

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

April 2, 2010

Mr. Kenneth Mayfield
Board Attorney, Noxubee County School Board
c/o Mayfield Law Firm, P.A.
106 W. Franklin Street
Tupelo, Mississippi 38802

Re: Shortfall Promissory Note under Miss. Code Ann. Section 37-57-108

Dear Mr. Mayfield:

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

Issues Presented

1. Does the Noxubee County School District have the authority, pursuant to Miss. Code Ann. Section 37-57-108, to borrow \$112,512.98 to cover a revenue shortfall from the 2008-09 school year, if the discovery was made by the financial officer before June 30, 2009 but was not spread upon the board minutes until after June 30, 2009?
2. If so, what type of finding must the school board spread upon its minutes for the loan to be in compliance with the statute?

Response

1. Yes. It is the opinion of this office that the Noxubee County School District has the authority, pursuant to Miss. Code Ann. Section 37-57-108, to issue a promissory note to cover a revenue shortfall from the 2008-09 school fiscal year so long as the school district can demonstrate that the shortfall occurred during that school district fiscal year and the amount of the promissory note does not exceed 25 percent of the budget anticipated to be funded from the source of the shortfall for that fiscal year.

2. The Noxubee County School Board must make a finding, spread upon the minutes and consistent with fact, that the shortfall occurred during the fiscal year. Such finding may be made subsequent to the end of the fiscal year.

Background

In your letter, you state that the Noxubee County School District experienced a revenue shortfall in the amount of \$112,512.98 during the 2008-09 fiscal year. The financial officer discovered the shortfall before June 30, 2009, but it was not spread upon the minutes of the school board until after June 30, 2009. The school board would like to borrow the funds from a local bank with repayment to be made in accordance with Miss. Code Ann. Section 37-57-108.

Applicable Law and Discussion

Subsection 1 of Miss. Code Ann. Section 37-57-108 authorizes the issuance of promissory notes by a school district due to a shortfall of revenue from local sources. Specifically, Section 37-57-108(1) provides in part:

In the event that the amount of revenue collected or estimated to be collected from local sources, on behalf of a school district during a fiscal year, is less than the amount provided for in the duly adopted budget of said school district for the fiscal year, then the school district may issue promissory notes in an amount and in the manner set forth in Section 27-39-333, not to exceed the estimated shortfall of revenue from local sources, but in no event to exceed twenty-five percent (25%) of its budget anticipated to be funded from the sources of the shortfall for the fiscal year. A school district issuing notes under the provisions of this section shall not be required to publish notice of its intention to do so or to secure the consent of the qualified electors or the tax levying authority of such school district.

Section 27-39-333, which is incorporated into the above section, at subsection (2) provides in pertinent part:

Any political subdivision which, during a fiscal year, estimates that the amount of the ad valorem taxes or other anticipated revenue from local sources to be collected therein is less than the amount estimated at the time of formulation of its budget for the fiscal year due to circumstances which were unanticipated at the time of formulation of the budget and which will prevent the political subdivision from meeting its financial obligations may, with the approval of the levying authority for such political subdivision, issue promissory notes in an amount equal to the estimated shortfall of ad valorem taxes and/or revenue from local sources but in no event to exceed twenty-five percent (25%) of its budget anticipated to be funded from the sources of the shortfall for the fiscal year.

Mr. Kenneth Mayfield

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Further, subsection 3 of Section 27-39-333 states that "[t]he proceeds of such notes shall be used in the budget or budgets in which the shortfall occurred and shall be used solely to offset the shortfall in such budgets for the fiscal year."

The "fiscal year" for all school districts shall begin on July 1 and end on June 30 of each year. Miss. Code Ann. Section 37-61-1 (1972).

In an opinion issued to Mr. Patrick Zachary dated October 31, 2008, which you reference in your letter, our office opined that a school district is authorized, pursuant to Miss. Code Ann. Section 37-57-108, to declare a shortfall and issue a promissory note therefor where the shortfall is discovered during the school district fiscal year and the amount of the promissory note does not exceed 25 percent of the budget anticipated to be funded from the source of the shortfall for that fiscal year. MS AG Op., Zachary (October 31, 2008). In the Zachary opinion, the school district discovered prior to the end of the school district's fiscal year that the amount collected from ad valorem taxes during the school district's fiscal year was less than the ad valorem request in the budget for that fiscal year. *Id.*

In your letter, you state that the revenue shortfall was discovered by the financial officer before June 30, 2009 but was not spread upon the minutes of the school board minutes until after June 30, 2009. We are of the opinion that Miss. Code Ann. Section 37-57-108 imposes no requirement that the discovery of the revenue shortfall be spread upon the minutes of the school board prior to the end of the fiscal year that the shortfall occurred in order for the school board to issue revenue shortfall promissory notes. So long as the school board can demonstrate that the shortfall occurred before June 30, 2009 and that such shortfall will prevent the district from meeting its financial obligations for that year, the school district may issue promissory notes pursuant to Section 37-57-108 of the Miss. Code.

Therefore, in response to your first question, it is the opinion of this office that the Noxubee County School District has the authority, pursuant to Miss. Code Ann. Section 37-57-108, to issue a promissory note to cover a revenue shortfall from the 2008-09 school fiscal year so long as the school district can demonstrate that the shortfall occurred during that school district fiscal year and the amount of the promissory note does not exceed 25 percent of the budget anticipated to be funded from the source of the shortfall for that fiscal year.

With respect to your second question, the Mississippi Supreme Court has consistently held and this office has repeatedly opined that public boards act and speak only through their minutes and their actions are evidenced solely by entries on the minutes. See Thompson v. Jones County Community Hospital, 352 So. 2d 795, 796 (Miss 1977); MS AG Op., Mabry (March 23, 2001). Only actions which are duly and properly reflected in the minutes may be considered as an action by the board. MS AG Op., Mabry (March 23, 2001). Thus, it is the opinion of this office that should the Noxubee County School Board declare a revenue shortfall for the 2008-09 school fiscal year and issue a promissory note therefor pursuant to Miss. Code Ann. Section 37-57-108, the school board must make a finding, consistent with the facts, that the revenue shortfall occurred

Mr. Kenneth Mayfield
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Conclusion

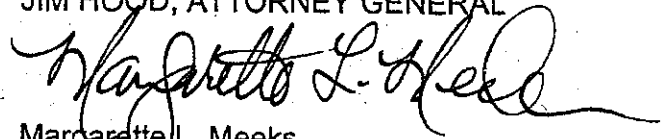
Accordingly, it is the opinion of this office that the Noxubee County School District has the authority, pursuant to Section 37-57-108 of the Miss. Code, to issue a promissory note to offset the revenue shortfall from the 2008-09 school fiscal year contingent upon the school district's ability to establish that the shortfall occurred during that school district fiscal year and the amount of the promissory note does not exceed 25 percent of the budget anticipated to be funded from the source of the shortfall for that fiscal year. Should the Noxubee County School Board declare a revenue shortfall for the 2008-09 school fiscal year and issue a promissory note therefor pursuant to Miss. Code Ann. Section 37-57-108, the school board must make a finding, consistent with the facts, that the revenue shortfall occurred during the 2008-09 school fiscal year. Such finding may be made and spread upon the school board minutes subsequent to the end of the 2008-09 school fiscal year.

Please feel free to contact our office if we may be of further assistance.

Very truly yours,



JIM HOOD, ATTORNEY GENERAL

By:



Margaritte L. Meeks
Special Assistant Attorney General

Mr. Billy Joe Ferguson
2009 WL 3332581
Opinion No. 2009-00526
September 25, 2009

Term  Best Section 
2009 WL 3332581 (Miss.A.G.)

Office of the Attorney General
State of Mississippi
Opinion No. **←2009→←00526→**

September 25, 2009

Re: Tax Levy for Carroll County School District

Mr. Billy Joe **←Ferguson→**
Superintendent
Carroll County School District
Post Office Box 256
Carrollton, Mississippi 38917

Dear Mr. **←Ferguson→**:

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

Issues Presented

1. Whether the Board of Supervisors is required by law to levy sufficient tax to generate requested funds for the school district budget?
2. If the response to question one is yes, what is the penalty if the Board refuses to do so?

Response

1. Yes. It is the opinion of this office that where the amount is included in the certified copy of the order adopted by the school board, submitted to the levying authority pursuant to Section 37-61-9, the levying authority shall determine the millage rate necessary to generate funds equal to the dollar amount requested by the school board.
2. The statutes do not provided a specific penalty. The school district or other interested party may wish to seek relief in a court of competent jurisdiction.

Background Information

In your letter, you indicated that the Carroll County Board of Supervisors has refused to levy the millage necessary to generate funds equal to the dollar amount of the Carroll County School District's budget request, which was approved by the school board.

Applicable Law and Discussion

Section 37-57-104 of the Mississippi Code Annotated (1972) provides in part:

(1) Each school board shall submit to the levying authority for the school district a certified copy of an order adopted by the school board requesting an ad valorem tax effort in dollars for the support of the school district. The copy of the order shall be submitted by the school board when the copies of the school district's budget are filed with the levying authority pursuant to Section 37-61-9. **Upon receipt of the school board's order requesting the ad valorem tax effort in dollars, the levying authority shall determine the millage rate necessary to generate funds equal to the dollar amount requested by the school board.** For the purpose of calculating this millage rate, any additional amount that is levied pursuant to Section 37-57-105(1) to cover anticipated delinquencies and costs of collection or any amount that may be levied for the payment of the principal and interest on school bonds or notes shall be excluded from the limitation of fifty-five (55) mills provided for in subsection (2) of this section.

(2)(a) Except as otherwise provided under paragraph (b) or (c) of this subsection, if the millage rate necessary to generate funds equal to the dollar amount requested by the school board is greater than fifty-five (55) mills, and if this millage rate is higher than the millage then being levied pursuant to the school board's order requesting the ad valorem tax effort for the currently existing fiscal year, then the levying authority shall call a referendum on the question of exceeding, during the next fiscal year, the then existing millage rate being levied for school district purposes. The referendum shall be scheduled for not more than six (6) weeks after the date on which the levying authority receives the school board's order requesting the ad valorem tax effort. (Emphasis added).

Paragraph b of Miss. Code Section 37-57-1 states that the term "levying authority" means the county board of supervisors.

In response to your first question, pursuant to Section 37-57-104, the school board shall request an ad valorem tax effort in dollars for the support of the school district ("district"). Upon receipt of the district's request, the levying authority shall determine the millage rate necessary to generate funds equal to the dollar amount requested by the school board.

With respect to your second question, we find no specific penalty set out in statute for failure to enact a sufficient levy. The school district or other interested parties might appeal a Board of Supervisors' action by filing a bill of exceptions and might seek equitable relief in the form of mandamus or injunction.

Conclusion

Accordingly, where the amount is included in the certified copy of the order adopted by the school board, filed with the levying authority pursuant to Section 37-61-9, the levying authority shall determine the millage rate necessary to generate funds equal to the dollar amount requested by the school board.

Please contact our office if we may be of further assistance.
Very truly yours,

Jim Hood
Attorney General

By: Margarette L. Meeks
Special Assistant Attorney General

2009 WL 3332581 (Miss.A.G.)

END OF DOCUMENT



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Mr. Patrick H. Zachary, Esquire
2008 WL 4825815
October 31, 2008

Term Best Section

2008 WL 4825815 (Miss.A.G.)

Office of the Attorney General
State of Mississippi
Opinion No. **←2008→**-00510

October 31, **←2008→**

Re: Authority to Declare Revenue Shortfall and Issue Promissory Note under Miss. Code Section 37-57-108

Mr. Patrick H. **←Zachary→**, Esquire
Board Attorney
Forrest County School District
c/o **←Zachary→** & Leggett, PLLC
211 S. 29th Avenue, Suite 100
Hattiesburg, Mississippi 39402

Dear Mr. **←Zachary→**:

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

Issue Presented

Whether the Forrest County School District has the authority pursuant to Miss. Code Ann. Section 37-57-108 to declare a shortfall and issue a promissory note for the shortfall?

Response

Yes. It is the opinion of this office that the Forrest County School District is authorized, pursuant to Miss. Code Ann. Section 37-57-108, to declare a shortfall and issue a promissory note therefor so long as the shortfall is discovered during the school district fiscal year and the amount of the promissory note does not exceed 25 percent of the budget anticipated to be funded from the source of the shortfall for that fiscal year.

Background

In your letter, you state the following:

For the 2007/**←2008→** school year, the Forrest County School District Ad Valorem request was \$5,686,447.00. We received \$5,346,664.98 (as calculated on a cash basis from July 1, 2007 through June 30, **←2008→**). This is a shortfall of \$339,782.02. After homestead exemption and ad valorem tax reduction funds are figured into this amount, our shortfall is \$336,366.00.

In addition, we calculated what the assessed value of the property in Forrest County School District should bring at 55 mills, using a 100% collection rate. This figure is \$5,491,083.09. This amount, less what the District received leaves a shortfall of \$144,418.11.

Pursuant to the authority of Section 37-57-108 of the Mississippi Code of 1972, amended, we would like to declare a shortfall and issue a note in order to secure a loan for the amount of \$144,418.00 to be repaid over three years by levee of the tax.

Applicable Law and Discussion

Paragraph 1 of Section 37-57-108 of the Mississippi Code (1972) provides:

(1) In the event that the **amount of revenue collected or estimated to be collected from local sources, on behalf of a school district during a fiscal year, is less than the amount provided for in the duly adopted budget of said school district for the fiscal year, then the school district may issue promissory notes in an amount and in the manner set forth in Section 27-39-333**, not to exceed the estimated shortfall of revenue from local sources, but in no event to exceed twenty-five percent (25%) of its budget anticipated to be funded from the sources of the shortfall for the fiscal year. A school district issuing notes under the provisions of this section shall not be required to publish notice of its intention to do so or to secure the consent of the qualified electors or the tax levying authority of such school district.

(Emphasis added).

Section 37-57-108 incorporates Section 27-39-333 of the Miss. Code, which at subsection (2) provides in pertinent part: Any political subdivision which, during a fiscal year, estimates that the amount of the ad valorem taxes or other anticipated revenue from local sources to be collected therein is less than the amount estimated at the time of formulation of its budget for the fiscal year due to circumstances which were unanticipated at the time of formulation of the budget and which will prevent the political subdivision from meeting its financial obligations may, with the approval of the levying authority for such political subdivision, issue promissory notes in an amount equal to the estimated shortfall of ad valorem taxes and/or revenue from local sources but in no event to exceed twenty-five percent (25%) of its budget anticipated to be funded from the sources of the shortfall for the fiscal year. Miss. Code Ann. Section 37-61-1 states that "[t]he 'fiscal year' of all school districts of this state shall commence on July 1 and end on June 30 of each year." We understood in a follow-up conversation with you that the shortfall was discovered before the end of the fiscal year.

In the opinion issued to Mr. Walter Cartier dated October 6, 1994, our office provided the general interpretation of Section 37-57-108 of the Mississippi Code. MS AG Op., Cartier (October 6, 1994). "...Section 37-57-108 contemplates that when a district discovers that the amount collected during the school district's fiscal year is less than the amount provided for in the budget for that school district fiscal year, then the district may issue promissory notes to cover the short-fall and notice the levying authority of this act." *Id.*

With respect to your inquiry, the Forrest County School District discovered prior to the end of the school district's fiscal year that the amount collected from ad valorem taxes during the school district's fiscal year was less than the ad valorem request in the budget for that fiscal year. In this instance, the Forrest County School District may issue a promissory note to cover the short-fall in accordance with Section 37-57-108 of the Mississippi Code (1972). The amount of the note may equal the estimated shortfall of ad valorem taxes but not exceed 25 percent of the budget anticipated to be funded from ad valorem taxes for that fiscal year.

Conclusion

Hence, it is the opinion of this office that the Forrest County School District is authorized, pursuant to Miss. Code Ann. Section 37-57-108, to declare a shortfall and issue a promissory note therefor so long as the shortfall is discovered during the school district fiscal year and the amount of the promissory note does not exceed 25 percent of the budget anticipated to be funded from the source of the shortfall for the fiscal year.

Please feel free to contact our office if we may be of further assistance.
Very truly yours,

Jim Hood
Attorney General

By: Margarette L. Meeks
Special Assistant Attorney General

2008 WL 4825815 (Miss.A.G.)

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