

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

June 21, 2019

Michele H. Floyd, Esq.
Attorney, Itawamba County School District
605 South Cummings Street
Fulton, Mississippi 38843

Re: Opinion Request Regarding Truancy

Dear Ms. Floyd:

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

Background and Issues Presented

Your request states:

Section 37-13-91(7) gives school attendance officers, sheriffs, deputy sheriffs, and municipal law enforcement the authority to file petitions in Youth Court under Section 43-21-451 of the Mississippi Code for school truancy. Is this authority exclusive to those people or may a school district employee, at the behest of the Superintendent or School Board, file petitions in Youth Court under Section 43-21-451 against truant students and their parents, guardians or custodians? If the answer is that a school district employee may file said petitions, must that school district employee, prior to the filing of the petition, contact the home of the child and provide written notice to the parent, guardian, or custodian of the requirement for the child's enrollment or attendance as required of school attendance officers in Section 37-13-91(5)?

Brief Response

Itawamba County School District employees do not have authority to file truancy actions in the youth court. Section 37-13-91(7) of the Mississippi Code specifically authorizes "school attendance officers" hired pursuant to Section 37-13-89 and law enforcement

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officers to file truancy actions. Since the answer to your first question is no, your second question is moot.

Discussion and Analysis

Your question involves the authority granted by Section 37-13-91(7) of the Mississippi Code. You ask if school district employees are empowered to file actions in the youth court for truancy actions. Section 37-13-91(7) states:

7) When a school attendance officer has made all attempts to secure enrollment and/or attendance of a compulsory-school-age child and is unable to effect the enrollment and/or attendance, the attendance officer shall file a petition with the youth court under Section 43-21-451 or shall file a petition in a court of competent jurisdiction as it pertains to parent or child. Sheriffs, deputy sheriffs and municipal law enforcement officers shall be fully authorized to investigate all cases of nonattendance and unlawful absences by compulsory-school-age children, and shall be authorized to file a petition with the youth court under Section 43-21-451 or file a petition or information in the court of competent jurisdiction as it pertains to parent or child for violation of this section. . . .

OFFICIAL OPINION
Section 37-13-91(7) requires that a "school attendance officer" file a petition and also authorizes law enforcement officers to file petitions with either the youth court or a court of competent jurisdiction. "School attendance officer" is defined by Section 37-13-91(2)(g) as a "person employed by the State Department of Education pursuant to Section 37-13-89." Section 37-13-89 states that "school attendance officers" are those employed by the State Department of Education to "adequately enforce the provisions of the Mississippi Compulsory School Attendance Law." In a follow-up phone conversation on June 13, 2019, you clarified that the employees you ask about are employees of the Itawamba County School District, not employees of the State Department of Education. Since school district employees are not included in Section 37-13-91(7), it is the opinion of this office that they do not have authority to file truancy actions in the youth court.

Since the answer to your first question is no, your second question is moot.

If we may be of further assistance, please advise.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By: 

Emiko Hemleben
Special Assistant Attorney General