

2015 WL 682410 (Miss.A.G.)

Office of the Attorney General

State of Mississippi
Opinion No. 2014-00504
January 23, 2015

Re: Downtown Jackson Business Improvement District

*1 Sam **Begley**, Esq.
Begley Law Firm, PLLC
P.O. Box 287
Jackson, MS 39205

Dear Mr. **Begley**:

Attorney General Hood is in receipt of your request for an official opinion and it has been assigned to me for research and reply.

Background and Questions Presented

Your opinion request states in part:

I represent Downtown Jackson Partners, the district management group for the Downtown Jackson Business Improvement District. Downtown Jackson Partners (DJP) is a private nonprofit corporation and a 501(c)(4) organization under the Internal Revenue Code. DJP is governed by its officers and board of directors operating through its articles of incorporation and by-laws. Day to day activities are managed by a full time President and CEO who directs two employees. The corporation's name when it was formed in 1993 was Capital Center, Inc. In 2001 its name changed to Downtown Jackson Partners.

DJP is the “district management group” for the Downtown Jackson Business Improvement District (BID), so designated under the “district plan” adopted by the BID's property owners pursuant to the Business Improvement District Act (the Act), Miss. Code Ann. Section 21-43-101, et seq.

Generally, the Act prescribes procedures for the voluntary formation of business improvement districts by owners of non-residentially zoned contiguous property within a municipality who collectively devise a set of “goals and strategies” set forth in a “district plan” for improvements to the “appearance and economic functioning” of property within their district, ranging from private security services, landscaping, and trash removal to economic development and marketing. Section 21-43-105(c) and (d). The Act provides that the improvements planned by and for a BID will be funded through an assessment for each property included in the district, over and above the ad valorem tax assessed against the property, which assessment is “based upon gross square footage of buildings and unimproved real estate.” Section 21-43-123. The assessments chosen by the property owners are collected by the City of Jackson through its usual ad valorem tax collection procedures.

DJP has been the district management group for BID since its inception on January 1, 1997. As the BID's district management group, DJP is responsible for execution of day to day activities for the district and for implementation of the district plan adopted by the property owners. Miss. Code Ann. Section 21-43-121(1). As the BID's district

management group, DJP is statutorily authorized to charge “reasonable management fees, operational reimbursements, administrative costs and program implementation fees to the district.” Miss. Code Ann. Section 21-43- 121(2).

Question 1: Are the proceeds of the assessment for the Downtown Jackson Business Improvement District “public funds”?

*2 Question 2: Is the “district plan” for the Downtown Jackson Business Improvement District a public or governmental program?

Question 3: Is DJP, by virtue of its role as the district management group for the BID, administering a public or governmental program?

Pursuant to Miss. Code Ann. Section 7-5-25, the Attorney General is authorized to issue official opinions on questions of law only. Questions 1, 2, and 3 of your request require a determination of fact which can only be made by a court of competent jurisdiction; therefore, we are unable to respond with an official opinion.

Question 4: Do the “funds” referred to in Miss. Code Ann. Section 7-7-211(f) mean public funds?

Question 5: Do the “programs” referred to in Miss. Code Ann. Section 7-7-211(f) mean public or governmental programs?

Miss. Code Ann. Section 7-7-211 enumerates the powers and duties of the Department of Audit. Questions 4 and 5 relate to the investigatory authority of the State Auditor's Office. Pursuant to Section 7-5-25, the Attorney General is authorized to issue official opinions only to designated public officials and agencies on questions of law relating to their respective offices. Accordingly, we are unable to respond with an official opinion.

Question 6: Is DJP under any legal duty to supply financial records and related information demanded by the State Auditor, in exercise of that agency's investigative powers under Miss. Code Ann. Section 7-7-211(f), in which the agency operates under the position that DJP is a business entity covered under that subsection?

The Department of Audit currently has an investigation ongoing into matters involving DJP. We understand that subpoenas pertaining to the information you reference in Question 6 have been issued and served on DJP. Since receipt of your request, we have also learned from you that DJP has complied with the Department of Audit's demands for records. Opinions of the Attorney General are issued for future guidance only and can neither validate nor invalidate past action. Accordingly, pursuant to Section 7-5-25, we must decline to respond to your request for an official opinion. We note that any questions regarding enforcement of these subpoenas must be resolved by a court of competent jurisdiction.

Sincerely,

Jim Hood
Attorney General
By: Elizabeth S. Bolin
Special Assistant Attorney General

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