

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

December 21, 2018

Joseph T. Sims, Esq.  
Attorney, City of Bay Springs  
Post Office Box 361  
Bay Springs, Mississippi 39422

Re: Compensation of fire chief to include fee per call

Dear Mr. Sims:

Attorney General Jim Hood has received your request for an opinion and has assigned it to me for research and response.

### Issues Presented

You inquire as to whether a municipality may pay a fire chief a salary in addition to a fee per call. Specifically, you provide the following:

I am the City of Bay Springs Board Attorney. The Board has requested me to obtain an opinion on the following issue:

Whether a Fire Chief may be paid a salary and in addition, be paid on a per call basis?

### Response

The municipality has the discretion to pay its employees, including the fire chief, compensation which it has deemed to be reasonable provided that the compensation is commensurate with the duties and responsibilities of the position and the resources of the municipality.

### Applicable Law and Discussion

Pursuant to Mississippi Code Annotated Section 21-3-5, municipal governing authorities are charged with setting the compensation of municipal officers and employees. We have previously opined that, when doing so, the governing authorities "should consider the duties and responsibilities of each position and the resources of the municipality."

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MS AG Op., Smoot (November 9, 2017).

With respect to the payment of municipal firemen, we have opined that municipal governing authorities have the discretion to pay full-time firemen "amounts for such duties as they shall determine is reasonable." MS AG Op., Alford (February 20, 1979). Due to your reference to the fire chief's "salary", we assume that the subject fire chief is an employee of the municipality and not a member of a volunteer fire department.<sup>1</sup> We make that distinction because there are specific limitations on which money can be used to compensate volunteer firemen. See Section 83-1-37(4). See also MS AG Op., Breeden (March 19, 1999)(payments to firefighters responding to fires not classified as an improvement of fire department per Section 83-1-37(4)); MS AG Op., Hudson (December 27, 2005)(county may not use money from general fund nor rebate funds to pay volunteer firemen).

We also note that, pursuant to Article 4, Section 96 of the Mississippi Constitution of 1890, a municipality may not grant additional compensation to its employees for work previously performed. Furthermore, public employees cannot be paid twice for the same hours worked. MS AG Op., Parks (March 30, 2012). Thus, to the extent that the subject "per call" payments involve duties that are already being compensated in the "salary" you reference in your request, the municipality would be prohibited from making such payments. Also, we refer you to the Mississippi Ethics Commission to respond to any potential questions involving conflicts of interest and use of office.

If we may be of further assistance, please advise.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Leigh Triche Janous  
Special Assistant Attorney General

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<sup>1</sup> A municipality may hire its own employees to operate the municipal fire department, or it may enter into a contract with a private, not-for-profit volunteer fire department for fire protection services. MS AG Op., Holder (September 24, 2009)