

IN THE CHANCERY COURT OF LEFLORE COUNTY, MISSISSIPPI

LEFLORE COUNTY BOARD OF SUPERVISORS

PETITIONER

VS.

CAUSE NO: 23-CV-90

**MARCUS BANKS, in his capacity as Commissioner of
Greenwood Leflore Hospital Board of Commissioners and
CITY OF GREENWOOD**

RESPONDENTS

**EMERGENCY PETITION FOR TEMPORARY PRELIMINARY AND PERMANENT
INJUNCTION**

COMES NOW, Petitioner, Leflore County Board of Supervisors (“Supervisors”), and files this Petition for Preliminary and Permanent Injunction against Respondents, Marcus Banks and City of Greenwood, requesting that the Court enjoin Respondent from violating the law governing his hospital board appointment by holding over in this position after the expiration of the term. In support hereof, Petitioner would show unto the Court the following, to wit:

PARTIES

1. Petitioner, Leflore County Board of Supervisors, is a political subdivision located in Leflore County, Mississippi, that consists of five (5) elected officials.
2. Respondent, Marcus Banks, is a resident of Leflore County and he may be served with process at 1326 Virden Avenue, Greenwood, Mississippi 38930.
3. Respondent, City of Greenwood, is a political subdivision located in Greenwood, Mississippi and it may be served with process through Mayor Carolyn McAdams, 101 West Church Street, Greenwood, Mississippi 38930.

JURISDICTION

4. Jurisdiction is proper in this Court pursuant to Article 6 § 159 of the Mississippi Constitution because this Court has full jurisdiction over all matters in equity.

FILED

DEC 04 2023

JOHNNY L. GARY, JR., CHANCERY CLERK

BY *[Signature]*

5. Venue is proper in Leflore County, Mississippi.

FACTS

6. On September 18, 2018, Marcus Banks, Greenwood Fire Chief, was nominated by Mayor Carolyn McAdams and approved by the Greenwood City Council to serve as a member on the Greenwood Leflore Hospital Board of Commissioners on September 18, 2018 with his term set to expire on June 1, 2023. (See Resolution from September 18, 2018 meeting of Greenwood City Council as Exhibit A). Marcus Banks was appointed and approved to serve on the hospital board on September 24, 2018. (See Minutes from September 24, 2018 Meeting of the Leflore County Board of Supervisors as Exhibit B). Mr. Banks has now served over six (6) months after the expiration of his term.
7. On October 13, 2023 and October 17, 2023, Petitioner emailed the Greenwood Leflore Hospital Board of Commissioners, including Marcus Banks, and the City of Greenwood to provide them with the Supervisors' position regarding the legality of Mr. Banks holding over as a hospital board member. (See Attached Letters as Exhibit C and Exhibit D)
8. The City of Greenwood, by and through the Mayor of Greenwood, has influenced Mr. Banks to illegally remain on his seat on the hospital board.

TEMPORARY PRELIMINARY AND PERMANENT INJUNCTION

9. Petitioner will demonstrate a likelihood that it will prevail on the merits of this case. The law is clear that the City of Greenwood and the Supervisors have the power to make a joint appointment to the seat that Mr. Banks is improperly holding. Mr. Banks is not authorized by law to hold over. In accordance with Mississippi law, Marcus Banks' hospital board seat became vacant upon the expiration of the term and should remain

vacant until someone is nominated and approved by the Supervisors and the City Council. According to Mississippi Code Section 25-1-7,

“If any person elected or appointed to any state, state district, levee board, county, county district, or municipal office shall fail to qualify as required by law on or before the day of the commencement of his term of office, or for any cause any such officer shall hold over after his regular term of office expires upon the authority given him to hold over until his successor is appointed or elected and qualified, a vacancy in such office shall occur thereby and it shall be filled in the manner prescribed by law.”

Mississippi Code Annotated Section 25-1-7 requires that in order for a particular officer to be entitled to remain in office after the expiration of his term, there must be statutory authority specific to that office authorizing hold over privileges. The statute that governs community hospital board members is located at Miss. Code Ann. §41-13-29. There is no language in §41-13-29 or any other statute that authorizes a hospital board member to “hold over” or continue to serve in office after the expiration of the term.

10. In *Littleton vs. McAdams*, 60 So. 3d. 169 (Miss. 2011) the Mississippi Supreme Court was faced with similar facts. In that case, the city attorney for Greenwood was terminated by the newly elected mayor, Carolyn McAdams. When the city attorney began to hold over as city attorney, the mayor sued the city attorney and sought injunctive relief in Chancery Court. The Mississippi Supreme Court found the Chancellor did not abuse its discretion, in citing the plain language of Miss. Code Ann. § 25-1-7, that “the statute applies only to positions that – from some other source – have been granted the power to hold over.” *Id.* at 171.

11. Also, this injunction is necessary to prevent irreparable harm that would result from actions taken by Mr. Banks purporting to act as a hospital board member in the absence

of the authority to do so. Mr. Banks has served over six (6) months after the expiration of his term which ended on June 1, 2023. According to Miss. Code Ann. §21-15-41,

(1) **“No person shall serve in an interim or hold-over capacity for longer than ninety (90) days** in a position that is required by law to be filled by appointment of the governing body of a municipality, or by mayoral appointment with the advice and consent of the council or aldermen. If such position is not filled within ninety (90) days after the expiration of the position’s term, or within ninety (90) days after the date of appointment in an interim appointment, the hold-over service or interim appointment shall terminate and no municipal funds may thereafter be expended to compensate the person serving in the position. Further, **any action or vote taken by such person after the ninety-day period shall be invalid and without effect.**

(2) It is the intent of the Legislature that the provisions of this section shall apply to all appointees serving in a hold-over or interim capacity on July 1, 2018.”

12. For over five (5) years, the law in Mississippi has been that one cannot hold-over in a position longer than ninety (90) days. Clearly, Mr. Banks has serve well passed his legal time to serve and we request this Court to remove him from this seat.

13. Furthermore, if Mr. Banks is removed from his seat on the board, harm to Mr. Banks is little to none when compared to the potential harm to Leflore County and its citizens by allowing him to vote on issues of the financially distressed hospital. The City of Greenwood has acknowledged that Mr. Banks’ term has ended by its October 31, 2023 letter which states “I am confident that by working together, we can find a suitable replacement for the **expired board member.**” (See Attached Letter from Greenwood Mayor as Exhibit D). The law is clear that any vote taken by Mr. Banks after the 90 day period is “invalid and without effect.”

14. This Court needs to intervene to prevent Mr. Banks from illegally taking action on behalf of Leflore County and the hospital board.

15. Pursuant to Miss. Rule of Civil Procedure 65, Petitioner is entitled to temporary and permanent injunctive relief to enjoin Mr. Banks from serving in a holdover capacity on the hospital board.

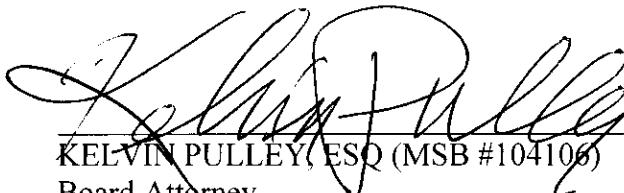
WHEREFORE PREMISES CONSIDERED, Petitioner requests the following relief against Respondents:

- A. A judgment enjoining Marcus Banks from serving as a hospital board member; and
- B. Other damages for which the Court deems reasonable and just.

Respectfully submitted, this the 4th day of December, 2023.



REGINALD MOORE, PRESIDENT
LEFLORE COUNTY BOARD OF SUPERVISORS



KELVIN PULLEY, ESQ (MSB #104106)
Board Attorney
Leflore County Board of Supervisors
104 Cotton Street
Greenwood, MS 38930

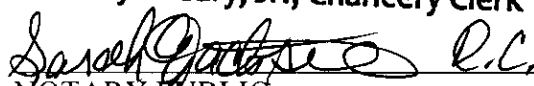
STATE OF MISSISSIPPI
COUNTY OF LEFLORE

Personally, appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named REGINALD MOORE, Petitioner in the foregoing Petition, who having been by me first duly sworn states on oath that the matters, things, and facts alleged, contained and set forth in the foregoing Petition are true and correct as therein stated.


REGINALD MOORE

2023 SWORN TO AND SUBSCRIBED before me this the 4th day of December,



Johnny L. Gary, Jr., Chancery Clerk

NOTARY PUBLIC

My Commission Expires Jan. 1, 2024

EX. A

MINUTE BOOK 121, PAGE 434
MUNICIPAL MINUTES, CITY OF GREENWOOD, LEFLORE COUNTY, MISSISSIPPI

SEPTEMBER 18, 2018, CITY COUNCIL MEETING

**RESOLUTION APPROVING THE APPOINTMENT OF MARCUS
D. BANKS TO THE HOSPITAL COMMISSION**

WHEREAS, Mayor Carolyn McAdams has recommended the appointment of Marcus D. Banks to the Greenwood Leflore Hospital Commission pursuant to §41-13-29(1)(6) MCA, as the joint appointment with Leflore County to replace Larry Griggs. Chief Banks' Resume is attached hereto; and

WHEREAS, this council finds that it is in the best interest of the citizens of the City of Greenwood that the appointment of Marcus D. Banks to the Hospital Commission as the joint appointment with Leflore County be approved to begin his term effective immediately and to expire on June 1, 2023; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENWOOD, LEFLORE COUNTY, MISSISSIPPI, that the findings, conclusions and statements of fact contained in the foregoing preamble are hereby adopted, ratified and incorporated herein, and that the appointment of Marcus D. Banks to the Greenwood Leflore Hospital Commission as a joint appointment with Leflore County for the term to be effective immediately and to expire on June 1, 2023 be and is hereby approved.

The above and foregoing resolution having been first reduced to writing was considered section by section and then as a whole, having been introduced by Councilperson Charles E. McCoy, Sr., was duly seconded for adoption by Councilperson Carl Palmer, and upon a vote being called, received the following vote:


<u>COUNCILPERSON</u>	<u>YEA</u>	<u>NAY</u>
Johnny Jennings	X	
Lisa Cookston	X	

The President of the Council then declared the motion passed and adopted this, the 18th day of September, 2018.

APPROVED BY:

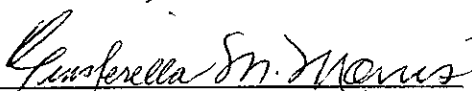


CAROLYN MCADAMS, MAYOR



RONNIE STEVENSON, PRESIDENT OF
THE CITY COUNCIL

ATTEST:



CINDERELLA MORRIS, CITY
COUNCIL CLERK

User1/Don/City/Resolution Approval Harris Powers to Hospital

MINUTES OF THE BOARD OF SUPERVISORS
MINUTE BOOK 330

LEFLORE COUNTY, MISSISSIPPI
SEPTEMBER 24, 2018

39

ORDER TO RESCIND A PREVIOUS ORDER OF BOARD OF SUPERVISORS APPOINTING EDGAR BLAND TO THE GREENWOOD LEFLORE HOSPITAL BOARD OF COMMISSIONERS AND TO APPROVE THE RECOMMENDED APPOINTMENT OF MARCUS BANKS BY THE CITY OF GREENWOOD FOR A FIVE-YEAR PERIOD, BEGINNING SEPTEMBER 24, 2018

BE IT REMEMBERED on June 4, 2018, in Minute Book 328, Page 163, the Board of Supervisors appointed Edgar Bland to the Greenwood Leflore Hospital Board of Commissioners, subject to the City of Greenwood's approval of this appointment.

After discussion, on motion made by Supervisor Collins, duly seconded by Supervisor Abraham, and approved by a majority vote of the Board members, with both Supervisor Self and Supervisor Moore voting "nay," it is hereby ordered to rescind a previous order of the Board of Supervisors appointing Edgar Bland to the Greenwood Leflore Hospital Board of Commissioners and to approve the recommended appointment of Marcus Banks by the City of Greenwood for a five-year period, beginning September 24, 2018. Supporting documentation is made a part of this order.

So ordered, this the 24th day of September, 2018.

SAM ABRAHAM, Dist. 1
GREENWOOD, MS _____

REGINALD MOORE, Dist. 2 President
GREENWOOD, MS _____

ANJUAN BROWN, Dist. 3
GREENWOOD, MS _____

ERIC MITCHELL, DIST. 4
ITTA BENA, MS _____

ROBERT COLLINS, Dist. 5 Vice President
GREENWOOD, MS _____

BOARD OF SUPERVISORS

LEFLORE COUNTY

POST OFFICE BOX 250

GREENWOOD, MS 38935-0250

TELEPHONE (662) 453-6203

FAX (662) 455-7965

JOHNNY L. GARY, JR. Clerk
GREENWOOD MS _____

KELVIN PULLEY, Attorney
GREENWOOD MS _____

RICKY BANKS, Sheriff
LEFLORE COUNTY, MS _____

JERRY SMITH, Road Manager
GREENWOOD, MS _____

REGULAR MEETINGS
EACH 1ST, 2ND & 4TH MONDAYS
AT 4:00 P.M.

Thursday, October 12, 2023

Greenwood Leflore Hospital Board of Commissioners
1401 River Road
Greenwood, MS 38930

RE: Greenwood Leflore Hospital Board's Holdover Board Member

Dear Hospital Board Members:

On Monday, October 9, 2023, the Leflore County Board of Supervisors voted to inform the Greenwood Leflore Hospital Board and the City of Greenwood that Marcus Banks, the "holdover" hospital board member, should vacate the jointly appointed board seat immediately. The position of the Leflore County Board of Supervisors is that Banks' hospital board seat became vacant upon the expiration of the five-year term and this seat should remain vacant until someone is approved by both the Supervisors and Greenwood City Council.

Mississippi Code Annotated Section 25-1-7 requires that in order for a particular officer to be entitled to remain in office after the expiration of his or her term, there must be statutory authority specific to that office authorizing hold over privileges. Littleton vs. McAdams, 60 So. 3d 169, 171 (Miss. 2011). "When a public office is filled by election by popular vote or by election in some manner provided by law for a specified term, the right to the office ceases with the expiration of the term except when provided by law the incumbent holds over until his or her successor is elected or qualified." MS AG Op., Bradley (September 6, 2013); MS AG Op., Brock (January 19, 2010). There is no language in Miss. Code Ann. § 41-13-29, the statute that governs community hospital board members, that authorizes a hospital board member to hold over or continue to serve in office after the expiration of the term. MS AG Op., Ellis-Stampley (January 20, 2012); MS AG Op., Hall (August 31, 2012). Furthermore, the determination of whether someone is acting as a "de facto" officer requires factual analysis which is subject to review by a court of competent jurisdiction. MS AG Op., Hall (August 31, 2012).

We look forward to your written response.

Sincerely,



Reginald Moore, President
Leflore County Board of Supervisors

EX. D

SAM ABRAHAM, Dist. 1
GREENWOOD, MS

REGINALD D. MOORE, Dist. 2 President
GREENWOOD, MS

ANJUAN BROWN, Dist. 3
GREENWOOD, MS

ERJC MITCHELL, DIST. 4
HITA BENA, MS

ROBERT COLUNS, Dist. 5 Vice President
GREENWOOD, MS

BOARD OF SUPERVISORS

LEFLORE COUNTY

POST OFFICE BOX 250

GREENWOOD, MS 38935-0250

TELEPHONE (662) 453-6203
FAX (662) 455-7965

JOHNNY L. GARY, JR., Clerk
GREENWOOD MS

KELVIN PULLEY, Attorney
GREENWOOD MS

RICKY BANKS, Sheriff
LEFLORE COUNTY, MS

JERRY SMITH, Road Manager
GREENWOOD, MS

REGULAR MEETINGS
EACH 1st, 2nd & 4th MONDAYS
AT 4:00 P.M.

Tuesday, October 17, 2023

Carolyn McAdams, Mayor
Ronnie Stevenson, President
Greenwood City Council
101 West Church Street
Greenwood, MS 38935

RE: Greenwood Leflore Hospital – Joint Appointment

Dear Mayor and City Councilmen/Councilwomen:

On Monday, October 9, 2023, the Leflore County Board of Supervisors voted to inform the Greenwood Leflore Hospital Board and the City of Greenwood that Marcus Banks, the "holdover" hospital board member, should vacate the jointly appointed board seat immediately. The position of the Leflore County Board of Supervisors is that Banks' hospital board seat became vacant upon the expiration of the five-year term and this seat should remain vacant until someone is approved by both the Supervisors and Greenwood City Council.

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We look forward to your written response.

Sincerely,



Reginald Moore, President
Leflore County Board of Supervisors