requesting entity, and such opinions can neither validate nor invalidate prior acts.

MS AG Op., Teeuwissen (July 7, 2014). Here, the declaration under Section 33-15-19 and/or related statutes was made on July 23, 2018. Because it is a past action, we cannot opine as to the validity of the declaration. Additionally, the declaration is dependent on factual determinations that must be made by the Board in the first instance. Our office cannot ratify or approve factual determinations by official opinion.

As your request letter notes, Section 33-15-49 authorizes a county, with respect to conditions created by natural disaster, to:

- (a) Use county or municipally owned equipment and such public employees as necessary to venture onto private property to aid in removing debris and to prevent further damage to such property at the request of the property owners;
- (b) Use county or municipally owned equipment and such public employees as necessary to venture onto private property to remove debris and to perform any other necessary and needed services to prevent the spread of disease or any other health hazard to the community at large.

The authority to use public equipment and resources is triggered when a "natural disaster occurs within the state or within any portion of it and a proclamation is issued by the governing authorities of the county . . . declaring such affected areas to be disaster areas . . ." Miss. Code Ann. Section 33-15-49 (as amended).

After a natural disaster and in order to use public resources on private property, a county must properly declare the county or portions of the county as a disaster area. Section 33-15-15(m) defines "Disaster" to include "any natural emergency as defined in this section that causes **damage of sufficient severity and magnitude** to result in a declaration of an emergency by a county . . ." (Emphasis added). Section 33-15-5(m), likewise, requires that a disaster be categorized on the following scale:

- (i) "Catastrophic disaster" means a disaster that will require massive state and federal assistance, including immediate military involvement.
- (ii) "Major disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance.
- (iii) "Minor disaster" means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance.

The definition of disaster clearly contemplates some natural calamity of sufficient magnitude and clarity as to justify a declaration.

Additionally, a disaster is further defined as encompassing an emergency which is defined in Section 33-15-5(h) "as any occurrence, or threat thereof, whether natural,

technological, or man-made, which results **in substantial injury or harm to the population or substantial damage to or loss of property.**" The definition of emergency like that of disaster does not appear to cover all natural acts or acts of God but, instead, envisions some level of substantial injury or substantial damage. Finally, as you note in your letter, the Board declared a "local disaster emergency." Section 33-15-5 defines "Local emergency" to mean a "duly proclaimed **existence of conditions of disaster or extreme peril to the safety of persons and property** within the territorial limits of a county . . . **which conditions are or are likely to be beyond the control of the services**, personnel, equipment and facilities **of the political subdivision and require the combined forces** of other subdivisions or of the state to combat." Miss. Code Ann. Section 33-15-5(g) (as amended)(emphasis added).

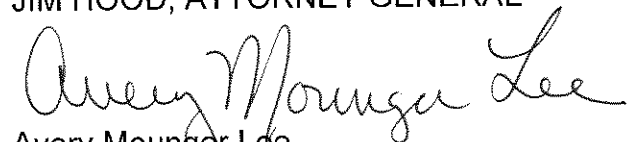
This office cannot make the factual determinations that would either justify or call into question a determination that portions of the county qualified as a disaster area. Moreover, the Board of Supervisors is tasked with determining whether the facts are indicative of a "disaster or extreme peril to safety and persons of property." Obviously, Section 33-15-49 is not intended to cover every natural incident which might require clean up on private property. Instead, the statute requires something more and uses phrases such as disaster, extreme peril and substantial damage. These determinations must be made by the Board in the first instance subject to review by the Office of State Auditor¹ and, ultimately, a court of competent jurisdiction. However, where proper and required factual determinations are made, Section 33-15-5 authorizes a county to use public equipment to venture onto private property to remove debris and to perform other necessary and needed services to prevent the spread of disease or any other health hazard to the community at large.

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

¹ Webster's definition of emergency encompasses a "set of circumstance" that "calls for immediate action." MERRIAM WEBSTER'S COLLEGIATE DICTIONARY, 10th Ed., p. 377. In this instance, the County did not take immediate action. Given that the facts obviously allowed time for seeking this opinion, we suggest that the County contact personnel at the OSA given that it would be the Agency responsible for making the decision of whether to allow the expenses or seek reimbursement on behalf of the State.