

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

June 7, 2019

Mr. Nick Elmore  
Jackson County Tax Assessor  
Post Office Box 998  
Pascagoula, MS 39568

Re: Tax Exemptions Pursuant to Section 17-21-5 of the Mississippi Code Annotated

Dear Mr. Elmore:

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

### Background

In your letter, you request an official opinion regarding the application of Section 17-21-5 of the Mississippi Code Annotated to condominiums and the interplay with homestead exemptions. You explain that the City of Ocean Springs has a development being constructed within its municipality. The City has approved a Pre-Construction Tax Exemption Application for a Mixed Use Development. The development has multiple buildings, some of which consist of both commercial and residential spaces and some of which are strictly residential space (i.e., condominiums only). You further explain that the developer has stated his intention is to sell the individual residential units and pass the tax abatement granted under Section 17-21-5 on to those purchasers/owners. The developer's application indicates there is approximately 9,200 square feet of retail space and 95 condominiums. You note that Ocean Springs has an ordinance regarding this exemption, which states that the residential component of a mixed-use development may be abated up to one (1) unit per 500 square feet of commercial. You state that you have calculated that after applying the ordinance there would be an abatement to only 18 of the 95 condominiums. As Jackson County's Tax Assessor, under Sections 27-35-15 and 27-35-49 of the Mississippi Code Annotated, you explain that it is your responsibility to appraise and assess all real and personal property in the county, including within a municipality. Lastly, you indicate that you are concerned with how the tax abatement granted under Section 17-21-5 coexists with the homestead exemption as well as how to assess each condominium.

### Questions Presented

1. Does Section 17-21-5 contemplate allowing an abatement on a residential unit in a mixed-use development if the sole intention is for the developer to sell the residential units to other individuals, as with any other condominium development?
2. How do I equitably handle the abatement for 18 condominiums when assessing each of the 95 condominiums?
3. If a residential unit in a mixed-use development is granted an abatement under Section 17-21-5, and that residential unit is sold to an individual who uses that property as his owner-occupied primary dwelling, is that unit also eligible to receive homestead exemption in addition to the abatement granted under Section 17-21-5, as it appears those two abatements/exemptions infer two different uses of the property?

### Response

1. Yes. However, whether or not a mixed-use development where the developer plans to sell the residential units to other individuals will promote business, commerce or industry in the area and qualifies for an exemption pursuant to Section 17-21-5 is a factual determination which must be made by the governing authority in each case.
2. We do not by official opinion interpret resolutions and ordinances of local governmental entities. Because your request involves a question of fact, we are unable to respond to your question with an official opinion.
3. Yes. In addition to a homestead exemption, an ad valorem tax exemption allowed pursuant to Section 17-21-5 is also available to a subsequent purchaser of the property, upon written application, during the statutory exemption period of up to seven (7) years.

### Applicable Law and Discussion

In response to your first question, Section 17-21-5 of the Mississippi Code Annotated provides an exemption from municipal ad valorem tax for certain structures in the central business district. The statute provides, in relevant part:

**(1) The governing authorities of any municipality of this state may, in their discretion, exempt from any or all municipal ad valorem taxes, excluding ad valorem taxes for school district purposes, for a period of not more than seven (7) years, any privately owned new structures and any new renovations of and improvements to existing structures lying within a designated central business district or historic preservation district or**

on a historic landmark site, as determined by the municipality, but only **in the event such structures shall have been constructed, renovated or improved pursuant to the requirements of an approved project** of the municipality for the development of the central business district and/or the preservation and revitalization of historic landmark sites or historic preservation districts. **The tax exemption authorized herein may be granted only after** written application has been made to the governing authorities of the municipality by any person, firm or corporation claiming the exemption, and **an order passed by the governing authorities** of such municipality **finding that the construction, renovation or improvement** of said property **is for the promotion of business, commerce or industry in the designated central business district** or for the promotion of historic preservation.

Miss. Code Ann. Section 17-21-5 (2018)(emphasis added).

It is the opinion of this office that the above provision authorizes the governing authority of a municipality the power, in its discretion, to grant ad valorem tax exemptions to any improvements, renovations or construction located within a central business district or a historic preservation district. In MS AG Op., Thomas (October 21, 2005), we opined that "each written application for such an exemption must be considered individually, and the order authorizing the exemption must recite the finding of the governing authority that the construction, renovations or improvements will have the effect of promoting business, commerce or industry in the central business district, or will have the effect of promoting historic preservation." Whether or not a mixed-use development where the developer plans to sell the residential units to other individuals will promote business, commerce or industry in the area is a factual determination which must be made by the governing authority in each case.

With regard to county ad valorem exemptions, Section 17-21-7 provides:

The **board of supervisors of any county** wherein there is located a municipality described in Section 17-21-5 **may, in its discretion, exempt from any or all county ad valorem taxes, excluding ad valorem taxes for school district purposes**, for a period of not more than seven (7) years, **any privately owned new structures and any new renovations** of and improvements to existing structures **where an exemption has been granted by the municipality** in accordance with the provisions of Section 17-21-5. The exemption from county ad valorem taxes may be granted only upon written application to the board of supervisors of the county by any person, firm or corporation claiming the exemption. **A copy of the order of the governing**

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**authority of the municipality granting an exemption from municipal ad valorem taxes shall be attached to the application as an exhibit** thereto.

Miss. Code Ann. Section 17-21-7 (2012)(emphasis added). Pursuant to Section 17-21-7, counties are restricted to granting exemptions "to . . . structures where an exemption has been granted by the municipality" pursuant to Section 17-21-5.

Your second question asks our office how the exemption authorized in Section 17-21-5 should apply to the 95 condominiums in light of the ordinance passed by the City of Ocean Springs that provides the residential component of a mixed-use development may be abated up to one (1) unit per 500 square feet of commercial. As the above statutes demonstrate, the threshold for such exemptions is that the municipality must have granted the exemption(s) to certain "structures and [/or] renovations." Counties are limited to granting exemptions "where an exemption has been granted by the municipality." Here, the municipality chooses to grant exemptions under Section 17-21-5 in accordance with its ordinance. Pursuant to Section 7-5-25 of the Mississippi Code of 1972, the Attorney General is authorized to issue official opinions on questions of law only. We do not by official opinion interpret resolutions and ordinances of local governmental entities. Because your request involves a question of fact and/or interpretation of a municipal ordinance, we are unable to respond to your question with an official opinion. Where a local ordinance is involved, local officials are tasked with interpreting the same in a reasonable manner consistent with the ordinance's intent and possible prior interpretation. *See Hatfield v. Bd. of Supervisors of Madison Cty.*, 235 So.3d 18, 21 (Miss. 2017), 97 So.2d 218, 220 (Miss. 1957) ("A key function of a county board, city council, or board of aldermen is to interpret its zoning ordinances. And "[t]he cardinal rule in construction of zoning ordinances is to give effect to the intent of the lawmaking body." [citations omitted]. Local boards are in the most advantageous position to interpret and apply local ordinances.")

Your third question inquires as to whether a residential property, i.e., condominium, that is sold by the developer to an individual and is used as a primary residence may qualify for a homestead exemption in addition to the exemption authorized in Section 17-21-5. In MS AG Op., Seal (July 28, 2004), we addressed a similar question regarding the tax exemption granted to new industry under Section 27-31-107. We stated as follows:

Ad valorem tax liability rests on the property which can be sold if not paid. Ownership does not alter the tax liability of the property or industry, but only which owner has the duty to see that the taxes are paid. It follows that the exemption granted under Section 27-31-101 is to the property and industry based on its character and not to the actual owner. The property and industry do not change in character solely because of a change in ownership.

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Just as ad valorem taxes apply to the property, not to the owner, similarly, any exemption applies to the property, not to the owner. MS AG Op., Vassel (March 20, 2012). A property owner may file for a homestead tax exemption and, if the property meets the qualifications of the statute, the homestead exemption may be granted. Additionally, we previously opined that Section 17-21-5 could be applicable to residential improvements within a central business district. MS AG Op., Thomas (October 21, 2005). Consequently, it is the opinion of this office that in addition to a homestead exemption, an ad valorem tax exemption allowed by Section 17-21-5 is also available to a subsequent purchaser of the residential property, upon written application, during the statutory exemption period of up to seven (7) years. Of course, to be entitled to the exemption provided in Section 17-21-5, an order authorizing the exemption must recite the finding of the governing authority that the residential property will have the effect of promoting business, commerce or industry in the central business district, or will have the effect of promoting historic preservation.

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

Sincerely,  
**OFFICIAL OPINION**  
JIM HOOD, ATTORNEY GENERAL

By:

  
Avery Mounger Lee  
Special Assistant Attorney General