

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

**OPINIONS
DIVISION**

May 24, 2019

Eddie C. Williams, Esquire
Attorney, Gulf Regional Planning Commission
1635 Popp's Ferry Road, Suite G
Biloxi, Mississippi 39532

Re: Leave Policy for Gulf Regional Planning Commission

Dear Mr. Williams:

OFFICIAL OPINION

Attorney General Jim Hood is in receipt of your opinion request and has assigned it to me for research and reply. In your letter, you state that you represent the Gulf Regional Planning Commission, a publically funded metropolitan planning organization created pursuant to Sections 17-1-29 through 17-1-35 of the Mississippi Code Annotated. You explain that it is a governmental agency authorized to receive and expend local, state and federal funds. You further explain that the Gulf Regional Planning Commission (hereinafter "GRPC") presently consists of fifteen (15) members: the three coastal counties and the twelve (12) municipalities located therein. Its activities are overseen by an executive director who supervises a staff of nine (9) planners and technical personnel. You also explain that you have been tasked with reviewing and updating the Personnel Policies and Procedures Manual.

Questions Presented

Because of the length of your letter and inquiries, we will not reiterate them here but rather summarize the questions presented.

1. Whether the GRPC may grant paid leave to staff members to volunteer for activities or events that benefit the Gulf Coast, but are not clearly related to their functions as employees of the GRPC?
2. Whether the GRPC may deduct a full day's pay for each day of jury service when the fees paid to the employee will likely not equal or exceed the employee's daily pay?

3. Whether the GRPC may reduce the non-remitting employee's pay by an amount equal to the actual fees paid to the employee for his/her service?
4. Whether the GRPC is authorized to pay for employee memberships in professional organizations in the manner provided in the Manual?
5. If the answer to question four is in the affirmative, may the GRPC withhold from an employee's final paycheck any dues allocable to the "unused" portion of the membership year?
6. Is the GRPC authorized to reduce an employee's paycheck in order to recoup a debt owed to the GRPC from the employee?

Legal Research and Response

You pose several questions specifically regarding the administrative leave and professional organization sections of the GRPC's Personnel Policies and Procedures Manual and enclose copies of these sections of the manual for our review. Section 17-1-35(e) of the Mississippi Code Annotated provides that a regional planning commission has the authority "[t]o employ and to compensate such personnel, consultants and technical and professional assistance as shall be necessary to exercise the powers and perform the duties set forth in Sections 17-1-31 through 17-1-35, inclusive." Additionally, Section 17-1-35(a) provides that a regional planning commission has the authority "[t]o adopt rules or procedure for the regulations of its affairs, set forth policies and procedures for the conduct of its business, and to appoint, from among its members, a chairman and vice chairman, to serve annually, provided that such chairman may be subject to reelection." Thus, the GRPC has the authority to adopt personnel policies, including policies regarding the type of leave an employee is entitled to receive. We do note, however, that given the facts and circumstances, provisions of a policy manual or handbook may become part of a contract of employment with employees. See *Robinson v. Bd. of Trustees of East Central Junior College*, 477 So. 2d 1352, 1353 (Miss. 1985). The GRPC should consider this when adopting or revising prior policies.

However, pursuant to the authority granted to this office in Section 7-5-25 of the Mississippi Code Annotated, official opinions of the Attorney General are limited to questions of law for future guidance of those officials entitled to receive them. Opinions of this office may not be issued which require our office to make factual determinations or to interpret policies and procedures of a public entity. Therefore, to the extent that your request requires this office to make a factual determination or to interpret specific personnel policies and procedures, we must decline to respond with an official opinion of this office.

In response to your first question, leave may not be granted to an employee for the purposes of the GRPC directing labor or resources to a private or non-governmental purpose. Caution should be used to ensure that "leave" is not used in a way that employee

time is essentially donated to private or public entities.

In regard to your second and third questions regarding civil leave for jury service, please note that Section 25-7-61 of the Mississippi Code Annotated provides that jurors shall be paid fees as provided:

(1) Fees of jurors shall be payable as follows:

(a) Grand jurors and petit jurors in the chancery, county, circuit and special eminent domain courts shall be paid an amount to be set by the board of supervisors, not to be less than Twenty-five Dollars (\$25.00) per day and not to be greater than Forty Dollars (\$40.00) per day, plus mileage authorized in Section 25-3-41. In the trial of all cases where jurors are in the charge of bailiffs and are not permitted to separate, the sheriff with the approval of the trial judge may pay for room and board of jurors on panel for actual time of trial.

No grand juror shall receive any compensation except mileage unless the juror has been sworn as provided by Section 13-5-45; and no petit juror except those jurors called on special venires shall receive any compensation authorized under this subsection except mileage unless the juror has been sworn as provided by Section 13-5-71.

(b) Jurors making inquisitions of intellectual disability, mental illness or unsound mind and jurors on coroner's inquest shall be paid Five Dollars (\$5.00) per day plus mileage authorized in Section 25-3-41 by the county treasurer on order of the board of supervisors on certificate of the clerk of the chancery court in which the inquisition is held.

(c) Jurors in the justice courts shall be paid an amount of not less than Ten Dollars (\$10.00) per day and not more than Fifteen Dollars (\$15.00) per day, to be established by the board of supervisors. In all criminal cases in the justice court in which the prosecution fails, the fees of jurors shall be paid by the county treasurer on order of the board of supervisors on certificate of the county attorney in all counties that have county attorneys, otherwise by the justice court judge.

(2) Any juror may return the fees provided as compensation for service as a juror to the county that paid for the person's service as a juror. The fees returned to the county may be earmarked for a particular purpose to be selected by the juror, including:

- (a) The local public library;
- (b) Local law enforcement;
- (c) The Mississippi Burn Care Fund created in Section 7-9-70; or
- (d) Any other governmental agency.

Thus, a regional planning commission in the exercise of its discretion may provide leave

with pay¹ or leave without pay for employees who serve on juries, but it cannot recover statutorily-authorized fees from employees who serve on juries. See MS AG Op., Carnathan (April 10, 1991)(school board in the exercise of its discretion may provide leave with pay or leave without pay for employees who serve on juries, but the school board cannot recover jury fees from employees who serve on juries).

Regarding your fourth question concerning professional memberships, this office has opined that governing authorities may pay professional association dues for employees if the following criteria are met:

- a. The public entity must determine that the professional association dues or licensing fees are reasonable and necessary to the performance of the employee's or officer's duties; and
- b. The membership must accrue to the benefit of the governing authority and any benefit to the individual must be merely incidental.

MS AG Op., Williams (May 25, 2007)(citing MS AG Op., Myers (February 22, 2005)); MS AG Op., Bailey (January 31, 2003).

OFFICIAL OPINION
In response to your fifth question, in our opinion to Dr. Ed Rank dated October 30, 1992, our office opined that the Department of Finance and Administration was authorized to pay for the Mississippi Bar Membership dues of the attorneys working for the Attorney General's Office. However, we noted that because these dues were paid in the name of an individual rather than in the name of the Attorney General's Office, the Attorney General's Office wisely required attorneys to execute a payroll deduction authorization to reimburse the entire amount paid on their behalf should they leave the Attorney General's Office prior to the end of the dues period. Assuming GRPC adopts a policy authorizing payment of professional dues and making such dues pro-ratable, GRPC could have its employees execute a payroll deduction authorization that would authorize GRPC to withhold any "unused" portion of the pro-rated dues from an employee's final paycheck.

¹ Compare Section 25-3-92 that authorizes adoption of administrative leave for jury duty as follows:

(2) State employees may be granted administrative leave with pay. For the purposes of this section, "administrative leave" means discretionary leave with pay, other than personal leave or major medical leave.

(a) The appointing authority may grant administrative leave to any employee serving as a witness or juror or party litigant, as verified by the clerk of the court, in addition to any fees paid for such services, and such services or necessary appearance in any court shall not be counted as personal leave.

Miss. Code Ann. Section 25-3-92 (as amended). Similar provisions could be adopted by GRPC as part of a policy manual.

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In response to your last question, Section 7-7-43 of the Mississippi Code Annotated provides:

(1) The State Fiscal Officer, any chancery or city clerk, or the fiscal officer of any county or separate school district, institution of higher learning, state college, university or state community college, shall not issue any warrant upon any allowance made to, or claim in favor of, any person, his agent, or assignee who shall be indebted to the state, or against whom there shall be any balance appearing in favor of the state; but such officer shall allow such debtor a credit on his account for such allowance or claim.


We have previously opined that Section 7-7-43 is applicable to the withholding of public employees' salaries and does not require the sum due to be reduced to judgment prior to submitting notice of the debt to the State Fiscal Officer. MS AG Op., Lamar (April 8, 2011); MS AG Op., Sander (September 6, 2013); MS AG Op., Jacks (October 31, 2014). However, Section 7-7-43 appears to apply to only those entities designated in the statute.² Insomuch as a regional planning commission is created by statute as a separate body corporate but is not included in Section 7-7-43, it is the opinion of this office that Section 7-7-43 cannot be used by GRPC. As noted above, GRPC can use payroll withholding authorizations under certain circumstances. However, with regard to a normal debt owed by an employee, GRPC would be related to a legal action.

If this office may be of any further assistance to you, please let us know.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:


Avery Mounger Lee

Special Assistant Attorney General

² These entities are "any chancery or city clerk, or the fiscal officer of any county or separate school district, institution of higher learning, state college, university or state community college."