

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

September 21, 2018

William C. Hammack, Esq.
Attorney, City of Meridian
Post Office Drawer 5514
Meridian, Mississippi 39302-5514

Re: Payroll - Approval on Claims Docket

Dear Mr. Hammack:

Attorney General Jim Hood received your letter of request and assigned it to me for research and response.

Issue Presented

You inquire as to whether a municipality may issue payroll checks to employees prior to having approved such payment on the claims docket. Specifically, you ask the following:

This firm serves as municipal attorney for The City of Meridian, Mississippi (the "City"), which operates under a Mayor-Council form of government. This request for an official opinion is being submitted at the request of the President of the City Council.

Factual Background:

Historically, hours worked by City employees who are paid bi-weekly are turned in on every other Tuesday. The hours are processed in Human Resources on Wednesday and wages are paid by direct deposit on Friday. The City has been utilizing this process for at least ten (10) years.

The City Council meets on the first and third Tuesday of each month. The Claims Docket, which includes employee compensation, is approved during each Council Meeting.

The procedure set out above and the City Council Meeting results in

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employees being paid before the Claims Docket authorizing the payment is actually approved. For example, the payroll approved at the Council Regular Meeting held on September 4, 2018, was both bi-weekly and month end payrolls which had been direct deposited on Friday, August 31, 2018. The next bi-weekly payroll is due Tuesday, September 11, 2018, and will be paid on September 14, 2018. The City Council will not meet again until Tuesday, September 18, 2018, at which meeting the Claims Docket will include the compensation paid to employees on September 14, 2018.

Question(s) Presented:

The questions posed by the Council President are as follows:

1. Is the City authorized, by law, to continue the practice of paying payroll before the Claims Docket, which includes the compensation already paid, is voted on by the Council?

- and,
2. If at the September 18, 2018, Council Meeting, the Council does not approve the Claims Docket, should the Council request the employees who have been paid to return their compensation?

Your prompt response is respectfully requested and I will be available to respond to any questions you might have or to provide additional information needed.

Response

Pursuant to the authority granted to this office in Mississippi Code Annotated Section 7-5-25, official opinions of the Attorney General are limited to questions of law for future guidance of those officials entitled to receive them. Furthermore, opinions of this office may not be issued which require our office to address issues of liability or to validate or invalidate past action. Therefore, to the extent that your inquiries require this office to validate past action, make legal assessments and/or make determinations about issues of liability, we are unable to respond by way of official opinion.

All municipal expenditures must be for payment of an approved claim on the claims docket or for payment of a specific appropriation made by an order of the governing authorities, pursuant to Mississippi Code Annotated Section 21-39-17. Pursuant to Section 21-39-7, however, the municipality is not required to obtain approval each time its salaries or other compensation are to be paid, assuming that it has previously fixed the amounts of said salaries or other compensation in the approval of its payroll and has entered the total payroll on the claims docket.

Applicable Law and Discussion

With respect to municipal expenditures, it is clear that all expenditures of municipal funds must be for payment of an approved claim on the claims docket or for payment of a specific appropriation made by an order of the governing authorities, pursuant to Mississippi Code Annotated Section 21-39-17. MS AG Op., Belk (July 2, 1999). In a prior opinion, we opined that:

[t]he authority of a municipal clerk to issue warrants or checks stems from the authority vested in the clerk by Section 21-39-17 and such issuance is only authorized for claims that have been allowed and approved by the governing authorities. MS AG Op., Crider (August 20, 2010). See also MS AG Op., Houston (December 17, 2010) (all warrants and checks issued by a municipality must be allowed and approved by the municipal governing authorities); MS AG Op., White (March 6, 1991)(no authority for a municipal clerk to sign city checks when municipality has not approved and adopted a budget). Once the board of aldermen has properly approved a claim, a check may be issued and signed by the mayor or a majority of the board of aldermen, pursuant to Section 21-39-13. MS AG Op., LeSure (December 10, 2010). Should a check be issued without the proper approval of the board of aldermen, the clerk and/or mayor may be subject to the penalties outlined in Sections 21-39-15 and 21-39-17. MS AG Op., Tucker (August 19, 2011). There is no authority which would permit the board of aldermen to delegate its authority to approve claims of the municipality to the mayor.

MS AG Op., Mims (August 15, 2014). The majority of municipal expenditures are processed and approved by way of a claims docket. Section 21-39-7 of the Mississippi Code requires certain municipalities to keep a formal claims docket and provides the following:

In all municipalities having a population of more than two thousand (2,000), according to the latest federal census, and in other municipalities where the governing authorities should so elect, it shall be the duty of the clerk of the municipality to keep as a record in his office a record to be styled "Docket of Claims," in which he shall enter all demands, claims and accounts against the municipality presented to him during the month. Said docket shall provide space for the name of the claimant, the number of the claim, the amount of the claim, and on what account. All demands, claims and accounts allowed against the municipality shall be preserved by the clerk as a permanent record, and shall be numbered in such a manner as to relate to the warrants to be issued therefor, and the said warrant issued in payment of such claim shall carry on its face a reference to the number of the claim for which the said warrant is issued in payment. No order for the payment or expenditures of any funds of such municipality in payment of

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any indebtedness thereof shall be made in municipalities having a claim docket unless such claim is filed as herein provided. **However, this provision shall not be applicable to the salaries or other compensation of officers or employees of such municipality where the amount of such salary or other compensation shall have been previously fixed by the governing authorities of the municipality in its approval of the payroll or payrolls** on which the same appears, and in case of such allowance, it will be sufficient to enter on the claims docket the total of such payroll, followed by reference to the said payroll upon which such allowance may be found.

(Emphasis ours). You will note that Section 21-39-7 specifically exempts salaries and other compensation from approval on the claims docket each time it is to be paid when the amount of the payroll expense has been previously fixed by the governing authorities in its approval of the total payroll. See MS AG Op., Willis (March 8, 2002); MS AG Op., Davis (July 12, 1995); MS AG Op., Watts (January 17, 1989). Having said that, we have previously opined that "there must be approval of payment to employees which have a variable salary" and approval of such payment cannot be made "prior to the work actually being done by the employees." MS AG Op., Watts (January 17, 1989).

If our office may be of further assistance, please advise.

Sincerely,

JIM HOOD ATTORNEY GENERAL

By:



Leigh Triche Janous
Special Assistant Attorney General