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**

ORDER GRANTING PRELIMINARY INJUNCTION

This matter came before the Court for hearing upon the Emergency Petition for Temporary Preliminary and Permanent Injunction filed by Petitioner, Leflore County Board of Supervisors, and the Court having conducted a hearing and after having first considered this matter finds as follows:

PROCEDURAL HISTORY AND FACTS

1. The Court has jurisdiction over the parties and subject matter in this case.
2. The Emergency Petition for Temporary Preliminary and Permanent Injunction was filed on December 4, 2023; and noticed for a hearing at 1:30p.m. on December 20, 2023.
3. On December 15, 2023, Respondents, Marcus Banks and the City of Greenwood, filed their Motion To Continue the hearing set for the Emergency Petition for Temporary Preliminary and Permanent Injunction. The Court finding there was no good cause for the request for continuance and denied the same by Order entered on December 18, 2023.
4. The Memorandum of Law in Support of the Temporary Preliminary and Permanent Injunction was filed by Petitioner on December 17, 2023; and Respondents' Memorandum of Law in Opposition to Petitioner's Request for a Temporary Injunction was filed on December 18, 2023.
5. The Greenwood Leflore Hospital is jointly owned by the City of Greenwood and Leflore County, Mississippi. The governing body of the hospital is comprised of five commissioners and is called

the Board of Commissioners. The City of Greenwood appoints two members to the board, Leflore County appoints two members to the board, and they appoint a joint member to the Board of Commissioners.

6. On September 18, 2018, the City of Greenwood approved the Resolution appointing Mr. Marcus D. Banks to the Greenwood Leflore Hospital Commission as the joint appointment with Leflore County for the term to be effective immediately and to expire on June 1, 2023.

7. According to Minutes of the Leflore County Board of Supervisors, the county passed and entered an Order approving the recommendation by the City of Greenwood to appoint Mr. Marcus D. Banks to the Greenwood Leflore Hospital Board of Commissioners for a five-year period, beginning September 24, 2018.

8. The President of the Leflore County Board of Supervisors, Mr. Reginald Moore, addressed a letter dated October 17, 2023, to Mayor Carolyn McAdams and Mr. Ronnie Stevenson, President of the Greenwood City Council, regarding the expiration of Mr. Banks' term on the Hospital Board. A similar letter dated October 12, 2023, was addressed to the Greenwood Leflore Hospital Board of Commissioners. Each letter stated in pertinent parts as follows:

> On Monday, October 9, 2023, the Lefore 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.

9. Mr. Marcus Banks did not vacate the seat and continued to serve as a commissioner which prompted the filing of this lawsuit seeking injunctive relief to remove Mr. Banks from serving in a holdover capacity as a commissioner on the hospital board.

DISCUSSION AND LEGAL AUTHORITIES

This Court has authority to issue injunctive relief pursuant to Rule 65, Mississippi Rules of Civil Procedure. The Advisory Committee notes to Rule 65 states as follows:

> Rule 65 authorizes parties to seek temporary restraining orders (TROs) and preliminary injunctions in civil cases in which permanent injunctive relief or other relief is being sought. A party may move for, and in appropriate circumstances, obtain a TRO and/or preliminary injunction before the merits of the case are resolved. Generally, the purpose of a TRO is to provide temporary short term relief until further action can be taken in the case.

It further states:

> The purpose of a preliminary injunction is to provide injunctive relief until the merits of the case are resolved. Preliminary injunctions cannot be granted without notice. A party moving for preliminary injunctive relief pursuant to Rule 65(a) must demonstrate that "(i) there exists a substantial likelihood that the [movant] will prevail on the merits; (ii) the injunction is necessary to prevent irreparable harm; (iii) the threatened injury to the [movant] outweighs the harm an injunction might do to the [opposing party]; and (iv) granting a preliminary injunction is consistent with the public interest." See *Littleton v. McAdams*, 60 So. 3d 169, 171 (Miss. 2011). Motions for preliminary injunctions are within the trial court's discretion. See *City of Durant v, Humphreys County Mem'l Hosp.*, 587 So. 2d 244, 250 (Miss. 1991).

In *A-1 Pallet Co. v. City of Jackson*, 40 So. 3d 563 (MSCt. 2010), the Supreme Court speaking through presiding Justice Carlson stated:

> Under traditional rules of equitable relief, a plaintiff bears burden of showing the need for injunctive relief. *Moore v. Sanders*, 558 So.2d 1383, 1385 (Miss. 1990) (citing *Sierra Club v. Bergland*, 451 F. Supp. 120 (N.D.Miss.1978)). Inadequacy of a remedy at law is the basis upon which the power of injunction is exercised. *Id.* An application for a preliminary injunction is a matter committed to the chancery court's sound discretion. *City of Durant v, Humphreys County Mem'l Hosp.*, 587 So. 2d 244, 250 (Miss. 1991). 40 So. 3d at 568

In issuing a preliminary injunction, a chancellor must balance the following factors:

(1) There exists a substantial likelihood that plaintiff will prevail on the merits;

(2) The injunction is necessary to prevent irreparable injury;

(3) Threatened injury to the plaintiffs outweighs the harm an injunction might do to the defendants; and

(4) Entry of a preliminary injunction is consistent with the public interest.

Id.

A-1 Pallet Co. v. City of Jackson, 40 So.3d 563 at 568-569 (2010). See also *City of Durant v. Humphreys County Mem'l Hospital supra.*

LIKELIHOOD OF SUCCESS

The County contends it has demonstrated the likelihood that it will prevail on the merits. It argues Mr. Banks is improperly holding over in office since the expiration of his term which ended on June 1, 2023. It further claims that there exists no authority to allow Mr. Banks to hold over as a commissioner on the hospital board. The County claims a vacancy exists and it relies upon Mississippi Code section 25-1-7 (MCA) which states:

> "If any person is 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 commencement of his term of office, or **for any cause any such officer shall 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.**"

Respondents argue this statute is not available to the County because Mr. Banks is jointly appointed by the City and County and that he is not a city appointed officer. Further, they contend the position of the hospital commissioner is not listed in §25-1-7 and the Mississippi Legislature knew how to spell hospital commissioner when it drafted this statute. Consequently, Respondents argued there is no vacancy and Mr. Banks must remain in his seat until the City and County can agree upon a joint appointment. The Court disagrees with the position of the Respondents. First, the Court finds that the position of hospital member is a city appointed office within the meaning of §25-1-7. Second, Mr. Banks' term to serve in office expired on or about June 1, 2023, and there is a vacancy under this statutory law. Lastly, §25-1-7 provides in essence that after the expiration of Mr. Banks' term, he can hold over "upon the authority given to him to hold over." 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 that authorizes a hospital board member to "hold over" or continue to serve in office after the expiration of the term or until his successor is appointed or elected and qualified. Respondents disagree that §41-13-29 is applicable to Mr. Banks because he is a joint appointment of the two entities involved in this matter. They point to no legal authority to support their contention that §41-13-29 is not applicable to this case.

The County contends *Littleton v. McAdams*, 60 So.3d 169 (MSCt. 2011) controls the outcome in this case. James Littleton, City Attorney of Greenwood, was terminated at the end of his term by the incoming and new Mayor, Carolyn McAdams. Littleton announced to the Greenwood City Council that he

was statutorily authorized to continue to serve as a holdover appointee until the mayor nominates and the council approves his replacement. Mayor McAdams sought injunctive and declaratory relief against James Littleton to prevent him from serving as a holdover city attorney. The Chancery Judge granted the Mayor's Petition for relief and Littleton appealed to the Supreme Court. On appeal the Supreme Court held that §25-1-7 did not give James Littleton the right to holdover and stated as follows:

> Under its plain language, the statute applies only to positions that – from some other source—have been granted power to hold over. Littleton cites no authority or other source for his assertion that, when his term ended, he had the right to hold over.
> 60 So.3d at 171

The instruction from *Littleton supra* is one cannot hold over unless you can point to some statute giving you holdover authority or holding over authority "from some other source." See *Littleton*, 60 So.3d 169 at 171. Littleton was unable to identify any statute or some other source granting him holdover authority and the Supreme Court affirmed the ruling of the trial Judge.

The County argued Respondent and City of Greenwood requested an opinion from the Attorney General in 2010 regarding hold over authority of an appointed member of the Greenwood Municipal School District[1]. According to the County, the Attorney General response was "we find no authority for a member of a municipal school board to "holdover" after his or her term has expired. The position in question becomes vacant upon the expiration of the term of the previous member and will remain vacant until a successor is nominated and approved."

The source of Mr. Banks' appointment to the hospital board was by the City's Resolution adopted on September 18, 2018 and the Order of the Leflore County Board of Supervisors of September 24, 2018. The City's Resolution appointed Mr. Banks to the Greenwood Leflore Hospital Commission as the joint appointment with the Leflore County for the term to be effective immediately and to expire on June 1, 2023. There is no language in the City's Resolution granting holdover authority to him. Leflore County passed and entered and Order approving the recommendation by the City to appoint Mr. Banks to the Greenwood

[1] The Greenwood Municipal School District was consolidated with the Leflore County School District by legislative act and no longer exists. The districts are known as the Greenwood Leflore Consolidated School District.

Leflore Hospital Board of Commissioners for a five-year period, beginning September 24, 2018. Similar to the City's Resolution, the County's Order lacks any language granting holdover authority to Mr. Banks. Consequently, Mr. Banks is unable to meet the *Littleton's* Test to holdover "upon the authority given to him to hold over."

In Respondents' pleading, they strongly implied Mr. Banks is a holdover commissioner. In the third paragraph of page one of their Memorandum of Law, it is stated, "[i]t appears that members of the Board other than Marcus Banks are or have served as hold over members of the board. If there are other board members who have been or are "hold overs", then equity requires the Court to treat all hold over members of the Board the same." At page 2, in the first paragraph of the memorandum, it states "[t]he applicable law permits Mr. Banks to holdover until the City and County jointly agree on an appointment to fill the Board position currently held by Mr. Banks." At page 3, in the first paragraph, Respondents wrote "[i]t appears that members of the Board other than Marcus Banks are also hold over members of the Board." Respondents stated their intention to file a counterclaim to have all holdover members of the Board to be treated the same.

After Respondents' pleadings clearly conceded Mr. Banks was a holdover commissioner, Respondents "switch gear" during the hearing and claimed Mr. Banks was not a holdover. Respondents argued Mr. Banks was not a holdover but was serving as a "de facto officer". They relied upon an Attorney General Opinion, 2012 WL 6065220 which concludes that when the term of a board member of a county hospital expires, that person may continue to serve as a "de facto officer" … and "the trustee's actions on the board are valid and binding as official acts." The Attorney General Opinion relied upon by Respondents was dated August 31, 2012, addressed and applied specifically to Mr. Shelby Hall, District 2 Board of Trustees Jefferson County Hospital, Fayette, Mississippi. See 2012 WL 6065220 (Miss. A. G.). Mr. Hall requested an opinion regarding a county Hospital Board of Trustee whose term had expired but the trustee continued to serve without being appointed by the Board of Supervisors. Mr. Hall inquired if the Trustee was serving illegal; will actions on the Board be null and void if the Trustee made and/or seconded motions and voted on motions which passed. Also, he inquired will the Trustee face civil and/or criminal charges

and will the Trustee have to make monetary restitution for all per diem received or other monetary gains received.

The Attorney General responded as follows:

Response

...If the Trustee is serving as a "de facto officer," his actions and those of the Board of Trustees are valid and binding; however, the individual is liable to all penalties imposed by law for usurping or unlawfully holding the office. Furthermore, the individual cannot claim compensation or fees of the office.

Applicable Law

...Miss. Code Ann. Section 25-1-37 (1972) provides:

> ...The official acts of any person in possession of a public office and exercising the functions thereof shall be valid and binding as official acts in regard to all persons interested or affected thereby, whether such person be lawfully entitled to hold office or not and whether such person be lawfully qualified or not; but such person shall be liable to all the penalties imposed by law for usurping or unlawfully holding office, or for exercising the functions thereof without lawful right or without being qualified according to law.

Analysis and Conclusion

...In the case of *Miller v. Batson*, 160 Miss. 642, 134 so. 567 (1931), the Mississippi Supreme Court set out various scenarios under which an individual may be considered a de facto officer.

> ...First. Without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumed to be. Second. Under color of a known and valid appointment or election, but where the officer had failed to conform to some precedent, requirement, or condition, as to take an oath, give bond, or the like. Third. Under color of a known election or appointment, void because the officer was not eligible, or because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity in its exercise, such ineligibility, want of power, or defect being unknown to the public. Fourth. Under color of and election or appointment by or pursuant to a public, unconstitutional law, before the same is adjudged to be such. And a mere usurper of an office, without any color of title whatever, who has for a considerate time exercised the powers thereof, with the acquiescence and recognition of the public authorities and the public is a de facto officer.

...*Batson* at 571. In light of the reasoning in *Batson*, and based on the information provided in your request, it appears this Trustee is acting as a de facto officer. We should point out, however, that this determination requires factual analysis which is subject to review by a court of competent jurisdiction.

> ...If the Trustee is acting as a de facto officer, Miss. Code Ann. Section 25-1-37 is applicable, and the Trustee's actions on the board are valid and binding as official acts. While the Trustee's actions may be valid and binding, this same provision of law recognizes that the Trustee could also be liable for unlawfully holding office and exercising the functions thereof.
>
> ...With the regard to compensation, we have previously opined that a de facto officer cannot claim compensation or fees from serving in the office. MS AG Op., Davis (Jan. 31, 2011); MS AG Op., Taplin (July 27, 2007).
>
> ...We also note that we find no authority in Miss. Code Ann. Section 41-13-29 for a community hospital trustee to serve in a holdover capacity until a successor is appointed. MS AG Op., Guice (Jan. 3, **2012**); MS AG Op., Ellis-Stampley and Travis (Jan. 20, **2012**); MS AG Op., Davis (Jan. 31,2011). Thus, a trustee would not be entitled to compensation or fees as a holdover officer.
> (my emphasis added)

The record is devoid of any fact or evidence to show Mr. Banks is claiming to be a de facto officer. Although he was present in court, no testimony was elicited from him or any witness to meet the *Batson* test so this Court could determine whether or not Mr. Banks is in fact a de facto officer. Although, this is an 11-year-old Opinion, the Attorney General noted that he found no authority in Miss. Code Ann. Section 41-13-29 for a community hospital trustee to serve in a holdover capacity until a successor is appointed.

In *McAdams v. Perkins*, 204 So.3d 1257 at 1267 (2016), the Mississippi Supreme Court, while acknowledging the weight of the Attorney General's Opinions, stated:

> "It is true that "an attorney general's opinion is not binding on this Court;" however, "it is persuasive ..." Citing *Dupree v. Carroll,* 967 So.2d 27, 31 (Miss. 2007) See also *City of Durant v. Laws Const. Co.*, 721 So.2d 598, 604 (Miss. 1998); (stating that "[t]hough attorney general's opinions are not binding, they may be considered by this Court and we find the attorney general's opinion persuasive here." See *City of Durant v. Laws Constr. Co.*, 721 So.2d 598, 604 (Miss. 1998)).
> *Id* 204 So.3d at 1262

In view of foregoing authorities and reasons, this Court finds that there is a substantial likelihood that Leflore County will prevail on the merits.

IRREPARABLE HARM

Respondents argue the Petition does not identify any irreparable injury Petitioner will suffer if it is not granted injunctive relief. Leflore County contends in its sworn Petition that an 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 authority to do so. The County further contends in its Petition "that 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 County relies on Section 21-15-41 (1) which states: "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…" This statute also provides that "any action or vote taken by such person after the ninety-day period shall be invalid and without effect." (emphasis added)

It is general common knowledge that the Greenwood Leflore Hospital is a financially distressed hospital and is losing money. As a joint owner of the Hospital, Leflore County is concerned that motions and/or seconds and votes taken by Mr. Banks are illegal and could jeopardize effort of the Hospital Board and /or City and County to take appropriate actions and measure to financially support the hospital. The Court finds that the injunction is necessary to prevent irreparable harm.

BALANCE OF INTEREST

The Court finds that based upon the facts in this case, the harm, if any to Mr. Banks is minimal, when compared to the potential harm to the hospital, the city, the county, and its citizens. The threatened injury to Leflore County and its citizens outweighs the harm, if any, an injunction might do to Mr. Banks.

PUBLIC INTEREST

This injunction serves the public interest because it removes Mr. Banks off the hospital board and prevents him from holding over illegally and taking votes and action which could cause the hospital board to be acting illegal and could jeopardize the efforts to save the financially distressed hospital.

The Petitioner, Leflore County Board of Supervisors, has met its burden of proving its entitlement to a preliminary injunction. Mr. Marcus Banks is enjoined from serving as a holdover commissioner and is enjoined from serving in any capacity of the Greenwood Leflore Hospital effective immediately.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Petitioner, Leflore County Board of Supervisors, has met its burden of proving its entitlement to a preliminary injunction.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Mr. Marcus Banks is enjoined from serving as a holdover commissioner and is enjoined from serving in any capacity of the Greenwood Leflore Hospital effective immediately.

SO ORDERED, ADJUDGED, AND DECREED this 22nd day of December 2023, nunc pro tunc December 20, 2023.

CHANCELLOR

RECEIVED
DEC 22 2023
JOHNNY L. GARY, JR., CHANCERY CLERK
BY D.C.