

Budget and Finance

The overriding objective of the County budget law is to prohibit deficit spending. That is an increasingly difficult challenge for many rural counties in this state, particularly those faced with unexpected litigation costs incident to the County-based indigent criminal defense system that recently survived constitutional attack. *State of Mississippi v. Quitman County* (Miss. 2003).

This law is set forth in Miss. Code Ann. §§19-11-1, et seq. (1972), as amended, and these are the highlights:

Fiscal Year Basis

•Each County must operate on a fiscal year basis, beginning October 1 and ending September 30 of each year. §19-11-5.

Budget Preparation

•In counties operating under the unit system, the County Administrator prepares and submits to the Board at its August meeting a complete budget of revenues, expenses and working cash balance estimates for the next fiscal year. This includes the Sheriff's budget, which is required to be prepared by the Sheriff, and must be published no later than September 15 along with a statement of revenues showing every source of revenue and expenses. In beat system counties, however, the Board prepares the budget. §19-11-7.

Form of Budget

•The form of the budget is prescribed by the State Auditor and, according to §19-11-9, must show in detail all estimates of the expenditures to be made out of the General County Fund and its auxiliary funds, all estimates of expenditures to be made out of the Road and Bridge Maintenance and Construction Funds, and all amounts to be paid out of the several bond and interest sinking funds for the bonded debt service in the next fiscal year.

Uniform System of Accounts

•The Clerk of the Board is required to keep a set of books known as “the uniform system of accounts for the counties,” which is always required to be open to inspection by the public within office hours. According to §19-11-13,

said books shall contain accounts, under headings, corresponding with the several headings of the budget, so that the expenditures under each head may at once be known. It shall be the duty of said clerk to enter all receipts and expenditures in the said books or system of accounts

monthly, post and balance the ledgers thereof at the end of each month so that all information needed for a comprehensive review of operations of the County under budgetary limitations may be readily obtainable. Such books shall be paid for out of the General County Fund, upon the order of the Board of Supervisors.³⁶

No Deficit Spending

•The County Budget Law's express prohibitions against deficit spending are set forth in §§19-11-15 and 19-11-17. Section 19-11-15 provides in part that the amount that the Board appropriates and authorizes to be spent for any item contained in the budget

must not exceed the amount actually estimated for such item, and the total amount appropriated and authorized to be expended from any fund, except for capital outlay, election expenses and payment of emergency warrants and interest thereon, or for extraordinary court expenses, shall not exceed the total amount actually estimated for all purposes.

In *Board of Supervisors v. Parks*, 71 So. 2d 197 (Miss. 1954), the Court emphasized that the primary aim of the County Budget Law was to prohibit deficit spending. “The provisions of the law are mandatory; and the law applies to expenditures made by the Board of Supervisors for road purposes, whether such expenditures are made by the Board under a County Unit Plan or under a Supervisor's District Unit Plan.” *Id.*

Personal Liability of Supervisor

•Section 19-11-17 renders a member of the Board of Supervisors liable for the full amount of any claim allowed, contract entered into or public work provided for in violation of this provision:

No expenditures shall be made, or liabilities incurred, or warrants issued, in excess of the budget estimates as finally determined by the Board of Supervisors, or as thereafter revised under the provisions of this chapter. The Board of Supervisors shall not approve any claim, and the Clerk shall not issue any warrant for any expenditures in excess of the budget estimates thus made and approved by the Board of Supervisors, or as thereafter revised under the provisions of this chapter, except upon the order of a court of competent jurisdiction, or for an emergency as hereinafter provided.

In *Lincoln County v. Entrican*, 230 So. 2d 801 (Miss. 1970), the Mississippi Supreme Court held that while §19-11-17 gives the State Auditor exclusive authority to sue for sums charged to be due, newly elected members of a County Board of Supervisors do not have authority to bring a suit against defeated members of the Board of Supervisors and their sureties to recover amounts alleged to have been expended in

³⁶This section was construed in AG Opinion # 96-0057 to Bradley, March 8, 1996, in which the Attorney General opined that the Board President does not have to sign the ledger claims on a daily basis or as often as claims are entered on the claims docket, and it is sufficient if he or she signs the claims docket once each month before the meeting at which the claims are considered)

violation of §§19-11-17 and 19-11-27, where no corruption is charged and the money was spent for objects authorized by law.

Budget Revision Through Interfund Transfer

•The County budget may be revised³⁷ through interfund transfers under §19-11-19. Under this Code section, if an item of the budget “is in excess of the requirements of said item” and the amount budgeted to that item will not be needed during the fiscal year, the Board may

transfer funds to and from items within the budget when and where needed, but no such transfer shall be made from fund to fund, or from item to item, which will result in the expenditure of any money for a purpose different from that for which the tax was levied. However, revisions as herein authorized shall not be deemed to permit any expenditures in excess of the various items of the budget as then approved, and any expenditures made in excess of the budget as then approved shall be invalid, and subsequent revision shall not validate such expenditures.

Emergency Revision

•The County Budget Law does provide for the budget to be revised in emergencies. Under §19-11-21,

upon the happening of any emergency caused by fire, flood, storm, epidemic, riot or insurrection, or caused by an inherent defect due to defective construction, or when the immediate preservation of order or of public health is necessary, or when the restoration of a condition of usefulness of any public building or other property which has destroyed by accident or otherwise, is necessary, or when mandatory expenditures required by law must be met, the Board of Supervisors may, upon adoption, by unanimous vote of all members present at any meeting, of a resolution stating the facts constituting the emergency and entering the same on its minutes, make the expenditures, borrow money or incur the liabilities necessary to meet such emergency, without further notice or hearing, and may revise the budget accordingly.

Clerk’s Monthly Report to Board

•The Clerk of the Board is required by §19-11-23. to submit to the Board of Supervisors each month a report of expenditures and liabilities incurred against each separate budget item during the preceding month and for the whole of the fiscal year up to that time, showing

- A. The unexpended balance of each budget item,
- B. The unencumbered balance in each fund,
- C. The receipts from property tax, and

³⁷A board order is necessary before any budget can be revised, and the board is not obligated to grant any request to revise any particular budget, but may exercise its discretion to do so, pursuant to §19-11-19.

- D. Detailed receipts from other taxes and all other sources by each fund.

Last-Year-Of-Term Prohibitions

•During the last year of a Supervisor's term of office, the prohibitions of §19-11-27 must be carefully observed:

No Board of Supervisors of any County shall expend from, or contract an obligation against, the budget estimates for road and bridge construction, maintenance and equipment, made and published by it during the last year of the term of office of such Board, between the first day of October and the first day of the following January, a sum exceeding one-fourth (1/4) of such item of the budget made and published by it, except in cases of emergency. The clerk of any County is hereby prohibited from issuing any warrant contrary to the provisions of this section. No Board of Supervisors nor any member thereof shall buy any machinery or equipment in the last six months of their or his term unless or until he has been renominated at the primaries of that year.

The provisions of this section shall not apply to a contract, lease or lease-purchase contract entered into pursuant to §31-7-13.

In addition to the above prohibitions, other statutory provisions should be followed during the last year of office. These include the following:

•Miss. Code Ann. §19-13-17 (Supp. 1993) authorizes the Board of Supervisors to purchase tractors, trucks and other machinery or equipment for road construction and maintenance and to provide for deferred payments to be represented by notes of the County, subject to the prohibition that none of such notes can mature later than June 15 of the last year of the term of office of the members of the Board making such purchase.

•Miss. Code Ann. §23-15-881 (1987) makes it unlawful for the Board of Supervisors to employ during the months of May through August in a general primary year a proportionally greater number of persons to work and maintain the public roads in any Supervisor's district of the County than the average number of persons employed for similar purposes in such district during May through August of the three preceding years. This same statute also prohibits the Board of Supervisors from expending out of the road funds of the County or any district for payment of wages or compensation for labor in working and maintaining the public roads during the months of May through August of a primary election year a total amount that exceeds the average total amount expended for such labor in such district during the corresponding four months' period of the three preceding years. Under this statute, the Board of Supervisors is required to keep sufficient records of the number of employees and expenditures made for labor on the public roads of each Supervisor's district for May through August of each year, to show the number of persons employed for such work in each district for the four months' period, and the total amount expended in paying salaries and other compensation to such employees, so it can be ascertained from examining such records whether or not the statute has been violated.

•Miss. Code Ann. §23-15-883 (1987) provides exceptions to the prohibitions under §23-15-881 with regard to public road expenditures or employment, and states that the prohibition “shall not apply to road contractors or bridge contractors engaged in the construction or maintenance” of County roads under contracts awarded by the Board of Supervisors, nor shall the restrictions apply to labor employed by such road contractors or bridge contractors in carrying out those contracts. The statute also exempts from the employment provisions “extra labor employed to make repairs upon...County roads or bridges, in cases where [they] have been damaged or destroyed by severe storms, floods or other unforeseen disasters.”

•Miss. Code Ann. §65-9-19 (1972) provides restrictions on awarding of state aid contracts during the last six months of the Board’s term of office, providing in part as follows:

Contracts for construction of state aid road projects shall be advertised and let by the Board of Supervisors of any County desiring so to do, in the manner now required by law but subject to the approval of the State Aid Engineer; however, during the last six (6) months of the Board of Supervisors’ terms of office, no contracts for state aid projects shall be awarded unless construction programs embracing such projects shall have been adopted by the Boards and approved by the State Aid Engineer in writing prior to July 1 of said year.

In a January 27, 1987, memorandum from State Aid Engineer William P. Stevenson, Mr. Stevenson advised that this same law has been followed in 1967, 1971, 1975, 1979 and 1983 and that it applies to federal and non-federal projects alike. This same memorandum reminds Boards of Supervisors to submit programs for projects which it anticipates letting during the last six months of the last year of the term of office, preferably during May, so that the State Aid Road Construction Division Office will have sufficient time to take action on them.

•Miss. Code Ann. §19-3-21 (1972) provides for certain restrictions on the repairs of road equipment (any tractor, truck or other road machinery or equipment) after the first day of July of the last year of the term of office of members of the Board of Supervisors. That provision states in part:

If any repairs herein permitted to be made after the first day of July of the last year of the term of office of the members of the Board making such repairs shall exceed the sum of Five Hundred (\$500.00) Dollars, such repairs shall not be made unless and until the Board of Supervisors, or a majority of the members thereof, shall have authorized the making of such repairs at a regular meeting of such Board, or a special meeting called for that purpose.

Bond Issues and Short-Term Financing

Statutory provisions providing for a uniform system for issuance of County bonds are set forth in Miss. Code Ann. §§19-9-1, et seq. (Supp. 1990).

Public Purposes

Section 19-9-1 authorizes the Board of Supervisors to issue negotiable bonds of the County to raise

money for a variety of public purposes, including erecting, equipping, repair or remodeling County buildings, courthouses, office buildings, jails, hospitals, health centers, County homes for indigents, public libraries, agricultural high school-junior colleges, as well as construction and repairing of roads and bridges and purchase of heavy construction equipment, establishing rubbish and garbage disposal systems, defraying County cooperative service district projects, purchasing machinery and equipment with an expected useful life in excess of ten (10) years, and purchasing firefighting equipment and apparatus.

Diversion of Bond Proceeds

State law provides that the proceeds of bonds issued by a County are to be placed at a special fund and “shall be used for no other purpose than that for which such bonds were authorized to be used.” Miss. Code Ann. §19-9-21 (1972). This statute provides for criminal penalties in case of illegal diversion of the proceeds of bonds, in the event the Board of Supervisors or any member of it

shall willfully divert or aid or assist in diverting any such fund, or any part thereof, to any purpose other than that for which such bonds were authorized to be issued....

Tax Anticipation Notes

Miss. Code Ann. §19-9-27 (Supp. 1983) provides authority for a Board of Supervisors to borrow money in anticipation of taxes for the purpose of defraying County expenses, and Miss. Code Ann. §19-9-28 (Supp. 1985) provides authority for a County to borrow money in anticipation of receipt of funds from a confirmed federal or state grant or loan.

Short-Term Financing Procedure

In 1985, the Mississippi Legislature enacted Miss. Code Ann. §§17-21-51, et seq. (Supp. 1985), establishing a “Uniform System for Issuance of Negotiable Notes or Certificates of Indebtedness.” This law, which was amended in 1994, authorizes a Board of Supervisors to borrow money up to the greater of one percent (1%) of the assessed value of all taxable property located within the County according to the last completed assessment for taxation or \$250,000.00. Such borrowing may be undertaken “to accomplish any purpose for which such governing authorities are otherwise authorized by law to issue bonds, notes or certificates of indebtedness.” Miss. Code Ann. §17-21-51 (1994). This statutory procedure provides a convenient and streamlined method for obtaining short-term financing:

1. The governing authority, which would include a Board of Supervisors, is required first to adopt a resolution declaring the necessity for the borrowing and specifying the purpose for which the money borrowed is to be expended, the amount to be borrowed, the date or dates of maturity and how the indebtedness is to be evidenced.
2. The borrowing must be evidenced by negotiable notes or certificates of indebtedness signed by the head and clerk of such governing authority.

3. Such notes or certificates of indebtedness must be offered at public sale by the governing authority after not less than ten (10) days advertising in a newspaper having general circulation within the governing authority.

4. The sale must be made to the bidder offering the lowest rate of interest or whose bid represents the lowest net cost to the governing authority, which rate cannot exceed the statutory ceiling provided by §75-17-101.

5. The notes or certificates of indebtedness must mature in approximately equal installments of principal and interest over a period of not more than five (5) years from the dates of the issuance thereof.

6. The full faith, credit and resources of the issuing entity are pledged for the prompt payment of the notes or certificate of indebtedness at maturity.

7. If the issuing entity does not have available funds in an amount sufficient to provide for the payment of principal and interest, then it is required annually to levy a special tax upon all of its taxable property at a rate the avails of which will be sufficient to provide such payment. §17-21-53(2).

Competitive Bids Under Public Purchase Law

While detailed analysis of Mississippi's Public Purchase Law is beyond the scope of this book, it should be noted that the Mississippi Supreme Court and the Attorney General's Office have had many occasions to address a variety of issues involving the competitive bid process, including

- The determination of the lowest and best bid

Miss. Code Ann. §31-7-13(d)(i)(Supp. 2003) provides in part that:

If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and a narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest *bid*. No agency or governing authority shall accept a bid based on items not included in the specifications.

In *Parker Brothers v. Crawford*, 68 So. 2d 281 (Miss. 1953), the Court held that the board of supervisors is invested with discretionary power to pass on the honesty, skill, experience and integrity of the bidder and all other matters bearing on the likelihood that the contract will be promptly and efficiently performed, and a bid award may, in a proper case, be refused the lowest bidder who does not, upon such consideration, qualify as the "best" bidder. See generally *Hemphill Construction Company, Inc. v. City of Laurel*, 760 So. 2d 720 (Miss. 2000) (Where the law allows the governing authority to determine the lowest and best bidder, it is permissible for factors other than price to be considered); *Landmark Structures, Inc. v. City Council for City of Meridian*, 826 So. 2d 746 (Miss. 2002).

See AG Op. No. 97-0838 to Smith, January 16, 1998 (A governing authority may award a preference other than to the lowest and best bidder only where provisions for other preferences are expressly made by the legislative action); AG Op. No. 97-0213 to Evans, April 18, 1997 (County may consider terms granting credit for unused tests in determining whether a bid is the “lowest and best” bid, if it enters into a contract for such tests pursuant to the bid laws); AG Op. No. 96-0297 to Creekmore, May 31, 1996 (Whether or not a bid other than the lowest bid is the “lowest and best” bid is a factual matter to be determined by the Board through detailed calculations and a narrative summary on the Minutes, and the Board may take into consideration the resale value, parts and service and warranty and lease terms, and any other relative information when making this determination.); AG Op. No. 2001-0525 to Mayfield, August 24, 2001 (If a Board accepts a bid that is not the lowest, the Minutes must contain an explanation of why that bid is lowest and best, with detailed calculations and a narrative summary, and the governing authorities may consider past performance, including prior fraudulent acts of bidders, when making the factual determination as to which bid is the lowest and best).

- Bid opening procedure

See AG Op. No. 94-0198 to Cockrell, April 6, 1994 (The task of actually opening public bids may be delegated to subordinate employees of an agency, or committees or individual members of the governing authority, but the actual opening of the sealed bids must be in public by the person or persons delegated the task by the executive authority of the public body); AG Op. No. 93-781 to Dyson, December 15, 1993 (Governing Boards of counties and cities are not required to open bids during an official meeting of the Board, and may in their discretion direct that bids be received and opened on the date and at the time and place specified by the Board in the request for bids by a designated agent of the Board, such as the Clerk, Deputy Clerk or Purchasing Agent. Such agent would only be authorized to open and announce the bids in an open, public proceeding where bidders, their representatives and the general public could be present, and the bids could then be arranged, recorded and tabulated and then presented to the governing Boards at a later official meeting for acceptance or rejection).

- Automatic renewal/options to renew

See AG Op. No. 95-0290 to Bradley, June 2, 1995 (Governmental entity may exercise an option to renew a contract, entered into pursuant to §31-7-13(n)(i) and for a period of less than 24 months, for the time remaining in the 24 month period without rebidding the contract, and the exercise of the option to renew is subject to any applicable prohibitions on the letting of contracts near the end of terms of office); AG Op. No. 98-0755 to Pope, December 23, 1998 (A governing authority may not enter into a garbage collection and transportation contract containing an option to extend the contract beyond six years); AG Op. No. 95-0175 to Benvenuti, May 10, 1995 (there was no legal prohibition to a contract containing provisions for automatic renewal, but a contract containing an automatic renewal clause for successive one year periods would nonetheless be subject to the restriction that no contract or automatic renewal thereof can extend beyond the terms of a majority of the present board members and thereby bind their successors in office, citing *Edwards Hotel and City Railroad Company v. City of Jackson*, 51 So. 802 (Miss. 1910) and *Tullos v. Town of Magee*, 179 So. 557 (Miss. 1938)).

- Personal services/service contracts

The Public Purchase Law's bidding requirements do not apply to service contracts, such as contracts for professional services³⁸ ; a contract for counseling services,³⁹ , personal services such as those of a collection agency⁴⁰ ; a contract allowing for the placement of soft drink vending machines on the premises of schools under the management of the County School Board, which is in the realm of the provision of a service⁴¹ ; a contract with a medical provider for healthcare services at a private prison⁴² ; performance of a technological assessment of a city's computers and software for the purpose of determining the likelihood of integrating or networking the various computer systems in different city offices, which assessment is essentially services related although it could potentially lead to the purchase of technological equipment⁴³ ; a contract for professional services of a web based e-government services provider, provided, that the mandates of public policy require that the public receive the best possible service at the lowest available price, so where there are multiple companies who can supply the service, the county is strongly encouraged to solicit competitive bids, even when not legally required, in order to assure the public that improper favoritism is not being exercised and the public body is receiving the best value at the lowest cost to the citizens⁴⁴ ; a contract for professional services for the administration of a juvenile detention center⁴⁵ ; and a service contract for the professional services of a tree surgeon.⁴⁶

- Negotiations in the absence of an acceptable bid

See AG Op. No. 95-0571 to Cole, September 5, 1995 (Since political subdivision's solicitation of proposals for a solid waste disposal service represents a policy decision and not a legal obligation, it may if it wishes curtail this process and enter into negotiations without any legal requirement to consider all proposals, nor is it required to accept the lowest proposal); AG Op. No. 95-0495 to Williams, July 20, 1995 (When an advertisement for bids results in no bids or results in a single bid that is too high, a public board must continue to solicit bids in accordance with §31-7-13 until the board receives an acceptable bid); AG Op. No. to Schneller, September 23, 1992 (There are no alternative provisions to §31-7-13 that would allow a drainage district to negotiate a repair and maintenance construction contract, even though public solicitation has failed to yield a qualified bidder, but the district may perform the work itself using its own staff of employees in compliance with §73-13-45).

- Formal requisites for an acceptable bid

See AG Op. No. 96-0168 to McFatter, April 19, 1996 (Where the specifications are merely referred to in an advertisement as on file with the clerk and the right is reserved in the advertisement to amend the

³⁸AG Op. No. 97-0309 to Peeples, May 30, 1997

³⁹AG Op. No. 97-0237 to Palmer and Thompson, May 9, 1997

⁴⁰AG Op. to Nichols, February 11, 1992

⁴¹AG Op. No. 2001-0670 to Carnathan, October 26, 2001

⁴²AG Op. No. 2001-0652 to Johnson, October 26, 2001

⁴³AG Op. No. 2001-0308 to Jones, June 1, 2001

⁴⁴AG Op. No. 2000-0270 to Haque, June 20, 2000

⁴⁵AG Op. No. 99-0497 to Starks and Yancey, September 24, 1999

⁴⁶AG Op. No. 99-0185 to Bowman, April 30, 1999

specifications with reasonable notice to all who have examined or requested copies of those specifications from the clerk, readvertisement for bids following an amendment to the specifications is not required); AG Op. No. 97-0297 to Gwin, May 30, 1997 (A governing authority may seek bids on specific alternatives from all bidders, but may not consider an unspecified “voluntary alternate” that deducts a portion of the work contained in the specifications for the project in making the determination as to which bid is the lowest and best); AG Op. No. 93-0244 to Troutt, April 14, 1993 (Where the complete bid amount is written on the outside of the bidder’s envelope, that bid does not constitute a sealed bid, but the sealed bid requirement is not violated by notations on the outside of a bid envelope that communicate a reduction in the bid without revealing the bid).

- Change orders under §31-17-13(g)

Miss. Code Ann. §31-7-13 (g)(Supp. 2003) governs the subject of change orders or “change authorizations” for construction contracts. If a County Board of Supervisors makes the determination after a construction contract is let that changes or modifications to the original contract are necessary or would better serve the purpose of the county, the board may in its discretion order such changes pertaining to the construction that are necessary under the circumstances without the necessity for further public bids. Such change must be made in a commercially reasonable manner and not made to circumvent the public purchasing statutes, and the architect or engineer hired by the county with respect to such public construction contract shall have the authority, when granted by the county to authorize changes or modifications to the original contract without the necessity of prior approval of the county board when such change or modification is less than 1% of the total contract amount.

The County Board of Supervisors may limit the number, manner or frequency of such emergency changes or modifications. See AG Op. No. 93-0502 to Gwin, July 30, 1993 (Where it was known during the bidding of a contract that a substantial additional construction not provided for was contemplated at a later time, this statute does not contemplate or permit the use of change orders to complete a second phase of a public construction project where the contract and specifications were limited to the first phase of construction. The second phase of the renovation of the hospital was not necessary or incidental to the completion of the first phase of construction, and must be treated as a new undertaking outside the scope of the contract, thus requiring the board to solicit competitive bids in order to complete the second phase of the planned renovations). See AG Op. No. 97-0547 to Havard and Lee, September 12, 1997 (It is legally permissible for a board to make changes that are necessary or incidental to the completion of work as originally bid, where those changes are not outside the scope of the original contract, are commercially reasonable and are not made to circumvent the public purchasing statutes, and any increase or decrease in cost is reasonable); AG Op. No. 96-0569 to Wallace, August 30, 1996 (The change order procedure cannot be *used* to amend a contract for the purchase of classroom furniture such as desks and chairs); AG Op. to Watts, April 25, 1989 (§31-7-13 (g) does not permit a governing authority to use change orders to authorize the payment of interest on money withheld by an agency or governing authority from a contractor).

- Modification of bid after acceptance

Miss. Code Ann. §31-7-13 (d)(ii)(Supp. 2003) provides in part that “if the lowest and best bid is not more than 10% above the amount of funds allocated for a public construction or renovation project, then the

agency or governing authority shall be permitted to negotiate with the lowest bidder in order to enter into a contract for an amount not to exceed the funds allocated.” This statute was construed in AG Op. No. 97-0277 to Webb, May 23, 1997, in which the Attorney General opined that the statute only allows the low bidder to reduce his bid to come within the amount of funds allocated, and that to do otherwise would allow unchecked reductions in the specifications for the project with only a corresponding 10% reduction in price, thus defeating the purpose of the public purchasing statutes, regardless of the size of the project.