

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

December 7, 2018

Mayor Eddie Fulton  
City of Quitman  
Post Office Box 16  
Quitman, MS 39355-0016

Re: Use of Prisoners for Private 501(c)(3) Animal Shelter

Dear Mr. Fulton:

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:

A private group, Creature Comforts, has a 501(c)(3) for the creation of an animal shelter. They intend to shelter stray dogs, cats, and other small pets to enable the five municipalities in Clarke County to eliminate or greatly reduce the stray population that affects each of our municipalities and county.

In that process they are requesting support from the county and municipalities from prisoners to help clean the facilities daily. The municipalities are more than willing for the prisoners to be paid minimum wage to help reduce outstanding fines. We understand that the prisoner must agree on a voluntary basis but wanted to make sure this is a legal action.

May we, the municipalities and county, utilize prison help in the maintenance of this non-profit shelter?

### Response

The answer to your question is no. The municipality cannot lawfully utilize prison help in maintaining a non-profit animal shelter.

Section 47-1-3 states:

It is the imperative duty of the board of supervisors in each county in this state to require each convict sentenced to imprisonment in the county jail and the payment of a fine and costs, or to imprisonment and payment of costs, or to payment of fine and costs, to work out the sentence on the county convict farm or on the public roads or other public works of the county, or in a contiguous county, as herein provided. . . .

(Emphasis added.)

The only statutory authority for a prisoner to do any work for a charitable organization as defined under Section 501(c)(3) of the Internal Revenue Code falls under Section 47-1-19. Section 47-1-19 states, in relevant part:

(2)(a) It is lawful for a state, county or municipality to provide prisoners for public service work for nonprofit charitable organizations as defined under Section 501(c)(3) of the Internal Revenue Code if that nonprofit charitable organization provides food to charities. In addition, it is lawful for a state, county or municipality to provide prisoners for public service work for churches according to criteria approved by the Department of Corrections.

(b) The prisoners participating in the public service work under paragraph (a) shall remain under the exclusive control and management of the county or municipality.

(c) A prisoner performing public service work under this subsection shall be entitled to earned credits as provided under this chapter.

Under Section 47-1-19, 501(c)(3) organizations authorized to use inmate labor are those who provide food to charities and public service to churches according to criteria approved by the Department of Corrections.

In a phone conversation on November 15, 2018, you mentioned that you did not believe there would be an issue since the prisoners would be "volunteering" if they were not paid. We note that any prisoner who is working as a prisoner of the municipality or county pursuant to Section 47-1-41 must be paid in accordance with Section 99-19-20. Section 99-19-20(2)(c) states:

(c) It shall be in the discretion of the judge to determine the rate of the credit to be earned for work performed under subsection (1)(d), but the rate shall be no lower than the rate of the highest current federal minimum wage.

(Emphasis added.)

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This statute mandates the lowest rate paid to a prisoner for working be not less than the highest current federal minimum wage.

Furthermore, this office has previously opined that a municipality does not have the authority to make a donation to a non-profit 501(c)(3) animal shelter. See MS AG Op., Dunbar (July 21, 2000); MS AG Op., Schissel (September 27, 1995).

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