

## **Home Rule**

Home Rule was made applicable to County government by §60 of the County Government Reorganization Act of 1988, and is set forth in Miss. Code Ann. §19-3-40 (Supp. 1990):

- (1) The Board of Supervisors of any County shall have the power to adopt any orders, resolutions or ordinances with respect to County affairs, property and finances, for which no specific provision has been made by general law and which are not inconsistent with the Mississippi Constitution, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi; and any such Board shall likewise have the power to alter, modify and repeal such orders, resolutions or ordinances. Except as otherwise provided in subsection (2) of this section, the powers granted to Boards of Supervisors in this section are complete without the existence of or reference to any specific authority granted in any other statute or law of the State of Mississippi.

Such orders, resolutions or ordinances shall apply Countywide except when the governing authorities of any municipality situated within a County shall adopt any order, resolution or ordinance governing the same general subject matter. In such case the municipal order, resolution or ordinance shall govern within the corporate limits of the municipality.

- (2) This section shall not authorize the Board of Supervisors of a County to (a) levy taxes other than those authorized by statute or increase the levy of any authorized tax beyond statutorily established limits, (b) issue bonds of any kind, (c) change the requirements, practices or procedure for County elections or establish any new elective office, (d) use any public funds, equipment, supplies or materials for any private purpose, (e) regulate common carrier railroads, (f) grant any donation, or (g) without prior legislative approval, regulate, directly or indirectly, the amount of rent charged for leasing private residential property in which the County does not have a property interest; unless such actions are specifically authorized by another statute or law of the State of Mississippi.

Prior to the adoption of County Home Rule, the traditional view was that Boards of Supervisors were held to the strictest limitations of their powers and could only exercise those powers which were expressly conferred by statute or which were necessarily implied. *Adams v. First National Bank of Greenwood*, 60 So. 770, 771 (Miss. 1913).

### **Broad Authority**

The traditional view of the limited authority of Boards of supervisors has been significantly relaxed by County Home Rule. The Mississippi Supreme Court's first opportunity to address County Home Rule came in *Harrison County v. City of Gulfport, Mississippi*, 557 So. 2d 780 (Miss. 1990). At issue was whether

Harrison County had the legal authority to oppose an annexation by the City of Gulfport. As an historical note, the Court observed that the rule in effect since 1876 had been that a County Board of Supervisors had authority to act only as provided by law, but that rule “has been moderately but significantly relaxed” by the Home Rule statute, §19-3-40. The Court concluded that the County was authorized to proceed in this matter by a combined reading of several statutes, which vested in the County, acting through its Board of Supervisors, the authority to employ counsel and participate fully in the annexation and confirmation proceedings, and that “any possible doubt of the matter has been removed by the enactment of §19-3-40.”<sup>2</sup>

As was once pointed out by P. L. Douglas, retired First Assistant Attorney General, the granting of Home Rule powers is really a distribution of existing governmental powers and is not an enlargement of the functions of government. In short, a County Board of Supervisors cannot enact orders or resolutions that the state legislature could not have enacted, nor may a County Board of Supervisors under Home Rule assume functions which are not public. County Home Rule contemplates that a local Board may act on matters of local interest but may not act on matters of statewide interest, at least to the extent that there is no specific provision made by general law and to the extent that there is no inconsistency with the state constitution or any other statute or law of the state.

Home Rule is thus designed to give counties broad authority in matters of local concern. The following are examples of the breadth and scope of Home Rule authority properly exercised by County Boards of Supervisors, as set forth in applicable AG Opinions:

- Although the County Home Rule statute gives county boards of supervisors broad powers with respect to county government, such authority is limited to powers with respect to county affairs, property and finances for which no provision has been made by general law and not inconsistent with the Constitution, statutes or laws of the State. An appropriation of funds to hire counsel for private citizens may be characterized as a contribution. Appropriations, loans, and donations of county funds are controlled and regulated by statute. Absent specific authority, a board of supervisors is not legally authorized to donate public funds. There does not appear to be authority for a board of supervisors to *use* public funds for the purpose of assisting private property owners in their efforts against a private corporation, and a board of supervisors may not appropriate funds to hire attorneys to represent private citizens in the matter of closing private railroad crossings. A county has no course of action to assist or render service in what is essentially a dispute between two private parties. AG Opinion No. 2003-0459 to Shepard, October 3, 2003.

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<sup>2</sup>*But cf. Perry County v. Ferguson*, 618 So. 2d 1270 (Miss. 1993)(denying County intervention of right pursuant to Rule 24(a)(2), MRCP, in a civil action by private parties seeking actual and punitive damages against a paper mill for its alleged discharge of toxic substances into a river, where the County owned the pulp mill and land on which it was located and leased the same to the paper mill under the terms of industrial development revenue bond issues in excess of a half million dollars, the Court reasoning that the County failed to prove that its interests were not adequately represented by the existing parties, despite the County’s claim that substantial monetary judgments in the pending cases, numbering over 160, would force the paper mill to close and thereby impair the County’s interest as project owner).

•County Home Rule would allow Harrison County to enact lawful ordinances regulating the use of the sand beach and to provide penalties for the violation thereof, to be enforced by the sheriff. AG Opinion to Meadow, April 23, 1993. The Harrison County Board of Supervisors may temporarily restrict access to areas of the public sand beach for two to three months for the benefit of the Least Terns and/or other nesting birds. Provided that reasonable access to waters adjacent to the temporary Least Tern sanctuaries is maintained, the county will not be liable to adjacent up-land owners for interfering with their purported riparian/littoral rights. Provided that the county determines that permanent and temporary bird sanctuaries are in the public interest, the Harrison County Board of Supervisors has the authority to establish such sanctuaries. AG Opinion No. 2003-0254 to Dawkins, June 6, 2003.

•County Home Rule does not authorize a county to use an essential governmental function such as law enforcement as a device to advertise private businesses. AG Opinion No. 2003-0069 to Williams, March 10, 2003.

•County Home Rule gives a county board of supervisors the authority to contract with a funeral home for services that consist of arranging for transportation and preservation of unclaimed bodies until family members may make arrangements, and any expenses incurred by the county would ultimately be the responsibility of the decedent's estate or that person liable at law for the necessities of the decedent during his or her lifetime. AG Opinion to Hemphill, August 30, 1996; AG Opinion No. 2003-0727 to Williams, January 24, 2003.

•County Home Rule does not authorize a county board of supervisors to adopt an ordinance with county-wide applicability regulating and restricting the removal or mining of dirt within a specific distance of public roads and road rights-of-way, because this area of regulation has been preempted by the state legislature through enactment of Miss. Code Ann. Section 53-7-19 (1999), which negates authority on the part of the county board from enacting such an ordinance; however, the county may petition the Board of Mississippi Geological, Economic and Topographical Survey for relief, and may recover civilly for damages to roads caused by undermining and/or excavation of adjacent lands. AG Opinion No. 2002-0300 to Griffith, May 31, 2002.

•County Home Rule would authorize a county to enter an order acknowledging established service areas and the recognized volunteer organizations which provide fire protection within those areas, and the county may regulate who and when persons can attach to a public water system and may establish rules regarding which fire protection providers have superior control over a fire scene. AG Opinion No. 2002-0570 to Morrow, November 8, 2002.

•A County may grant a non-exclusive cable television franchise, which is properly a matter of governmental concern and is a County affair. AG Opinion No. 90-0001 to McKenzie, January 10, 1990.

•A County Board of Supervisors is authorized under County Home Rule to purchase special items that may be required for plain clothes or undercover operations, other than normal street apparel. AG Opinion No. 90-0006 to Grimmett, January 24, 1990.

•A County may contract with a private corporation to provide necessary equipment and monitoring services in order to operate a home confinement program. AG Opinion No. 90-0084 to Haque, January 31, 1990.

•A County has authority under Home Rule to adopt misdemeanor leash laws and to impose such misdemeanor penalties for violations which they deem appropriate, which regulations are required to be applied Countywide. AG Opinion No. 90-0073 to Gex, February 8, 1990.

•A County Board of Supervisors may entertain an ordinance to provide for the handling of abandoned property, to the extent that such is not addressed elsewhere under the law and provided such ordinance comports with due process and otherwise passes constitutional muster. AG Opinion No. 92-0393 to Best, June 24, 1992.

•A County Board of Supervisors may enact, pursuant to County Home Rule, reasonable zoning restrictions touching on bingo operations and/or may enact reasonable ordinances relating to bingo hours of operation. AG Opinion No. 93-0014 to Scott, January 20, 1993.

•A County Board of Supervisors is authorized under Home Rule authority to provide itself with offices and may, in its discretion, employ a part-time secretary, if such is determined to be reasonable and necessary to accomplish the needs of the County. AG Opinion No. 92-0982 to McKenzie, February 1, 1993.

•A Board of Supervisors has authority under County Home Rule to contract with a phone company for provision of pay telephone service to prisoners. AG Opinion No. 93-0090 to Jackson, February 25, 1993.

•A County Board of Supervisors may entertain a lease of private property for the purpose of providing additional public parking spaces for County buildings and County business if the Board makes a factual determination that there is such a need. AG Opinion No. 93-0733 to Gex, November 22, 1993.