

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

April 26, 2019

Honorable Greg Younger  
Alcorn County Chancery Clerk  
Post Office Box 69  
Corinth, Mississippi 38835-0069

Re: Fire protection districts

Dear Mr. Younger:

Attorney General Jim Hood is in receipt of your request for an official opinion on behalf of the Alcorn County Board of Supervisors, and it has been assigned to me for research and reply.

### Background

Your request states, in part:

Alcorn County has 9 rural fire protection districts. In accordance with Section 83-1-39 of the Mississippi Code, we have traditionally levied a tax millage on all property outside the municipal limits of Corinth, and divided it equally between the 9 fire districts.

Our question to you is: can all or a portion of the money from the rural fire protection millage be divided proportionately amongst the fire districts based upon the percentage of population within each fire district as it relates to the percentage of the population of the County as a whole? Also, is there a cap on the total millage that can be levied in support of rural fire protection?

### Applicable Law and Analysis

Subsection (5) of Section 83-1-39 of the Mississippi Code sets forth the requirements for a county to be eligible to receive insurance rebate monies which may be used for fire

protection purposes in the county. Specifically, Section 83-1-39(5)(d) reads:

Counties shall levy a tax of not less than one-fourth ( $\frac{1}{4}$ ) mill on all property of the county or appropriate avails of not less than one-fourth ( $\frac{1}{4}$ ) mill from the county's general fund for fire protection purposes. Municipalities making a written declaration to the county that they fund and provide their own fire services shall be exempted from this levy. This levy shall be used for fire protection purposes which include, but are not limited to, contracting with any provider of fire protection services.

In response to your first question, the statute provides that the monies collected pursuant to the levy are to be used for fire protection purposes which would include contracting with fire protection districts for services. The statute does not require the county to follow a particular formula in distributing those monies; thus, we are of the opinion that such determination should be made by the board of supervisors acting in the best interest of the residents of the county.

In response to your second question, Section 83-1-39(5)(d) requires counties to levy a tax of not less than one-fourth ( $\frac{1}{4}$ ) mill on all property of the county or appropriate funds equal to the avails of one-fourth ( $\frac{1}{4}$ ) mill from the general fund in order to be eligible to receive insurance rebate funds. If the county opts to levy the tax, the subsection sets forth the minimum levy required but does not set a limit. MS AG Op., Houston (July 10, 2015).

Section 19-5-189 also addresses the amount of millage that can be levied in support of a fire protection district. A county is authorized to levy a tax on all taxable real property in a district, the avails of which are paid to the board of commissioners of the district for the operation, support and maintenance of the district and/or the retirement of bonds issued by the district. Generally, Section 19-5-189(1) limits the tax to four mills annually; however, several exceptions are provided for in the statute including one which allows the levy to be increased when the board of supervisors determines that a need exists for additional revenue. See Section 19-5-189(2)(c). If such a determination is made, the board of supervisors must follow certain publication and notice requirements set forth in the statute; and if a proper petition is presented to the board, then the increase cannot be imposed until authorized by a majority vote on the issue in an election held in the district. *Id.* The board of supervisors also has the option to call an election on the issue and forgo the publication and notice requirements. *Id.* Section 19-5-189(2)(c) does not set a limit on the levy increase. We note, however, that the proceeds derived from the levy authorized by Section 19-5-189(1) must be factored accordingly when determining the limitations on increases of ad valorem taxes found in Section 27-39-321.<sup>1</sup>

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<sup>1</sup> Section 19-5-189(1)(b) reads: The proceeds derived from two (2) mills of the levy authorized herein shall be included in the ten percent (10%) increase limitation under Section 27-39-321, and the proceeds derived from any additional millage levied under this subsection in excess of two (2) mills shall

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Please let us know if this office can be of further assistance.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Elizabeth S. Bolin  
Assistant Attorney General

# OFFICIAL OPINION

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be excluded from such limitation for the first year of such additional levy and shall be included within such limitation in any year thereafter.