

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

November 9, 2018

Margaret Murdock, Esq.
2309 15th Street
Post Office Box 1780
Gulfport, Mississippi 39502-1780

Re: Appeal Cost under Miss. Code Ann. Section 11-51-75

Dear Ms. Murdock:

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 and Issues Presented

Your request states:

As your office is aware, the procedure for perfecting an appeal of a decision of a municipal governing authority was amended during the 2018 Legislative Session pursuant amendment of Miss. Code Ann. 11-51-75. While the new statutory provisions simplify the process greatly, the City of Gulfport desires clarity on the issue of who is responsible for the payment of the costs associated with preparation of the record in such an appeal. We understand that, after a decision has been rendered, "costs may be awarded as in other cases." Our questions, however, center on payment of costs at the time of the appeal. Accordingly, we would request your opinion with regard to the following questions:

1. May the City of Gulfport adopt an ordinance that requires the Appellant to pay the costs associated with the preparation of the record (including costs associated with preparation of the transcript) and establish a schedule for payment of those costs?
2. If so, may the City request an extension of time to file the record with the Circuit Clerk if the Appellant fails to pay those costs in a

timely manner or must the City incur the costs and file the record with the Circuit Clerk and then seek a stay of the appeal until such time as the costs are paid?

3. If the answer to question No. 1 is "No", is it, then, the responsibility of the City (i.e, the taxpayers) to pay for the costs of preparing the record or would placing such burden on the City (i.e., the taxpayers) constitute an unlawful donation?

Response

The answer to your first question is no. The duty to prepare the record is statutorily placed on the clerk in Miss. Code Ann. Section 11-51-75 which states, in relevant part:

(c) The clerk of the board of supervisors or the municipal clerk must assemble a complete record of the proceedings to include all writings, matters, items, documents, plats, maps and transcripts of proceedings that were part of the record and deliver the complete record to the circuit clerk within thirty (30) days after the filing of the notice of appeal with the circuit clerk. The clerk of the board of supervisors or the municipal clerk shall certify that the record is accurate and complete and contains all writings, matters, items, documents, plats, maps and transcripts of proceedings designated by appellant and appellee in their designations of record.

(d) . . . Costs shall be awarded as in other cases. . . .

(Emphasis added).

The statute is clear that the clerk is responsible for assembling a complete record and delivering it to the circuit clerk within thirty (30) days. The municipality cannot supplant state law by ordinance. Costs are assessed by court order, and awarding of costs is governed by statute or rule.¹ Generally, costs are awarded to the prevailing party, and it is possible that the award, if any, could include the cost of preparing the record.

Your second question is moot.

In response to your third question, the City is responsible for preparing the record pursuant to Miss. Code Ann. Section 11-51-75. Because there is a statutory duty for the

¹ The Mississippi Court of Appeals in *Gulfport Partners V, L.P. v. Harrison County Board of Supervisors*, 231 So.3d 234(2017) discussed the procedure for appeals to circuit court. The court stated that in cases where a circuit court sits as an appellate court for cases arising from county court that the Mississippi Rules of Appellate Procedure govern. However, in cases where an appeal stems from a board of supervisors, the court is governed by a specific statute (Miss. Code Ann. Section 11-51-75).

Margaret Murdock, Esq.
November 9, 2018
Page 3

clerk to prepare the record, there is no donation issue. Additionally, costs are awarded by court order, and Miss. Code Ann. Section 25-1-47 gives municipalities the authority to pay and satisfy any judgment.

If we can be of further assistance, do not hesitate to call us.

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By:



Emiko Hemleben
Special Assistant Attorney General

OFFICIAL OPINION