

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

August 31, 2018

Lester Walker
Washington County Constable
114 Tyler Street
Leland, MS 38756

Re: Dual Employment

Dear Mr. Walker:

Attorney General Jim Hood has received your opinion request and has assigned it to me for research and reply.

Issues Presented

In your request, you ask the following two questions:

1. Would I be in some type of violation under the separation of power law if I am employed by the Greenville Public School System as a vocational instructor teaching law and public safety since I am an elected Constable?
2. Would there be a conflict of interest or other violation because both employment deals with Mississippi Public Employee Retirement System ("PERS")?¹

Response

Response 1: A public school teacher does not exercise core powers. Both teacher and constable are in the executive branch of government. Thus, working as both a constable and a teacher would not violate the doctrine of separation of powers.

¹ Whether there is any "other violation" with a particular employment situation is too broad of a question for our office to answer by official opinion. Our response to your Question 2 is, therefore, limited to whether a person can be employed by two public entities that participate in PERS.

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Response 2: There is no statutory prohibition against a person being employed by two public entities that participate in PERS.

Applicable Law

The Supreme Court has recognized that “not every act is the exercise of a power” as contemplated by the doctrine of separation of powers. *Dye v. State ex rel. Hale* 507 So.2d 332 (Miss. 1987) citing *Alexander v. State ex rel. Allain* 441 So.2d 1329 (Miss. 1983). A violation of the doctrine of separation of powers only occurs if an officer of one branch of government performs “a function ‘at the core’ of the power properly belonging to either of the other two departments.” *Id.* at 343. A teacher does not exercise core powers within a school district; he is not in the upper level authority nor does he have policy-making authority for the school district. Furthermore, both teacher and constable are in the executive branch of government.

Miss. Code Ann. Section 25-11-103(k), which defines “earned compensation” states, in part:

In addition, any member in a covered position, as defined by Public Employees' Retirement System laws and regulations, who is also employed by another covered agency or political subdivision shall have the earnings of that additional employment reported to the Public Employees' Retirement System regardless of whether the additional employment is sufficient in itself to be a covered position.

On its face, the above-cited statute allows a person to be employed by two public entities that participate in PERS. However, we suggest that you contact PERS directly to determine whether the specific employment situation you are contemplating complies with its regulations. With respect to your question regarding a conflict of interest, we refer you to the Mississippi Ethics Commission to determine whether the Ethics in Government Laws are implicated.

If we may be of further service, please let us know.

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By:



Beebe Garrard
Special Assistant Attorney General