

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

October 5, 2018

Andrew N. Alexander, III
City Attorney
City of Greenville
Post Office Box 918
Greenville, MS 38702-0918

Re: Applicability of City's Debt Limitation pursuant to Miss. Code Ann. Section 21-33-303

Dear Mr. Alexander:

OFFICIAL OPINION

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

Background

Your request states, in part:

In the Spring of 2013, the City of Greenville was notified by the Atlanta Regional Office of the Environmental Protection Agency (EPA) that it believed that the City's sanitary sewer collection system was in violation of Sections 301 and 402 of the Clean Water Act (CWA).

The parties negotiated in good faith for several years and, ultimately, on April 6, 2016, a Partial Consent Decree was entered in the case styled *United States of America and the State of Mississippi vs. The City of Greenville, Mississippi*, Cause No.: 4:16-cv-00018, in the United States District Court for the Northern District of Mississippi, Greenville Division. The City has not admitted any liability in this matter. This Decree does not address all of the issues raised by the EPA, but was entered into in an attempt to address a majority of those issues. I should stress that this Opinion Request does not involve any of the issues addressed by the Partial Consent Decree; instead, it addresses only how the City may address internal financial issues that have arisen as the City has proceeded in satisfying its obligations under the Decree.

In brief, as the sanitary sewer evaluations required by the Decree have proceeded, they have indicated that the remedial measure required by the Decree will be substantially more expensive than initially expected. That fact, coupled with several unforeseen sewer problems – not addressed by the Decree, but urgently needed – have arisen. It now appears that these increased repair costs, when added to the previously anticipated expenses, will inevitably reach a level that will far exceed the City's "debt ceiling" under Miss. Code Ann. Section 21-33-303, "*Limitations of Indebtedness*." That point will probably be recorded in the fourth quarter of F/Y 2019. Through this Opinion Request we seek guidance for the Mayor and City Council regarding Mississippi law in this area, as well as the potential liability of the city officials who must act in response to this situation. We also seek a definitive answer concerning whether, as a last resort, a municipality such as the City can seek relief in Federal Bankruptcy Court.

Questions Presented

Question 1: May the City incur a higher percentage of total debt than twenty percent (20%) of the assessed value of all taxable property within the City according to the last completed assessment for taxation?

In response, Miss. Code Ann. Section 21-33-303 states, in part:

No municipality shall hereafter issue bonds secured by a pledge of its full faith and credit for the purposes authorized by law in an amount which, when added to the then outstanding bonded indebtedness of such municipality, shall exceed either (a) fifteen percent (15%) of the assessed value of the taxable property within such municipality, according to the last completed assessment for taxation, or (b) ten percent (10%) of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984, whichever is greater. In computing such indebtedness, there may be deducted all bonds or other evidences of indebtedness, heretofore or hereafter issued, for school, water, sewerage systems, gas, and light and power purposes and for the construction of special improvements primarily chargeable to the property benefited, or for the purpose of paying the municipality's proportion of any betterment program, a portion of which is primarily chargeable to the property benefited. **However, in no case shall any municipality contract any indebtedness which, when added to all of the outstanding general obligation indebtedness, both bonded and floating, shall exceed either (a) twenty percent (20%) of the assessed value of all taxable property within such municipality according to the last completed assessment for taxation or (b) fifteen percent (15%) of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984, whichever is greater.**

In accordance with the limits set forth in the statute, we are of the opinion that the City may not incur a higher percentage of total debt than twenty percent (20%) of the assessed value of all taxable property within the City.

Question 2: What legal liability/responsibility, if any, would face a Mayor or Council member who voted in the affirmative on a motion to borrow an amount which, when added to all of the City's outstanding general obligation indebtedness, both bonded and floating, exceeds twenty percent (20%) of the value of the assessed taxable property in the City?

In response, this office does not opine on matters of civil or criminal liability. For informational purposes only, we note that Miss. Code Ann. Section 25-1-45 reads:

If any county, county district, or municipal officer who has executed bond for the faithful performance of duty shall knowingly or wilfully fail, neglect, or refuse to perform any duty required of him by law or shall violate his official obligations in any respect, the president or, in the absence or disability or default of the president, the vice-president of the board of supervisors in case of a county or county district officer, and the mayor in case of a municipal officer, or any person interested in either case shall cause suit to be brought on the bond of such officer for the recovery of the damages that may have been sustained thereby.

Additionally, Miss. Code Ann. Section 97-11-37 provides:

If any person, being sheriff, clerk of any court, constable, assessor, or collector of taxes, or holding any county office whatever, or mayor, marshal, or constable, or any other officer of any city, town, or village, shall knowingly or wilfully fail, neglect, or refuse to perform any of the duties required of him by law, or shall fail or refuse to keep any record required to be kept by law, or shall secrete the same, or shall violate his duty in any respect, he shall, on conviction thereof, be fined not exceeding One Thousand Dollars (\$1,000.00), or be imprisoned in the county jail not exceeding six (6) months, or both.

Question 3: In order for a municipality to be eligible to file for Chapter 9 bankruptcy protection, it must be specifically authorized to be a debtor by state law or by a governmental officer or organization empowered by state law to authorize the municipality to be a debtor. 11 USC Section 109(c)(2). We have been unable to identify any Mississippi law to that effect. Under Mississippi law, is a municipality specifically authorized to be a "debtor" in a Chapter 9 bankruptcy filing?

In response, the City of Greenville is not authorized to be a Chapter 9 debtor under current state law. In researching your question, we identified local and private

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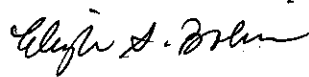
legislation which authorized a community hospital to file for Chapter 9 relief. (S.B. 3186, Chap. 901, Local & Private Laws 2008 Regular Session). It appears that the City would need to seek similar authorization from the legislature in order to proceed with a Chapter 9 filing.

Please let us know if this office can be of further assistance.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Elizabeth S. Bolin
Special Assistant Attorney General

OFFICIAL OPINION