

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

February 1, 2019

Jay Gore, III, Esq.
Attorney for the Grenada County Board of Supervisors
Post Office Box 901
Grenada, Mississippi 38902-0901

Re: County Supervisor dual employment

Dear Mr. Gore:

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

Background and Issues Presented

Your request states:

As attorney for the Board of Supervisors of Grenada County, I write to request an opinion from your office concerning the ability of a Supervisor being also employed by another state agency and whether such employment violates the separation of powers clause of the Mississippi Constitution of 1890, or any other prohibition.

Sections 1 and 2 of Article I of the Mississippi Constitution of 1890 prohibit being employed by two separate branches of government in the exercise of "core powers." The supervisor is contemplating applying for a job as a pipeline inspector for the Public Service Commission. Would such employment be considered an impermissible exercise of a function at the core of power where the acts are "ongoing and are in the upper level of governmental affairs and have a substantial policy-making character?" MS AG Op., Shepard, July 1, 2011, *Dye v. State ex. Rel Hale*, 507 So.2d 332, 343 (Miss. 1987).

Response and Analysis

The separation of powers doctrine places limitations on an individual's ability to serve

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simultaneously in different branches of government. See Article 1, Sections 1 and 2, Miss. Const. (1890). A person who exercises "core powers" in one branch of government cannot simultaneously hold a position in another branch of government if that position also exercises "core powers." "Core power" has been defined by the Court to include those circumstances "where the acts are 'ongoing and are in the upper level of governmental affairs' and have a substantial policy-making character." *Dye v. State*, 507 So.2d 332 (Miss. 1987)(quoting *Alexander*, 441 So.2d at 1337).

This office has consistently opined that a member of a board of supervisors exercises "powers at the core" of the judicial branch of government. See MS AG Op., Simmons (February 5, 2016); MS AG Op., Guice (November 28, 2011); and MS AG Op., Johnson (April 4, 2008). Further, we have opined that the Public Service Commission is an arm of the executive branch of government. See MS AG Op., Smith (February 23, 1984). You attached a copy of a job posting by the Public Service Commission for the position of "Pipeline Safety Investigator I." This posting contains a section entitled "Characteristics of Work" and a listing of "Examples of Work."

With regard to the specific issue of your request, your letter states:

The supervisor is contemplating applying for a job as a pipeline inspector for the Public Service Commission. **Would such employment be considered an impermissible exercise of a function at the core of power where the acts are "ongoing and are in the upper level of governmental affairs and have a substantial policy-making character?"**

Obviously, if the supervisor (a judicial officer) takes a job in the executive branch and engages in "acts [that] are 'ongoing . . . upper level . . . and have a substantial policy-making character,'" then the supervisor would clearly be violating the separation of powers doctrine. We are not clear whether your letter advocates for or against such a conclusion. However, the job posting¹ indicates that the job is "technical work" and that the position is a non-supervisory position. Additionally, the position is not at the upper levels of government, and the enclosed job description indicates no involvement by the Pipeline Safety Investigator in policy-making functions. Given these facts, this office concludes that the inferences drawn from the factual description of the job can only lead to a conclusion that the job does not exercise core powers of the executive branch. Accordingly, it is the opinion of this office that the separation of powers doctrine would not prevent the supervisor from accepting the job as Pipeline Safety Investigator.²

¹A copy of the job posting is attached hereto as Exhibit "A."

² On various occasions, this office has opined that "investigators" exercise core powers in the executive branch. In those cases, the investigators had law enforcement powers. See MS AG Op., McCrory (Feb. 18, 1993)(Arson investigator presumably with arrest powers exercised core executive powers); MS AG Op., Abron (June 21, 2004)(D.A. investigator exercises core executive powers.) Where the investigator was not a law enforcement officer, this office concluded core powers were not implicated.

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If this office may be of further assistance, do not hesitate to contact us.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By: 

Emiko Hemleben
Special Assistant Attorney General

Attachment

OFFICIAL OPINION

See MS AG Op., McGehee (Nov. 17, 2000)(Youth court investigator without law enforcement authority deemed not to exercise core powers.). The Pipeline Safety Investigator is not a law enforcement officer position.

STATE OF MISSISSIPPI
invites applications for the position of:
Pipeline Safety Invest I

SALARY: \$36,575.00 Annually

OPENING DATE: 01/03/19

CLOSING DATE: 01/18/19 11:59 PM

JOB TYPE: Full-Time

LOCATION: 83 - STATEWIDE

SHIFT SCHEDULE: Day Shift Only

TRAVEL SCHEDULE: Some Overnight

TIME LIMITED POSITION: No

CHARACTERISTICS OF WORK:

This is technical work in enforcing standards for the transportation and storage of natural and other gases, in addition to hazardous liquids. Employees in this class make field inspections and investigations of gas distribution, municipal, master meter, intra-state transmission, and direct sales pipelines in an assigned area of the state. Work involves investigating the operations, services, records, maintenance, and construction of gas utilities and pipeline facilities to ensure these systems are in compliance with federal and state requirements. The incumbent also writes reports, reviews utility requests for variations in services, and investigates accidents. Supervision is received from a technical supervisor who reviews the work through field visits and written reports.

EXAMPLES OF WORK:

Examples of work performed in this classification include, but are not limited to, the following:

Investigates and answers complaints and violations.

Interviews pipeline company officials during investigations of pipeline incidents or failures.

Gathers facts and evidence regarding incidents and accidents.

Investigates natural gas utilities to determine their reasonableness and conformity with established laws and regulations.

Conducts field inspections and makes investigations of a technical nature concerning the engineering and operating aspects to ensure that the services rendered are reasonable, adequate, and safe.

Attends and testifies at Commission hearings and court proceedings.

Reviews gas applications requesting procurement of additional rights, sale of transfer property, abandonment of services, and other requests.

Aids in investigating natural gas accidents, along with supervisor, to determine the cause and methods of prevention for the future.

Reviews operation, maintenance, emergency, and damage prevention plans of gas operators.

Audits maintenance records of gas operators on a routine basis.

Provides training and assistance to gas operators as needed.

Compiles required forms, reports, and document files.

Presents facts and evidence regarding accidents or incidents to supervisors.

Confers and corresponds with utility company officials to have unsatisfactory conditions corrected.

Prepares reports (including follow-up or supplemental reports) of findings and recommendations.

Evaluates pipeline companies' drug and alcohol policies and ensures that they are in compliance with federal and state regulations.

Performs related or similar duties as required or assigned.

MINIMUM QUALIFICATIONS:

These minimum qualifications have been agreed upon by Subject Matter Experts (SMEs) in this job class and are based upon a job analysis and the essential functions. However, if a candidate believes he/she is qualified for the job although he/she does not have the minimum qualifications set forth below, he/she may request special consideration through substitution of related education and experience, demonstrating the ability to perform the essential functions of the position. Any request to substitute related education or experience for minimum qualifications must be addressed to the Mississippi State Personnel Board in writing, identifying the related education and experience which demonstrates the candidate's ability to perform all essential functions of the position.

EXPERIENCE/EDUCATIONAL REQUIREMENTS:

Education:

Bachelor's Degree from an accredited four-year college or university in engineering, personnel management, accounting, business administration, public administration, or a related field, or a field related to the scientific or technological functions of the employing agency;

AND

Experience:

One (1) year of experience related to the above described duties;

OR

Education:

Graduation from a standard four-year high school or equivalent (GED or High School Equivalency Diploma);

AND

Experience:

Five (5) years of experience related to the above described duties.

Substitution Statement

Above graduation from a standard four-year high school or equivalent (GED or High School Equivalency Diploma), related education, and related experience may be substituted on an equal basis.

Special Requirements

Incumbent must complete nine (9) classes at the Transportation Safety Institute.

ESSENTIAL FUNCTIONS:

Additional essential functions may be identified and included by the hiring agency. The essential functions include, but are not limited to, the following:

1. Conducts field investigations, performs surveillance, and monitors permitted activities.
2. Prepares investigative reports and other correspondence and consults with supervisors on actions to be taken.
3. Interviews persons and reviews reports to compile evidence for presentation.
4. Provides training and assistance as needed.

APPLICATIONS MAY BE FILED ONLINE AT:

<http://agency.governmentjobs.com/mississippi/default.cfm>

210 East Capitol Street
Suite 800

Position #2328-0811-20180103ST
PIPELINE SAFETY INVEST I

BL

Jackson, MS 39201
601-359-1406
601-359-1406

jobs@dfa.ms.gov

An Equal Opportunity Employer

Pipeline Safety Invest I Supplemental Questionnaire

- * 1. What is the highest level of education (or semester hours of college) you have completed in engineering, personnel management, accounting, business administration, public administration, or a related field, or a field related to the scientific or technological functions of the employing agency?
- None
 - GED or High School Equivalency Diploma / High School Diploma
 - 30 semester hours
 - Associate's Degree / 60 semester hours
 - 90 semester hours
 - Bachelor's Degree
 - Master's Degree
 - Specialist Degree
 - Doctorate Degree
- * 2. How many years of related experience do you have? (refer to the job posting for an explanation of related experience)
- No experience
 - 1 year of experience
 - 2 years of experience
 - 3 years of experience
 - 4 years of experience
 - 5 years of experience
 - 6 years of experience
 - 7 years of experience
 - 8 years of experience
 - 9 years of experience
 - 10 years of experience
 - More than 10 years

* Required Question