

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

October 26, 2018

Joe Spraggins, Executive Director
Mississippi Department of Marine Resources
1141 Bayview Avenue
Biloxi, MS 39530-1613

Re: Mississippi Budget Transparency and Simplification Act of 2016

Dear Mr. Spraggins:

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

Background

Your request states, in part:

I am writing to request your opinion on whether the Mississippi Department of Marine Resources (MDMR) can pay the Mississippi Forestry Commission (MFC) for services rendered under contracts authorized by Section 57-15-5 (1) and (6) of the Mississippi Code, for the management of the Coastal Preserve System, or would such payment be prohibited by Section 27-104-203 (Mississippi Budget Transparency and Simplification Act of 2016)?

By way of background, Section 57-15-5(1) provides that the Mississippi Commission on Marine Resources (formerly known as the Mississippi Marine Resources Council) shall have the responsibility for the general management of the state's wetlands and is authorized to enter into contracts with any state or federal agency as may be necessary to carry out the purpose of the chapter. Subsection (6) specifically states, "The council may contract with other governmental agencies and third parties for the acquisition and **management** of lands and properties for inclusion in the "Coastal Preserve System." (Emphasis added.)

Joe Spraggins, Executive Director
October 26, 2018
Page 2

Your request further notes that Senate Bill 2362 “did not mention, modify, amend or repeal Section 57-15-5(1) or (6).”

Applicable Law and Analysis

The Mississippi Budget Transparency and Simplification Act provides, in pertinent part:

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent, audit fee, personnel fee or other charge for services or resources received. . . .

Miss. Code Ann. Section 27-104-203.

In general, Section 27-104-203 prohibits charges for services or resources provided between certain agencies.

Mississippi Code Section 57-15-5(1) authorizes the Mississippi Commission on Marine Resources (Commission) to enter into contracts with any state agency to carry out its purposes under the law. Further, Section 57-15-5(6) specifically authorizes the Commission to contract with governmental agencies for the management of lands in the Coastal Preserve System.

When the MDMR enters into a contract with the MFC under the authority provided in Section 57-15-5, the MFC will be charging the MDMR a fee for land management which falls into the category of “services or resources.” The fee paid pursuant to the contract between the MDMR and the MFC is consideration in exchange for the services performed by the MFC. A necessary element to a binding contract is consideration. *Grenada Living Center, LLC v. Coleman*, 961 So.2d 33 (Miss.2007). The authority provided in Section 57-15-5 authorizes the MDMR to enter into a contract which, in this case, requires monetary consideration; therefore, a conflict is created with Section 27-104-203 which, in general, prohibits such charges, and presumably any resulting payments, between certain agencies.

As a general rule of statutory construction, in the event of a conflict between a general statute and a specific statute on the same subject, the terms of the specific statute control over the general statute. *Lenoir v. Madison County*, 641 So.2d 1124 (Miss.1994); MS AG Op., *McElroy* (June 13, 2016).

In this instance, we are of the opinion that Section 57-15-5, the specific statute authorizing the MDMR to enter into land management contracts, controls over the general statute.¹ Accordingly, the MDMR is authorized to pay the MFC for services

¹ We also note that the Mississippi Forestry Commission is authorized under Section 49-19-3(e) “to assist and cooperate with any federal or state department or institution, county, town, corporation or individual, under such terms as in the judgment of the commission will best serve the public interest, in the preparation and execution of plans for the protection, management, replacement, or extension of the forest, woodland and roadside or other ornamental tree growth in the state.”

Joe Spraggins, Executive Director
October 26, 2018
Page 3

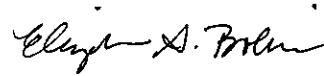
rendered under contracts authorized by Section 57-15-5 for the management of the Coastal Preserve System.

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