

IN THE CIRCUIT COURT OF LEFLORE COUNTY, MISSISSIPPI

SHERIEL F. PERKINS

V.

NO. 2014-0074(CM)(L)

MAYOR AND CITY COUNCIL OF GREENWOOD, et al

ORDER AND OPINION

THIS MATTER is before the Court on an appeal from the City Council of Greenwood, Mississippi's [herein "the Council"] decision to pay attorney's fees and costs to defend the election contest styled *Sheriel F. Perkins v. McAdams*, 2013-0047-CI. The Court having reviewed the record and being otherwise advised in the matter finds that the decision of the Council is beyond its scope or powers and violates the Petitioner's constitutional and statutory rights. The Court finds specifically as follows:

Statement of the Case

The City of Greenwood held a general election on June 4, 2013. Carolyn McAdams, the incumbent Mayor was re-elected. Sheriel F. Perkins [herein "Perkins"] filed an election contest on June 24, 2013. McAdams is the only named defendant. The Attorney for the City of Greenwood requested an opinion from the Attorney General as to whether a municipality may (1) reimburse a mayor for legal fees and costs incurred as a result of an election contest; and (2) retain counsel to represent the municipality's interest in the election contest, which includes defending the validity of the challenged election.<sup>1</sup> On December 1, 2014, the Mississippi Attorney General issued an opinion in response to these specific issues.<sup>2</sup>

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<sup>1</sup>The Request for Opinion to the Attorney General states that these are questions Mayor McAdams asked the City Attorney. *MS AG Op., Brock* (December 1, 2014).

<sup>2</sup>Attorney General's opinions are not binding upon this Court; however, such opinions may be considered by the Court. *Tupelo Redevelopment Agency v. Gray Corp., Inc.*, 972 So.2d 495, 509 (Miss. 2007).

The Attorney General opined that Mississippi Code Annotated §§25-1-47 and 21-17-5 authorize municipalities to employ counsel to defend election contests (1) asserting claims against a municipal officer or employee as a result of official capacity actions; and (2) in which the municipality determines it has an interest. *MS AG Op., Brock* (December 1, 2014). The opinion also stated that the municipality may not reimburse the mayor for legal expenses that were previously incurred in the defense of the election contest where the action was not brought against the mayor as a result of her actions while acting in her capacity as mayor. *Id.*

The Council entered a Resolution on December 16, 2014, authorizing the employment of Butler Snow, LLP to defend the City's interest in the election contest. Butler Snow, LLP also represents Mayor McAdams in the same action. The Resolution was made effective November 12, 2014. Ms. Perkins, a taxpayer of Greenwood, Mississippi and the plaintiff in the subject election contest, has filed a Bill of Exceptions challenging the Council's decision pursuant to *Miss. Code Ann.* §11-51-75.

Ms. Perkins asserts that the City Council's decision is in violation of Mississippi laws prohibiting the authorization and use of public funds for a private cause of action or purpose. She specifically claims that the City Council's reliance on the December 1, 2014 Attorney General Opinion is misplaced and violates State law since there are no city officials or election commissioners named as defendants in the election contest.

In response, the Council contends that this Court has an insufficient record before it and should dismiss the Bill of Exceptions because it lacks a pertinent document, the election contest complaint. Alternatively, the Council asserts that its decision should be affirmed on the following bases: (1) it was not arbitrary and capricious, but fairly debatable; (2) it was

authorized by the Mississippi Attorney General; (3) it was authorized by §§25-1-47 and 21-17-5.

### Legal Analysis

In an appeal from the decision of a municipal authority, the bill of exceptions serves as the record and an appellate court can only consider the case as made by the bill of exceptions. *Van Meter v. City of Greenwood*, 724 So.2d 925, 927-928 (Miss.App. 1998). Judicial review is limited to a determination of whether the municipality's decision is (1) beyond its scope or power; (2) violates the constitutional or statutory rights of the aggrieved party; (3) not supported by substantial evidence; or (4) is arbitrary or capricious. *Baymeadows, LLC v. City of Ridgeland*, 131 So. 3d 1156, 1159 (Miss. 2014).

When a bill of exceptions, presented to the proper official for signature, appears to be incomplete, the officer or official has a duty to point out what is incorrect, note her corrections, and sign the bill of exceptions as correct. *Wilkinson Cnty. Bd. of Supervisors v. Quality Farms, Inc.*, 767 So. 2d 1007, 1012 (Miss. 2000). In this case, rather than following the procedure for supplementing and submitting a corrected bill of exceptions, the mayor signed the bill of exceptions as presented agreeing to the facts as stated. The Council argues that the Bill of Exceptions is fatally deficient requiring dismissal. The Court disagrees. While inclusion of Perkins' election contest Complaint would have provided the Court with more factual detail, this is not fatal to the appeal. The issues for consideration on appeal are presented sufficiently by the Bill of Exceptions, including its exhibits. Thus, the Court has jurisdiction to hear this matter and an adequate record for intelligent analysis and decision.

*Miss. Code Ann.* §25-1-47(1) authorizes a municipality to provide legal counsel for the defense of any claim . . . made or brought against any . . . municipal officer, agent, servant,

employee, or appointee as a result of his actions *while acting in the capacity of such officer, agent, servant, employee, or appointee*. (emphasis added).

The Mississippi Attorney General has consistently opined that §25-1-47 prohibits a municipality from authorizing the payment of legal expenses in election contests absent claims resulting from official capacity actions.<sup>3</sup> Even in its December 1, 2014 Opinion in the instant case, the Attorney General opined, consistent with its earlier opinions, that §25-1-47 authorized municipalities to employ counsel to defend election contests raising claims made or brought against an official as a result of his official capacity actions.

It is undisputed that *Sherial F. Perkins v. McAdams*, 2013-0047-CI is an election contest between private litigants. There are no city officials or election commissioners named as defendants and the action asserts no claims arising out of McAdams' actions as mayor. Therefore, §25-1-47 clearly prohibits the Council from authorizing the employment of legal counsel to defend the election contest.

In its Resolution, the Council determined that although Mayor McAdams is the only defendant in the subject election contest, Ms. Perkins alleges that various violations of the Mississippi Election Code occurred, e.g., the handling of affidavit and absentee ballots, ballot boxes and certain polling procedures. The Council also determined that the claims involved the actions of various city officials carrying out their official duties as members of the Election Commission, poll workers, as well as the Municipal Clerk and his employees. Most election contests raise similar challenges. Yet, the legislature has not amended §§25-1-47 or 21-17-5 to expand the authority of municipalities to employ counsel in election contests.

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<sup>3</sup>*MS AG Op., Still* (October 3, 2008) (reimbursement of legal expenses may be authorized where municipality gives official advance approval of legal representation *and* determines that the official acted in his official capacity); *MS AG Op., Tennyson* (August 8, 1997). *See, also, MS AG Op., Childers* (May 2, 1997); *MS AG Op., Causey* (April 22, 1992); *MS AG Op., Causey* (November 14, 1991); *MS AG Op., Belk* (June 27, 1991).

The Council argues that its decision was authorized by the Attorney General's December 1, 2014 opinion interpreting §21-17-5. Over the years, the Mississippi Attorney General has expanded its interpretation of Mississippi law regarding a municipality's authority to pay legal expenses in election contests. In December 1991, the Attorney General first interpreted another statute, §19-3-47, to specifically "bestow discretionary authority upon county boards of supervisors to employ legal counsel in civil cases in which the county is interested". *MS AG Op., Sanders*, (December 18, 1991).<sup>4</sup> Then in 1993, the Attorney General without any reference to §25-1-47, opined that though a municipality did not have the same specific statutory authority §19-3-47 provides to a county, applying the same rationale with regard to a municipality's authority pursuant to §21-17-5 would not conflict with the Mississippi Constitution or any statutory law. *MS AG Op., Ellis* (July 14, 1993).

This interpretation is in direct contradiction to the specific language of §25-1-47. Although §19-3-47 specifically authorizes a board of supervisors to employ legal counsel in all civil cases where the board finds it has an interest in the litigation, §25-1-47 does not include similar language. In fact, §25-1-57 specifically prohibits the employment of counsel in cases that do not result from official capacity actions.

The Attorney General's Opinion rationalizes what would unquestionably be the expenditure of public funds for a private purpose. The sole issue in an election contest in the State of Mississippi is which candidate received the greater number of legal votes in the contested election. *Straughter v. Collins*, 819 So. 2d 1244, 1252 (Miss. 2002).

Each candidate presents evidence and legal support for her claim that she is the winner by this standard. Usually the plaintiff's position involves claims that certain aspects of the election process did not proceed according to law, while the winner defends by showing that

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<sup>4</sup> This Court's Opinion and Order does not address the Attorney General's interpretation of §19-2-47.

no irregularities occurred. These are evidentiary issues and not the ultimate determination in the case.

In this case, what the City of Greenwood has resolved to do is financially assist Mayor McAdams in marshaling evidence and retaining legal services to defend against Ms. Perkins' claim that she (Perkins) received the greater number of legal votes cast in the June 4, 2013 general election. The City of Greenwood has no legitimate legal interest in the determination of this ultimate issue and bears no liability in the election contest.

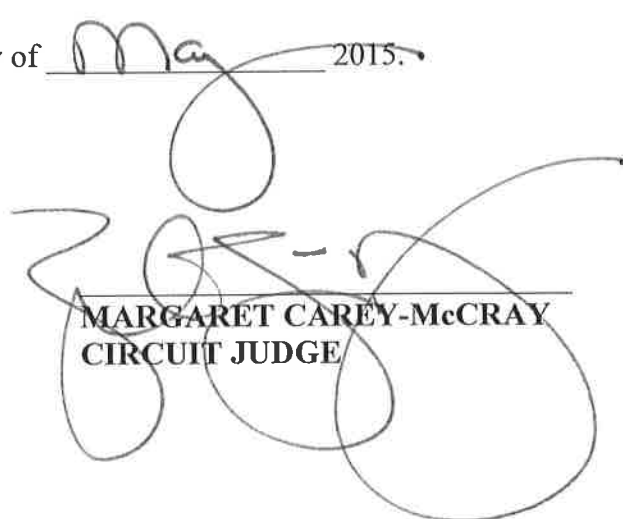
The legal services Butler Snow is to provide in defending the City's interest in this election contest are the same services counsel must provide to defend Mayor McAdams in establishing that she received the greater number of legal votes. Is the City, and ultimately the public, financially responsible for these overlapping legal services?

Another troubling aspect of the Attorney General's interpretation of §25-17-5 is that it also effectively allows municipalities to subjectively determine which election contests they will defend even when cases present identical claims. The City Council, on a case by case basis, has discretion to determine: first, whether municipal interests are involved; then, whether the city will expend public funds to defend. For example, if the results of the June 2013 election were the opposite and an otherwise identical election contest was filed, the Council could simply ignore it or refuse to defend. Winning candidates supported by a majority of the Council could routinely gain publicly paid legal counsel to defend or at least buttress their case. On the other hand, such support could be withheld from winners who are not the majority's choice. Thus, the City Council's discretion constitutes misuse of municipal authority regarding the expenditure of public funds for private purposes in clear violation of the Mississippi Constitution.

Finally, the Council authorized the reimbursement of expenses previously incurred by the Mayor directly contrary to the Attorney General's opinion. The Resolution was entered on December 16, 2014, but made effective retroactively to November 12, 2014. It is therefore,

**ORDERED AND ADJUDGED** that the decision of the City Council of Greenwood, Mississippi to pay attorney's fees and costs in the election contest styled *Sherial F. Perkins v. McAdams*, 2013-0047-CI is hereby REVERSED.

SO ORDERED this the 11<sup>th</sup> day of May 2015.



MARGARET CAREY-McCRAY  
CIRCUIT JUDGE

**FILED**

MAY 26 2015

ELMUS STOCKSTILL, CIRCUIT CLERK  
BY:  D.C.