



**STATE OF MISSISSIPPI  
OFFICE OF THE STATE AUDITOR  
STACEY PICKERING, AUDITOR**

**NEW SUPERVISOR STATEWIDE  
SEMINAR**

Jackson, Mississippi  
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# Mississippi Office of the State Auditor

Stacey E. Pickering

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County Supervisors,

Welcome to today's seminar. It is our honor to speak with you. We hope you will find today both informative and helpful.

Our Technical Assistance Division is always available to answer any compliance related questions you may have. They can be contacted at 1-800-321-1275 or you can send an e-mail to [tech@osa.ms.gov](mailto:tech@osa.ms.gov). Our website, [www.osa.ms.gov](http://www.osa.ms.gov), also includes resources that may be of assistance to you. In addition, if I can ever be of assistance to you personally, please do not hesitate in calling me.

As always, I appreciate your service to your county, and to our state. You, along with your staff, serve in a very important role for the taxpayers of Mississippi.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Stacey E. Pickering". The signature is fluid and cursive, with a long horizontal stroke at the end.

# New Supervisor Training

## Audit Requirements-

*Generally accepted accounting principles (GAAP)* are uniform minimum standards and guidelines for financial accounting and reporting. The opinion letter in an audit reports how a county has complied with generally accepted accounting principles. These standards for counties are derived primarily from official pronouncements of the Governmental Accounting Standards Board (GASB). GASB is the ultimate authoritative accounting and financial reporting standard-setting body for state and local governments.

The Governmental Accounting Standards Board (GASB) has identified accountability as the cornerstone of all financial reporting in government. The GASB has further identified two different forms of accountability: fiscal accountability for governmental activities and operational accountability for business-type and certain fiduciary activities. Fiscal accountability is the responsibility of governments to justify that their actions in the current period have complied with public decisions concerning the raising and spending of public moneys in the short term (usually one budgetary cycle or one year). Operational accountability is governments' responsibility to report the extent to which they have met their operating objectives efficiently and effectively, using all resources available for that purpose, and whether they can continue to meet their objectives for the foreseeable future.

The financial management cycle is an annual process for counties. It is a systematic approach to accountability and effective management. The cycle has three major elements: Budgeting, Accounting and Reporting. Each element bears a strong relationship to the others. Budgeting lays out a financial blueprint for the year's activities and guides the accounting.

County officials should understand the financial management cycle and how it operates in their county. This understanding will result in better performance of the duties entrusted to them by the taxpayers.

We encourage county governments to begin learning how to prepare their own financial statements.

A county government must keep reasonably accurate and auditable financial records in order to obtain an unqualified ("good") opinion on its financial statements. Sufficient competent evidential matter must be available for an auditor to apply necessary audit procedures and recommend to management any necessary adjustments to the financial statements.

**Q-** In reading policies providing elected official's bonds, some policies read the term of the policy as reflecting the 4 year term (ie. 1-1-2012 to 12-31-2016) of the official. The amount of coverage is correct

but is the intent that an official have \$100,000 coverage each year or over the course of their term in office?

A- Section 19-3-5, Mississippi Code requires county supervisors to secure an official surety bond; usually \$ 100,000. Other elected and appointed county officers will require different amounts of surety bond coverage. Section 25-1-15, Mississippi Code provides for the conditions of Official Bonds. These conditions include that: a new surety bond must be secured for each new term of office; and that each new bond must cover the entire four years in the new term of office. [These conditions apply to all official bonds required by law; regardless of the public officer being bonded.]

Note: These requirements are not a matter of county policy; but specified by state law. See Section 170, Mississippi Constitution.

### **Budgeting Process, Sub-Offices-**

Budgetary process stages occur over the entire fiscal year because the budgetary process is ongoing. The budget is under review throughout the year, may be amended when necessary and culminates with the final amended budget. (See Budget Calendar Sheet in this handout)

Counties are considered *primary governments* because the foundation of county government is a separately elected governing body, the Board of Supervisors. A primary government also includes all the departments and offices that make up its legal entity. For counties, such offices typically include the Chancery Clerk, Purchase Clerk, Tax Assessor-Collector, Circuit Clerk, Justice Court Clerk and Sheriff. In addition, counties have *component units* which are legally separate organizations for which the primary government is financially accountable. Examples of component units include county hospitals, county port authorities and county libraries. These are component units of the Board of Supervisors because they were created by the county and are controlled by the county. The Board of Supervisors is responsible for the component units' activities. The Governmental Accounting Standards Board considers component units to be part of the county reporting entity.

*Supervisors are responsible for reviewing the audit report of any component unit, including but not limited to, county owned hospitals.*

Q- What authority does the Board of Supervisors have over the Sheriff's Department?

A- The sheriff is an independently elected official and, generally, the board of supervisors has no control over the sheriff in the performance of his official duties. The Attorney General has previously opined that a sheriff has exclusive authority and control over his employees. This authority includes hiring, firing, disciplinary rules and regulations as well as other general operations of his office. **The sole restriction is that the expenditures of the sheriff's office must not exceed his budget as approved by the board of supervisors.**

Additionally, Section 19-25-69, MISS. CODE ANN. (1972), charges the sheriff with the care and custody of the jail of his county. Section 19-25-71, MISS. CODE ANN. (1972), states that the sheriff is the jailer

of his county and authorizes the sheriff to hire additional jailers to run the operation of the jail. Again, the sheriff has exclusive control over these employees, subject to the constraints of his budget as approved by the board of supervisors.

With regard to regular deputies, Section 19-25-21, MISS. CODE ANN. (1972, as amended), sets out a minimum number of deputies handling law enforcement duties for each sheriff based on the population of the county according to the latest Federal census. With regard to auxiliary deputies, Section 19-25-23, MISS. CODE ANN. (1972, as amended), provides as follows:

Each sheriff shall maintain and cause to be paid a sufficient number of regular deputies, properly trained and adequately equipped, to insure the domestic tranquility within his county. In addition thereto, each sheriff may maintain an adequate number of properly trained auxiliary deputy sheriffs to be equipped, trained, and paid from the general county fund. The number of said auxiliary deputies shall be approved by the board of supervisors and may be increased or reduced from time to time by said board.

Thus with regard to auxiliary deputies, the board only has the power to approve the number of such auxiliary deputies and does not have any control over who may be named auxiliary deputy by the sheriff.

Please note that the budget of the sheriff's office may be revised from time to time as the board of supervisors deems necessary and proper. Section 19-25-13, MISS. CODE ANN. (1972, as amended).

**Q-** ABC County has recently had a situation develop in which they need some assistance on.

The County has not been adding in Oil and Gas production into their Assessed Values in calculating their statutory salaries. The Board has been bumped up to the next classification because of the County having so much Forestry land; however, it also states that Oil and Gas production should be used as well, and it has not been.

Per Chancery Clerk this would affect about (10) employees, which are the Board of Supervisors (5), Tax Assessor/Collector, Justice Court Judges (2), County Prosecutor, and County Attorney. The Tax Assessor/Collector has looked up an Attorney General's Opinion to Donna Schrimshire (Clarke County) from 1997 to which they are thinking says they can go back (3) years and give back pay.

Please advise as to whether or not this seems appropriate and legal as this is going to be a lot of cost to County in order to do this. They would like something in writing from our office before they do the board order and pay this out.

**A-** As discussed in the referenced Attorney General's Opinion No. 97-0198, the salary of the Tax Collector is mandatory under Section 25-3-3, Mississippi Code and must be paid; but subject to the three year limitation of Section 15-1-49, Mississippi Code.

Section 25-3-13, Mississippi Code provides for the mandatory salary of the members of the Board of Supervisors. This salary is also mandatory and subject to Section 15-1-49. However, as discussed in the Attorney General's Opinion No. 1999-0500; supervisor's salaries are not increased until the board passes a resolution stating the amount of the increase and spreads in upon its minutes. [Note: Section 25-3-15 provides that oil and gas assessed valuation may be included in calculating supervisors' salaries. This section also specifies counties that are over 25 % exempt federal real property shall pay the supervisors at the next highest rate. (I think ABC County is made up of more than 25 % exempt federal real property.)

Section 25-3-36 (2), Mississippi Code provides for the Justice Court Judges' salary. If the Justice Court Judges' salaries are based upon the salaries of the Board of Supervisors (not population), their increase in compensation would be effective at the same time as the boards'.

Section 25-3-9, Mississippi Code provides for the County Prosecuting Attorney's salary. Section 25-3-9 (1) provides for a "may" population based salary and Sec. 25-3-9 (2)(hh) appears to allow a "may" 10 % increase. However, Section 25-3-9 (4) provides "...no county prosecuting attorney shall receive for his services an annual salary less than the salary paid to a justice court judge in his respective county".

Section 19-3-47 (1)(a), Mississippi Code authorizes the Board of Supervisors to pay the County Attorney a base annual salary not to exceed the maximum payable to Board of Supervisor members.

How this appears:

1. The Tax Collector's Salary must be paid for the three years preceding the claim by the Tax Collector for insufficient compensation.
2. The Supervisors' Salaries would not be effective until after the board approves the increase.
3. The Justice Court Judges' Salaries would not be effective until the board approves its increase.
4. The County Prosecuting Attorney's would not be effective until the board approves its increase, and then, only if the salary is based upon the Justice court Judges (and boards') salary; and it would be an increase.
5. The County Attorney's Salary increase would not be effective until the board approves its increase; and then, only if the order setting the attorney's salary was directly tied it to the board member's salary.

After all is said and done, the Tax Collector will probably be the only official due payment for insufficient prior salary.

### **Beat vs. Unit System-**

In a unit system of road administration, there shall be no road districts, separate road districts, or special road districts in any county; supervisors' districts shall not serve as road districts; and the construction and maintenance of roads and bridges shall be on a countywide basis. The distribution and use of all road and bridge funds; the planning, construction, and maintenance of county roads and bridges; the purchase, ownership, and use of all road and bridge equipment, materials, and supplies; the employment and use of the road and bridge labor force; and the administration of the county road department shall be on the basis of the needs of the county as a whole, as determined by the board of supervisors, without regard to any district boundaries. Any real and personal property of any road district becomes the property of the countywide system of road administration in a unit system.

- a. County Administrator - The board MUST appoint someone other than a member or the board to serve as County Administrator.
- b. Road Manager – The board shall establish a county road department. The board must adopt the general policies to be followed, and appoint a county road manager who shall be educated or experienced in the construction and maintenance of highways, bridges, and other facets of county highway responsibilities.
- c. Road Maintenance Facilities – The board shall establish and maintain one central road repair and maintenance facility for the county. Additional facilities may be established if the board

determines it to be essential for the effective and efficient management of the county road and bridge programs.

**The AG has ruled that individual supervisors in a unit county have no authority over the everyday working of the roads, and have no authority to maintain an office in any maintenance facility. All supervisors' offices should be located in the courthouse or another appropriate facility.**

Under the beat system, supervisors elected from their five (5) respective districts of each county, independently manage roads and bridges in their beats. County revenues for roads and bridges are usually divided equally (or as determined by the board) and distributed to each supervisor's road and bridge funds. The supervisor then spends these funds as he sees fit, within the limitations of the *Mississippi Code* and with approval of the entire board. Each supervisor usually maintains a barn or storage facility where his beat's road equipment can be stored. In addition, each supervisor maintains a road crew and may hire a foreman to oversee the work of the road crew.

- a. County Administrator – The board may employ a county administrator. If the board chooses to hire an administrator, he or she must hold at least a bachelor's degree from an accredited university and must have knowledgeable experience in any of the following fields: work projection, budget planning, accounting, purchasing, cost control, personnel management, and road construction procedures.
- b. Road Maintenance Facilities- The board may buy or rent land upon which to establish stations for the working of public roads, and may erect barns, sheds, and other necessary buildings thereon; but in no case shall said board buy more than two acres of land for any one station.

### **Doing Work on Private Property-**

Inevitably you will receive calls from your constituents complaining about things on their property. They think these things are the county's responsibility and they will expect you to see that the county handles the problem.

The question becomes what work, if any, may a county perform on private property? Mississippi Code Section 19-5-92.1 authorizes a county to acquire property and obtain easements necessary to perform work and to reimburse landowners for damages and injury resulting from work performed by the county under this section. In order for the county to perform any work or to reimburse a landowner for work on private property, the board of supervisors must : (a) Make a finding, as evidenced by entry upon its minutes, that such work and/or expenses are necessary in order to promote the public health, safety and welfare of the citizens of the county; (b) Give notice, in writing, to all owners of property that will be affected by the work for such period of time as is reasonable to allow such owners to express any objections; (c) Not receive written objection to the work by any owners of property that will be affected by the work within the period of time allowed to express objections; and (d) Unless otherwise agreed, in writing, by the county and the landowner, construct or install a culvert or bridge, at the county's expense, at an appropriate location or locations to provide the landowner ingress and egress to all of the property to which the landowner had access immediately before performance of the work by the county.

The Attorney General's Office has opined that neither a county or a municipality may repair, install or maintain a culvert on private property for the primary benefit of the landowner (MS Attorney General's Opinion, Carnathan February 2010). A county may not rely on Section 19-5-92.1 to remove and replace a storm drain that was improperly installed by a developer between two private residences (MS Attorney General's Opinion, Williams May 2007). A county may perform work on private property, after obtaining the appropriate easements, if the county makes the factual determination that the purpose of the work on the culvert is to clean and clear the drain and to prevent erosion, and additionally, that the board of supervisors makes the determination, recorded in the minutes, that such work and/or expenses are necessary in order to promote the public health, safety and welfare of the citizens of the county (MS Attorney General's Opinion, Carnathan February 2010). A county can perform drainage work on a ditch or creek or the banks thereof only to the extent necessary to drain water from an adjacent county road or to protect such a road, county building and other county property (MS Attorney General's Opinion, Meadows August 22, 2003). If a private landowner attempts to fill in or remove a storm water drainage pipe on their property in such a way that it causes the public road to flood and not drain properly, the county would be authorized to go onto their property to clear the drain or replace the pipe so as to allow the public roads to drain properly (MS Attorney General's Opinion, Martin June 2009).

If you have any questions regarding what your county is allowed to do on private property, or if you would like us to email you a copy of the complete MS Code Section 19-5-92.1, please contact our office at 1-800-321-1275 or [tech@osa.ms.gov](mailto:tech@osa.ms.gov).

**Q-** Request clarification on what the county is allowed to do in regards to maintenance of cemeteries. Are we only allowed to perform maintenance work on county-owned cemeteries, or are there any exceptions for cemeteries on private land, i.e., church owned?

**A-** A county may work on private property cemeteries only when a state law specifically authorizes the work. Without specific authority, the work would violate Section 66, Mississippi Constitution and Section 19-3-40 (3)(f), Mississippi Code prohibiting donations.

Authorities for a county to work for the benefit of cemeteries are as follows:

1. Section 19-3-75, Mississippi Code allows the Board of Supervisors to authorize to "...in its discretion, to grade, gravel or shell and/or to repair and maintain roads or driveways to public cemeteries."
2. Section 19-7-39 provides: "The board of supervisors of any county bordering on the Gulf of Mexico having two judicial districts and where U. S. Highways 90 and 49 intersect is authorized to maintain and repair any public or private nonprofit cemetery located within the county but located outside the corporate boundary of any municipality in the county. The expense of such maintenance may be paid from any available county funds."
3. Section 39-5-19 provides: "Upon the official certificate of the trustees of the state department of archives and history that any abandoned cemetery is of **historical significance** and should be repaired, rehabilitated, or maintained as a historical monument, the boards of supervisors of the respective counties in this state are hereby authorized and empowered, in their discretion, to repair, rehabilitate, and maintain any such cemetery within the borders of the county over which



such board has jurisdiction.

Subject to like certificate from the said trustees, the board of supervisors in adjoining counties may, in their discretion, jointly accomplish such repairs, rehabilitation, or maintenance in those instances where the cemetery in question occupies territory which at one time or another was located as a part of said adjoining counties.”

[Note: Sections 47-5-441 address authority and procedures to use prisoners to work on historic cemeteries.]

4. Section 47-5-452 provides: “ Upon written request by a majority of the board of supervisors of any county, the Commissioner of Corrections may authorize offenders committed to the custody of the Department of Corrections to clean abandoned or neglected cemeteries of the county or clean public roads of the county. The offenders shall be under the supervision of the department and the department shall establish all proper regulations for the working, guarding, safekeeping, clothing, housing and subsistence of offenders while working.”
5. Section 19-3-42 (5) provides: “(5) In addition to any other authority granted in this section, the board of supervisors of any county is hereby authorized, in its discretion, to repair and maintain driveways and parking lots of: (a) any nonprofit organization in the county which is tax exempt under Section 501(c) of the United States Internal Revenue Code and which has as one (1) of its primary purposes for organization to aid and assist in the rehabilitation of persons suffering from drug abuse or drug addiction; and (b) any private, nonprofit cemeteries in the county. The board of supervisors of any county shall not be authorized under the provisions of this subsection to repair or maintain driveways or parking lots located more than one hundred fifty (150) feet from the center of any highway, road or street under the jurisdiction of the county.”
6. Section 17-13-9 inter-local agreement specifications may provide for the county and municipality (Sec. 21-37-21) to jointly provide for cemetery services.
7. Section 19-5-93 (1) also provides: “ (a) *Confederate graves*. For the location, marking, care and maintenance of the grave or graves and graveyard of Confederate soldiers or sailors who died in the Confederate service, and the purchase, if necessary, of the land on which any of the said graveyards may be situated, and the erection and maintenance of appropriate monuments and appropriate inscriptions thereon. In the exercise of this power the board is fully authorized to accept donations of land on which any of said graveyards may be situated and also money or funds to be used for any of the purposes in this section expressed.

Any board of supervisors may, in its discretion, contribute money to be used for the upkeep of graves of the Confederate dead in its county.”

[Note: Attorney General Opinion No. 2000-0490 provided in a similar situation that where there is authority to donate money, it is implied donation of equipment and labor is authorized.]

What is important for a road manager is, to be sure that the Board of Supervisors has authorized on its minutes any work on private cemeteries; and that specific authority (such as referenced above) is cited.

**Q-** One of our supervisors is having damage to a county road caused by beaver dams on private property. It also becomes a safety hazard during large rains due to a vehicle could be pulled off the road into deep water because the water covering road.

With the land owner's permission, can the County contract with a company to blow these dams on private property?

**A-** Section 19-5-92.1, Mississippi Code provides a procedure for the Board of Supervisors to clean and clear creeks on private property.

If the board makes the proper findings and receives the required agreement; an order to remove a beaver dam could be authorized and included as part of an order for clearing of a creek, channel or conduit; and/or altering the stream to prevent damage to the county road (for the health comfort and convenience of the county).

### **Purchasing, Travel, Credit Cards-**

**COUNTY CENTRAL PURCHASE SYSTEM (31-7-101/127 Mississippi Code of 1972).** Since January, 1989, each county in Mississippi has been required to operate with a central purchase system. Sections 31-7-113 and 7-7-211 *Miss. Code*, require the State Department of Audit to design and prescribe the forms and systems for the central purchase system. The central purchase system is administered by a county department of purchasing headed by a purchase clerk who, unless the chancery clerk is appointed by the board of supervisors as purchase clerk, is appointed by the county administrator, with the approval of the board of supervisors, in any county required to operate under a countywide system of road administration. In other counties, the board of supervisors appoints the purchase clerk (31-7-101). The purchase clerk must successfully complete the professional education program offered for purchase clerks within one (1) year after being appointed. Assistant purchase clerks are not required to attend or complete an education program (31-7-101).

The purchase clerk must be bonded for \$75,000. All assistant purchase clerks must each be bonded for \$50,000 (31-7-124).

The department of purchasing has sole responsibility to purchase all equipment, heavy equipment, machinery, supplies, commodities, materials and services used by any office or department of the county except for those offices or departments whose expenditures are not required by law to be approved by the board of supervisors (31-7-101, 103).

Section 25-3-41, Mississippi Code provides travel authority for county employees and Section 19-3-67 provides for the specific travel of county supervisors.

Section 19-3-68 (copy at the end of this email) provides for the Board of Supervisors to acquire credit cards for "travel" only. This means only expenses associated with authorized (addressed above) travel may be reimbursed (meals, lodging, transportation, and necessary supplies).

The county may acquire credit cards for purposes other than travel in accordance with Section 31-7-9 state contract provisions See DFA regulations at web

site: <http://www.dfa.state.ms.us/Purchasing/ProcurementCardServices/ProcurementCardGuidelinesRevised10-30-2013.pdf>. [Note: Page 7 prohibits travel expense use. Also, note counties are “governing authorities”, not agencies when reading these regulations.]

The final language means an employee would have to repay the county for any unauthorized charges (non-travel, expenditures not within law or county policy limits, etc.). “Not approved for payment”, means the employee was not authorized to make the charge. This provision is included because the county will have to pay the credit card company regardless of authorization (contract obligation), and will need to recover its money from the employee (or officer). [Note: “reimburse the county” language.]

**Q-** We are about to enter into a contract with a University for a study. They are requesting a \$10,000 retainer. It is my understanding that we cannot pay for services or goods until we receive them. Will you convey whether we can or cannot pay a retainer?

**A-** As explained in the Attorney General’s Opinion No. 2009-00014, counties may not pay for goods and services (retainer) in advance. The county may pay for services only after receipt (as specified in the contract) and approval of the associated claim. The contract may provide for partial payments as measurable thresholds are achieved.

**Q-** I have been speaking with a local Ford dealer. We issued a purchase order for several trucks back in September. One truck has been AWOL for several weeks. It is still missing but the dealer has offered to find another vehicle to replace this one. The vehicle he has offered far exceeds the options found on the state contract 070-4852255-6 for a standard Ford F150, regular cab with the V6 option. The vehicle he is offering to us is a 2014 F-150 Lariat SuperCrew 4x2. I have checked the VIN and found it is a V8 and has a 4.2” LCD cluster screen, 10-way leather power heated seats, memory driver seat, power sliding rear window with defrost and privacy tint...just to mention a few items...many amenities we did not seek. He is offering this truck at the state contract price of the modest model we requested (\$15,736.00).

My question for you: Are we legally allowed to accept a vehicle with more options than offered on state contract? We interpreted the code stating “IDENTICAL” to mean apples to apples. This does not comply if we are correct.

**A-** Section 31-7-12 (2), Mississippi Code authorizes counties to purchase the “identical” commodity (on state contract) from any source offering such commodity at or below the state contract price. As long as the commodity is identical (brand, model, specifications, etc.) to the state contract commodity (vehicle); the donation of additional features does not diminish the exemption from making the purchase without soliciting bids.

Maintaining a record of facts and circumstances leading to the purchase of the vehicle serves to document the justification for accepting additional options; and the faithful performance efforts of the county officers to comply with state law.

**Q-** I am the Payroll/HR Clerk in ABC County and we have heard about this issue in other counties. I have read many AG Opinions and they all say very clearly that no county vehicle can be used for personal use. Per the IRS, however, the act of taking of a vehicle home is a personal use fringe benefit. My question is this - Is the taking home of any vehicle (that is not a “qualified nonpersonal use vehicle” per the IRS) not a violation of State law (which says no personal use) and therefore not allowed? It seems to me that the answer would be “yes” and make this whole issue with the IRS a moot point since no one

should be doing this. Another simpler way to look at it...if the State doesn't allow personal use, then how can an employee be taxed for personal use? If they are, then State law is being broken by allowing the employee to have the vehicle...right?

A- Several Mississippi counties have been scrutinized by the Internal Revenue Service (IRS) for their use and accounting of public vehicles. Unless exempted by 26 CFR 1.274-5(k) as a "qualified nonpersonal use vehicle," the personal use of a government-owned vehicle may be considered a taxable fringe benefit. The value of such benefit is considered income to the employee granted use of the vehicle. The IRS provides for three methods of valuating the personal use of the vehicle for tax purposes: the Lease Valuation Rule (26 CFR 1.61-21(d)), Cent-Per-Mile Rule (26 CFR 1.61-21(e)), and Commuting Rule (26 CFR 1.61-21(f)).

The regulations provide guidelines for the application of each valuation method. For example, the Cent-Per-Mile Rule requires the vehicle to be driven a minimum of 10,000 miles annually and fifty percent (50%) or more of the mileage must be for business use. The Commuting Rule allows a simplified calculation where each one-way trip from the employee's home to workplace is valued at \$1.50. However, the Commuting Rule cannot be used for control employees, which include elected officials or any employee whose compensation meets or exceeds a federal government employee at Executive Level V (\$147,200.00). The regulations also contain a chart to assist in the conversion of fair market value of a vehicle to lease value, and rules set forth the proper formula to calculate the taxable benefit based on the percentage of personal/commuting mileage.

In an effort to prevent this from becoming a problem in your county or municipality, we would like to make you aware of information relating to these topics. We have attached for your review the Quick Reference Guide for Public Employers published the IRS and encourage you to consult the IRS Fringe Benefits Guide, publication 5137, available at <http://www.irs.gov/pub/irs-pdf/p5137.pdf>.

### **Renewing County Contracts-**

A board of supervisors is elected to exercise its powers for a specific amount of time (term of office; 25-1-1.) The board's actions are limited to be binding only during its term of office, except where specified by law (ex- bond obligations.)

This does not mean a board's orders or policies necessarily terminate at the end of its term. A subsequent board may (in its discretion) change or terminate a prior board's orders and policies after the subsequent board takes office (ex 19-2-9- personnel polices continue until changed.) A prior board's contracts that are not authorized by law must be found void.

The AG has issued numerous opinions to address binding of successors and authority of successor governing authorities or public officials.

Q- OSA Investigator's questions regarding a volunteer fire department and expense:

A non-profit organization contracts with a county for fire services as a volunteer fire department. Per the contract, the fire department receives \$5,000.00 annually from the County. These funds are derived from millage taxes. The fire department maintains a checking account in which these funds are deposited. The fire department has a separate checking account named "special account" in which fundraising and

private donation funds are deposited. The funds from the county are not comingled with private donation and fundraising money.

The millage funds are used by the fire department to purchase fuel, tires for fire trucks, fire truck maintenance, pay utility bills, miscellaneous expenses pertaining to the building (light bulbs, cleaning supplies, etc), and any other fire department related expense. The "special account" is used to purchase anything wanted by the fire department members, whether it be cook out supplies, beer for members while cleaning station, etc.

Complaint: Fire Chief is misspending fire department funds, i.e. beer purchases

Questions: Does OSA have an issue with the expenditure of the funds located in the "special account" which are derived from fundraising and donations?

If so, what are the restrictions for the expenditures?

Must the funds be expensed according to purpose of fundraiser?

**A-** Money paid to a non-profit corporation (such as a volunteer fire department) for fire response services is not restricted; unless specified in the service contract. How the non-profit spends money it receives is otherwise only restricted by their corporate charter. See section (d) on page 17 of the Fire Coordinators program material. [This guide is very comprehensive; and should help with any other questions you may have.]

Section 83-1-39, Mississippi Code (discussed in the guide) requires county contracts with providers of fire protection services to restrict insurance rebate money paid to fire service providers. [Ad valorem tax proceeds are not insurance rebate funds.]

Bottom line, if the ad valorem source money is restricted in the service contract and the service provider is violating the contract; the Board of Supervisors should be held responsible for enforcing their contract. If the contract does not restrict the money, it is no more restricted than money paid to Walmart for a set of tires. [You have to see the contract; required by Section 83-1-39.]

Note: Fire Protection Districts (Sec. 19-5-151 et seq.) are governmental entities. Payments to them are appropriations; and they are subject to state law expenditure restrictions (bidding, donations, etc.).

Also note; there is no state law that prohibits public funds from being used to purchase alcohol. Like any other purchase, it purchase must just be justified as reasonable and necessary in the satisfaction of the function of government being served (economic development entertainment, undercover activities, etc.).

**Q-** Can contracts approved by one Board of Supervisors bind a successor board- or can the successor board vote to terminate a contract legally entered into by a previous board before the expiration of a contract term- without cause.

**A-** A board of supervisors is elected to exercise its powers for a specific amount of time (term of office; Section 25-1-1). The board's actions are limited to be binding only during its term of office; except where specified by law (example: bond obligations).

This does not mean a board's orders or policies necessarily terminate at the end of its term. A subsequent board may (in its discretion) change or terminate a prior board's orders and policies; after the subsequent board takes office (example: Section 19-2-9 personnel policies continue until changed). A prior board's contracts that are not authorized by law, must be found void.

The Attorney General has issued numerous opinions to address binding of successors and authority of successor governing authorities or public officials. As an example please see Opinion No. 2012-00448 to address a subsequent board's responsibility to find void a contract that extended beyond the amount of time authorized by state law.

**Q-** I have a situation I need some clarification on regarding a potential illegal donation through the improvement of private property, which was leased to the county. The County entered into a lease to provide auxiliary parking for the community center to accommodate an anticipated inflow of patrons to its annual Black History Parade. Per the lease agreement, the county was granted a right of entry to clear vegetation and or debris to the extent reasonably necessary to suit the anticipated uses. The lease also acknowledges the fact that the county is a political subdivision of the State of Ms. and is prohibited from making any improvements to the property.

We made an observation of the property in question and noted that the surrounding area consisted of a large cutover area, mainly consisting of stumps, limbs, brush, etc. It was our understanding that the lot itself was in the same condition prior to the "clearing of vegetation and debris" that was agreed upon in the lease. The area that was cleared for parking also included dirt, millet (or what appeared to be some sort of asphalt), and culverts, which we understand was provided by the County. We attempted to gain an understanding on the degree of labor and material that went in to bringing the property up to its current condition from the Board President while making our observations, however, he was unwilling to fully disclose the efforts provided by the County.

The Board President did agree that there was dirt provided and spread on the property as well as the millet being brought in for the parking area. Per our conversation with the Board President, he stated that the millet and the dirt were spread on the site but it is his intent to reuse the materials on a future road site.

Based on this information would the addition of dirt, the millet, and the associate labor regarding the leveling and preparing of this site be considered an illegal donation through the improvements to the property?

**A-** Counties may lease property for proper functions of county government. As explained in the Attorney General's Opinion No. 1999-0506, real property lease agreements may include provision for reasonable improvements to the property; provided the costs of the improvements is reasonable in light of the value of the lease.

For an audit finding, evidence would be required to establish the value of the improvements were unreasonable as consideration for the benefits of the lease.

Whether or not the value of improvements is reasonable is a matter of judgment; subject to determination by a court of competent jurisdiction.

**Note:** Counties may establish recreational facilities (including parking accommodations) under Section 55-9-1, Mississippi Code.

Please see the 2014Jan-MML Attorney program handout for an overview of liability exposure of public officials.

### **County Personnel Policies-**

Personnel policies should be established in all counties in Mississippi. Uniform personnel policies safeguard the county and the employee and assist in the hiring of the best possible people.

# Helpful Statutes

19-3-5 - Surety Bond requirement for County Supervisors

19-3-19 - Calling Special Meetings

19-3-23 - Quorum and fine for failure to attend

19-3-40 - Powers, orders, resolutions or ordinances

19-3-41 - Jurisdiction and authority generally

19-3-42 - Maintenance powers (when it's ok to do work on private property)

19-3-67 - Traveling costs of supervisors

19-3-68 - Credit cards for payment of travel expenses for county business

19-3-69 - Professional services

19-3-77 - Programs of professional education

19-5-93 - Patriotic and Charitable Donations

31-7-13 - Purchase Law Statute (**Only for:** commodities and printing; contract for garbage collection or disposal; contract for solid waste collection or disposal; contract for sewage collection or disposal; contract for public construction; and contract for rentals)

## Resources-

OSA Purchase Law Summary is located on our website.

[http://www.osa.ms.gov/downloads/Purchase\\_Law\\_Update.pdf](http://www.osa.ms.gov/downloads/Purchase_Law_Update.pdf)

OSA Purchase Clerk Manual is located on our website.

<http://www.osa.ms.gov/downloads/purchase-manual12.pdf>

OSA County A&A Guide is helpful for explaining basic governmental accounting and budgeting process and timelines. <http://www.osa.ms.gov/downloads/county02.pdf>

Emergencies- Please see our emergency guide for information on your responsibilities during an emergency. <http://www.osa.ms.gov/downloads/emergency-accountability-plan.pdf>

See cited Mississippi Code Sections at web site: <http://www.lexisnexis.com/hottopics/mscode/>.

See Mississippi Constitution at web

site: [http://www.sos.state.ms.us/ed\\_pubs/constitution/constitution.asp](http://www.sos.state.ms.us/ed_pubs/constitution/constitution.asp).



**State Auditor**

**Stacey Pickering**

**State Auditor and DA Announces Multiple  
Plea Agreements in Public Corruption Investigation**

Corinth, Miss –Former Alcorn County Supervisor, Jimmy Dallon Nelms pled guilty to false representation to defraud government, fraudulently obtaining public funds, and embezzlement. Nelms, already in custody after his bond was revoked in an unrelated arrest, pled guilty before Circuit Judge Paul Funderburk. Nelms received 30 years in the custody of the MS Department of Corrections (MDOC) with 18 of those years suspended and 12 years to serve followed by 5 years of post-release supervision, and restitution in the amount of \$308, 244.71, \$5,000 in fines, and court costs in the amount of \$3,157.50.

Alcorn County vendor, Jimmy Ray Mitchell pled guilty to fraudulently obtaining public funds and false representation to defraud government. Mitchell received 5 years in the custody of MDOC, ordered to pay restitution in the amount of \$95,382.35, placement in the MDOC intensive supervision program, followed by 5 years of post-release supervision, \$5,000 in fines which are suspended, and court costs in the amount of \$1,263.00.

“Uncovering deep rooted public corruption like this is why I wanted to be your State Auditor,” said State Auditor Stacey Pickering. “The people of Mississippi deserve to feel confident in their government. There are individuals in this state who have no problem taking hard-earned, tax-payer dollars and spending them for their own pleasure. I hope the sentencing of these individuals serves as a wake-up call for those who are betraying their public oaths: We will uncover the truth, and violators will be held accountable.”

“The pleas of guilty today reveal the dedication by our office to prosecute public officials in our district who steal taxpayer dollars,” said District Attorney John Weddle. Weddle



stated, "For months I've been speaking with people in Alcorn County who are deeply concerned about long-standing corruption. I am proud of the cooperation between our office and the State Auditor, and I am happy for law-abiding Alcorn County citizens who had the courage to stand with us to indict these corrupt officials."

Two additional defendants are scheduled to appear before Judge Funderburk at 2:30pm this afternoon, and one additional defendant is scheduled to plea tomorrow.