NO. 2007-CA-02259

IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RANKIN GROUP, INC.
Appellant

vs.

CITY OF RICHLAND
Appellee

On Appeal from the Circuit Court
of Rankin County, Mississippi

BRIEF OF APPELLEE

Oral Argument is not requested

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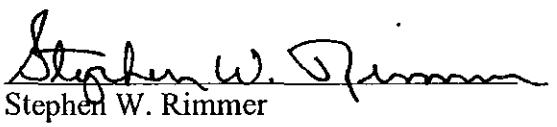
CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record hereby certifies pursuant to Mississippi Appellate Rule of Procedure 28(a)(1) that the following persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeal may evaluate possible disqualification or recusal.

1. Honorable Samac Richardson, Circuit Court Judge of Rankin County, MS
2. Stephen W. Rimmer, Watkins Ludlam Winter & Stennis, P.A.
   Counsel for Appellees
3. Samuel D. Joiner, Joiner Law Firm, LLC
   Counsel for Appellants
4. Rankin Group, Inc., Appellant
5. Mr. George Sanders, President, Rankin Group, Inc.
6. City of Richland, Mississippi, Appellee
7. Mark Scarborough, Mayor of City of Richland, MS



Stephen W. Rimmer
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STATEMENT OF THE ISSUES

The sole issue before this Court is whether the Circuit Court of Rankin County erred in sustaining the Motion of the City of Richland ('Richland" or "City") to dismiss the Petition for Writ of Mandamus filed by Rankin Group ("Rankin" or "Appellant") in the Circuit Court. Richland's position is based upon Rankin's failure to file a bill of exceptions within ten days of the decision it was seeking to appeal, as required by Miss. Code Ann. §11-51-25.

* Rankin, in its Brief, has attempted to present argument with respect to estoppel and other alleged issues in this matter. The Circuit Court found that the underlying merits of this case are in no way relevant to this inquiry unless they in some way are relevant to the question of the timeliness of the filing of the Bill of Exceptions by Rankin. (Tr.6) Language in Rankin's own Brief militates against any such argument. Counsel for Rankin in his Brief properly frames the one and only issue in this appeal by stating on Page 1 the following:

> This is a civil action wherein Appellant, Rankin Group, Inc., sought relief from a final order of the Board of Aldermen of the City of Richland, MS, by filing a Bill of Exceptions and a Petition for Writ of Mandamus, which were dismissed by the lower court as not being timely perfected.

Rankin reaffirmed this position by stating on Page 4 of its Brief the following:

> If this Court is of the opinion that the ten day period begins to run on September 4 or 11, then the lower court should be upheld and the City wins.

and further, on page 5, "This case involves the issue as to when the time for appeal begins."

The decision by the Circuit Court in sustaining Richland's Motion to Dismiss was based solely upon Rankin's failure to perfect its appeal to the Circuit Court by filing of a Bill of Exceptions within ten days of the date of adjournment of the meeting at which the action for which it was aggrieved was taken. Such filing is mandatory pursuant to Miss. Code Ann. §11-

51-75. It is Richland's position that the ten day period runs from the actual date the meeting was adjourned; Rankin maintains the ten day period doesn't begin to run until the minutes of the meeting are signed.

UNDISPUTED FACTS

The undisputed facts relevant to the issues herein are:

(i) The action from which Rankin is appealing was taken by the Richland Board of Alderman at its first regular monthly meeting held on September 4, 2007.

(ii) That meeting was not adjourned, but was recessed until September 11, 2007, at which time the meeting was adjourned.

(iii) The Richland Mayor and Board met in their second regular monthly meeting on September 18, 2007, at which time the minutes of the meeting of the September 4 and September 11 meeting were approved.

(iv) No action whatsoever was taken by the Rankin to appeal the September 4, 2007, decision of the Richland Board of Aldermen until at least September 27, 2007, as evidenced by the following statement appearing in Paragraph 10 of Rankin's Petition:

> Counsel for Rankin Group immediately started working on Rankin Group's Bill of Exceptions and filed it on Thursday, September 27, 2007, which was well within the Rankin Group's time to appeal. (R. 53)

(v) At least 16 days elapsed between the adjournment of the meeting on September 11 and the taking of any action by Rankin to perfect an appeal to the Circuit Court.

(vi) Miss. Code Ann. §11-51-75 provides the manner and time for the filing of an appeal from a decision of a municipal governing body or board of supervisors and provides in part:

> Any person aggrieved by a judgment or decision of the board of supervisors, or municipal authorities of a city, town, or village, may appeal **within ten days from the date of adjournment** at which session the board of supervisors or municipal authorities rendered such judgment or decision, and may embody the facts, judgment and decision in a Bill of Exceptions which shall be signed by the person acting as president of the board of supervisors or the municipal authority . . . .

Appendix A.

ARGUMENT

I. When Mandamus is an appropriate remedy.

Miss. Code Ann. §11-41-1 states when mandamus is an appropriate remedy and how the remedy is obtained, providing as follows:

> On the complaint of . . . any private person who is interested, the judgment shall be issued by the circuit court, commanding any inferior tribunal, corporation, board, officer or person to do or not to do any act, the performance or omission of which the law specifically enjoins as a duty resulting from the office, trust or station, where there is not a plain, adequate or speedy remedy in the ordinary course of law . . . .

Appendix B.

Thus, the two essential elements for the granting of a petition for writ of mandamus are:

(i) There must be clear duty and legal obligation to perform the act in question by the body to whom it is directed; and

(ii) It must be shown that there is no plain, adequate or speedy remedy at law available to the petitioner.

Mississippi law is replete with the principle that "citizens may only bring a mandamus action to compel public officials and bodies to act only as to nondiscretionary duties plainly required by law." Hobson v. City of Vicksburg, 848 So.2d 199 (Miss. 1997). Here, Rankin was asking the Circuit Court to compel the City of Richland to accept and approve a Bill of Exceptions, even though that Bill of Exceptions was not submitted to Richland within the ten day time period required by Miss. Code Ann. §11-51-75. In view of the facts and law applicable to this matter, the Circuit Court was without authority to require Richland to accept and sign what was clearly an untimely Bill of Exceptions. A proffered appeal that is not perfected in the manner and time prescribed by statute confers no jurisdiction on the appellate court. Thus, the Petition for Writ of Mandamus was without merit.

II. Rankin's Bill of Exceptions was untimely and Richland had no duty or obligation to accept it.

The action from which Rankin is seeking to perfect an appeal was taken by the Richland Board of Aldermen at its first regular monthly meeting held September 4, 2007. That meeting was not adjourned, but was recessed until September 11, 2007, at which time the meeting was adjourned. The Richland Mayor and Board of Aldermen met in their second regular monthly meeting on September 18, 2007, at which time the minutes of the meetings of September 4 and September 11 were approved. No action whatsoever was taken by Rankin to appeal the September 4 decision of the Board of Aldermen until at least September 27, 2007. It is undisputed by Rankin that no Bill of Exceptions, notice of appeal, or any other pleading or notice indicating an intent to appeal was filed with the City of Richland or the Circuit Court within the ten day period immediately following September 11, 2007, nor was there any attempt at such filing. Miss. Code Ann. §11-51-75 makes the timely filing of a Bill of Exceptions a mandatory prerequisite to the perfection of an appeal of a decision of the Richland Board of Aldermen to the

Rankin County Circuit Court. Mississippi case law is replete with the principle that established time frames within which appeals shall be taken are both **mandatory** and **jurisdictional** and must be strictly complied with. This principle was cogently stated by this Court in *Moore v. Sanders*, 569 So.2d 1148 (Miss. 1990):

> This brings us to the question of whether the ten day provision in the statute is mandatory. The pertinent portion of the statute is in the following language: ". . . [HN3] may appeal within ten (10) days from date of adjournment at which session the board of supervisors or municipal authorities rendered such judgment or decision, and [**5] may embody the facts, judgment and decision in a Bill of Exceptions which shall be signed by the person acting as president. . ." [HN4] Bills of exception unknown to the common law, are founded wholly on the statutes and can only be made up in the manner, time and place provided by statute. Richmond v. Enochs, 109 miss. 14, 67 So. 649 (1915). Furthermore, it has long been the law of this state that statutes limiting the time within which appeals may be taken are both mandatory and jurisdictional. An appeal not perfected with the time prescribed by statute confers no jurisdiction on the appellate court. Such an appeal should be dismissed either on the motion of the appellee or by the appellate court of its own motion. Turner v. Simmons, 99 Miss. 28, 54 So. 658 (1911).
>
> * * * *
>
> After [*1150] the ten days had elapsed from the adjournment of the October 1971 meeting there was no way that the appeal could then be perfected.

Id. at 754-755.

> As we held in *Turner v. Simmons*, 99 Miss. 28, 54 So. 658 (1911):
>
> [HN5] Statutes limiting the time within which appeals shall be taken are both mandatory and jurisdictional, and must be strictly complied with. The court is without power to engraft any exception [**6] on the statute. When the statute is not complied with, the Supreme Court is without jurisdiction of this cause, which will be dismissed, either on motion of appellee or by this court of its own motion. This

> court is without power to make any other order. *[Emphasis added]*

This Court reaffirmed its long held position that the provisions of Miss. Code Ann. §11-51-75 are both mandatory and jurisdictional and must be strictly adhered to in *Robert House, et al. v. Gary L. Honea, et al.*, 799 So.2d 882 (Miss. 2001), stating:

> In the case at hand, it is unquestioned that the meeting adjourned on December 30, 1999. Defendants did not file their notice of appeal and Bill of Exceptions until January 14, 2000, which was more than ten days after adjournment. This clearly shows that the appeal to the Circuit Court was untimely.

In Rankin's brief, reference is made to this Court's opinion in *City of Oxford v. Inman*, 405 So.2d 111 (Miss. 1981), as supporting Rankin's position. This Court in very cogent language disposed of any effect the Inman decision would have on the issues herein stating:

> *Inman* deals with when a municipal ordinance becomes effective and has nothing to do with when an order of a board of supervisors is effective.

Even though it likely appears harsh to Rankin that its appeal is time barred for failure to perfect it within the relatively short but mandatory ten day period, an analytical evaluation of this requirement would actually reveal otherwise. If, as urged by Rankin the appeal period did not begin to run until the Minutes were signed, such would serve to impose an untoward burden on a party seeking to perfect an appeal by making it necessary for the potential appellant to make daily contact with the City Clerk to determine if the minutes had been signed and the appeal period had commenced to run. Miss. Code Ann. §11-51-75 unequivocally states that the ten day appeal period begins to run from the date of the adjournment of the meeting at which the action appealed from was taken. Thus, a potential appellant knows precisely when the appeal period commences and how long it has to perfect its appeal.

III. A meeting of a municipal governing body is adjourned at the time a motion is made, seconded and approved by a majority of the board – not when the minutes of the meeting are signed.

It appears that the Rankin is taking the position that any action taken by a municipal governing body at a meeting has no validity until such time as the minutes of the meeting are signed. Miss. Code Ann. §21-15-33, Municipal Minutes, contains the requirements for adoption and approval of municipal minutes, providing as follows:

> The minutes of every municipality must adopted and approved by a majority of all of the members of the governing body of the municipality at the next regular meeting or within 30 days of the meeting thereof; whichever first occurs. Upon such approval, said minutes shall have the legal effect of being valid from and after the date of the meeting. . . .

Appendix C.

There appears to be a fundamental misunderstanding on the part of Rankin as to the purpose and effect of the minutes of a meeting of a mayor and board of aldermen. The minutes are not the action of the board, but simply chronicle and evidence the actions and events of the meeting. When approving the minutes of a meeting, the mayor and board of aldermen are simply affirming that the minutes accurately reflect the actions taken at the meeting. If the line of reasoning proffered by the Appelant was followed, any time after a purported "adjournment" and a later date at which the minutes were signed, the board would be free to take further action, change votes, etc. Such a situation would be completely unworkable. Clearly, once the meeting is adjourned, there can be no further action on the part of the mayor and/or board of aldermen, except to approve the minutes, thereby affirming that they accurately reflect the action taken at that particular meeting.

If this Court were to embrace the position advanced by Rankin, the efficient functioning and operations of municipalities would be substantially impaired. Such a position would require

that none of the actions authorized at the meeting of the Mayor and Board of Aldermen could legally be undertaken until the minutes were signed. For example, at almost every meeting, a claims docket is approved for payment. Thereafter, the City Clerk would begin writing checks to the various parties appearing on the claims docket. Following Rankin's line of reasoning, any payments that were made by the Clerk between the time of the meeting and the time the minutes of the meeting were approved would constitute unauthorized expenditures of municipal funds on the part of the Clerk. Further, the undertaking of other actions by city officers and employees that were authorized at that meeting that were undertaken in the interim between the meeting and the signing of the minutes would be without legal authority. The fallacy of such position is obvious.

IV. Upon signing of the Minutes of the September 4 and September 11 meeting on September 18, 2007, such signing in effect "related back" to the date of the adjournment of the September 11, 2007, meeting.

There is a fundamental misunderstanding on the part of Rankin as to the language and effect of the provisions of Miss. Code Ann. §21-15-33. The provision in this section, which states, "Upon such approval, said minutes shall have the legal effect of being valid from and after the date of the meeting," does not mean that the minutes only have legal effect from and after the date of the meeting at which the minutes are approved, **but that the minutes have legal effect as of the date of the meeting that is reported by those particular minutes."** This is clearly reflected by the language in the predecessor statute, §21-15-33, which appeared as §33-74-72 of Miss. Code of 1942 and stated in part,

> The minutes of every municipality must be signed by the mayor or a majority of all of the members of the governing body of the municipality within ten days of the meeting thereof, and upon such signing, said minutes shall have the legal effect of being valid from and after the date of the meeting. All minutes signed after ten days from the date of the meeting shall be valid from and after the date of such signing.

Thus, the foregoing provision makes it clear that under the former statute if the minutes were signed within ten days of the meeting, they "related back" to the date of the meeting. The legislature recognized the inherent problems the ten day limitation posed for a municipality and changed the statute to thirty days and deleted any provision to the effect that the minutes signed more than thirty days of the meeting would be valid only after their adoption. As previously stated, to do otherwise would substantially impede the efficient functioning of a municipal governing body. Unequivocal support for the foregoing is found in the Court's opinion in City of Biloxi v. Cawley, 279 So.2d 389 (Miss. 1972), wherein the Court stated:

> It will be seen that the statute deals with the minutes of meetings, not with days of meetings. **Also, it is obvious that it was the legislative intent to provide latitude in the signing of minutes in order that official actions should not be invalidated, even if not signed in ten days. . . .**
>
> The city commission convened its regular session on May 17, 1971. By appropriate recessing orders, the Council continued in regular session on May 18, 24 and 26, 1971, and June 2, 1971. The annexation ordinance was duly adopted on May 18, 1971, and the regular meeting was not finally adjourned until June 2, 1971. **The ten days contemplated by the statute began to run from June 2, 1971.** (Emphasis added)

Judge Richardson cogently disposed of this issue in his Opinion stating as follows:

> OK. Again, I'll try to do this. Section 21-15-33 states, "the minutes of every municipality must be adopted and approved by a majority of all the members of the governing body of the municipality at the next regular meeting or within 30 days of the meeting," and it uses the word "thereof", which means the meeting when the action was taken. It can't mean anything else because then it follows up and says, "whichever occurs first." Upon such approval, said minutes shall have the legal effect of being valid from and after the date of the meeting," and it's got to be the meeting where the action was taken because that's the meeting thereof.

(Tr. 27)

V. Rankin's ability and right to appeal is in no wise limited or otherwise impaired.

On Page 6 of Rankin's Brief, the following language appears:

> The reason the Court should decide to use the later date is to prevent an obvious trap. All the City needs to do to prevent review on appeal is to delay typing of its minutes for more than ten days, thus preventing anyone from having a right to appeal anything.

The foregoing statement attempts to raise an issue for which there is no legal basis whatsoever. There are several Mississippi cases stating that a party seeking to perfect an appeal of a decision of a municipal governing body or a board of supervisors is not required to file a pleading formally styled, "Bill of Exceptions" to perfect is appeal, so long as they file a formal pleading indicating an intention to appeal **within ten days of the adjournment** of the meeting at which the action appealed from was taken. While the foregoing reflects a relaxation of the requirement for the filing of a document styled "Bill of Exceptions" within ten days, it in no way relieves or otherwise affects the mandatory jurisdictional requirement that some formal pleading indicating intent to appeal be filed within the ten day period. This position was clearly stated by the Supreme Court in *Bowen v. DeSoto County Board of Supervisors*, 552 So.2d 2003 (Miss. 2003), wherein the Court stated:

> The Court of Appeals found that neither of those cases are contrary to the proposition of Bowling v. Madison County Board of Supervisors, 724 So.2d 431 (Miss. Ct. App. 1988) that [HN2] the actual filing of the bill of exceptions with the circuit court within ten days is not an absolute requirement to vest the court with jurisdiction **as long as some formal pleading indicating an intention to appeal is filed within ten days.** The Court of Appeals further found that although the bill of exceptions must ultimately be filed, it is not necessary to do so within ten days.

This writer in the past when representing parties aggrieved by a decision of a municipal governing body, has frequently been faced with circumstances wherein the entire record of the proceeding is not available within the ten day period. This problem can be easily dealt with by

simply filing a bill of exceptions and designating the items that will comprise the complete record of the proceeding when those items are available. A statement may be included in the bill of exceptions that it will be supplemented as the necessary documentation becomes available. This is all that is necessary to comply with the mandatory jurisdictional requirements of §11-51-75, so long as it is undertaken within the mandated ten day time frame.

This Court stated in *Tilghman v. City of Louisville, Mississippi*, 874 So.2d 1025 (Miss. 2004)

> Thus, our courts have interpreted Miss. Code Ann. §11-51-75 (Rev.2002) to require the filing of an appeal within ten days, but have allowed the bill of exceptions to be filed or amended within a reasonable time thereafter.

The foregoing wholly disposes of this "issue."

CONCLUSION

The Judgment of the Circuit Court of Rankin County should be upheld for the following reasons:

i This case involves an effort by an aggrieved party to perfect an appeal of a decision of the City of Richland Mayor and Board of Aldermen to the Circuit Court;

ii Section 11-51-75 provides that any such appeal must be made within ten days from the date of adjournment of the meeting at which the action in question was taken;

iii The action from which Rankin is seeking to perfect an appeal was taken by the Richland Board of Aldermen at its first regular monthly meeting held September 4, 2007;

iv That meeting was not adjourned, but was recessed until September 11, 2007, at which time the meeting was adjourned;

v The Richland Mayor and Board met in their second regular monthly meeting on September 18, 2007, at which time the Minutes of the meeting of September 4 and September 11 were approved;

vi No action whatsoever was undertaken by Rankin to appeal the September 4, 2007, decision of the Richland Board of Aldermen until at least September 27, 2007;

vii At least 16 days elapsed between the adjournment of the meeting on September 11 and the taking of any action by the Rankin to perfect an appeal to the Rankin County Circuit Court.

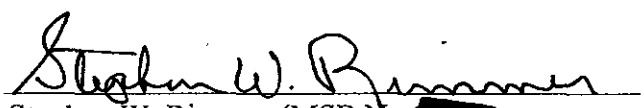
The proffered appeal of Rankin was untimely and the Judgment of the Circuit Court of Rankin County dismissing Appellant's Petition for Writ of Mandamus should be sustained.

* In view of the undisputed facts of this case, as well as the fact that this case involves no complex or esoteric theories of law, it is the position of Appellees that oral argument in this case is not necessary, would in no way advance the inquiry herein and would constitute an unwarranted waste of judicial time and resources.

Respectfully submitted,

CITY OF RICHLAND

By Its Attorneys
WATKINS LUDLAM WINTER & STENNIS, P.A.

By: 
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has this day been mailed by United States mail postage prepaid, to the following:

Samuel D. Joiner, Esq.
Joiner Law Firm, LLC
105 N. College Street
Brandon, MS 39042

This, the 10th day of June, 2008.

Stephen W. Rimmer

APPENDIX A

RESEARCH REFERENCES

Am Jur. 4 Am. Jur. 2d (Rev), Appellate Review §§ 358-360.

CJS. 4 C.J.S., Appeal and Error §§ 409, 410, 421-433.

Law Reviews. 1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§ 11-51-75. Appeal to circuit court from board of supervisors, municipal authorities.

Any person aggrieved by a judgment or decision of the board of supervisors, or municipal authorities of a city, town, or village, may appeal within ten (10) days from the date of adjournment at which session the board of supervisors or municipal authorities rendered such judgment or decision, and may embody the facts, judgment and decision in a bill of exceptions which shall be signed by the person acting as president of the board of supervisors or of the municipal authorities. The clerk thereof shall transmit the bill of exceptions to the circuit court at once, and the court shall either in term time or in vacation hear and determine the same on the case as presented by the bill of exceptions as an appellate court, and shall affirm or reverse the judgment. If the judgment be reversed, the circuit court shall render such judgment as the board or municipal authorities ought to have rendered, and certify the same to the board of supervisors or municipal authorities. Costs shall be awarded as in other cases. The board of supervisors or municipal authorities may employ counsel to defend such appeals, to be paid out of the county or municipal treasury. Any such appeal may be heard and determined in vacation in the discretion of the court on motion of either party and written notice for ten (10) days to the other party or parties or the attorney of record, and the hearing of same shall be held in the county where the suit is pending unless the judge in his order shall otherwise direct.

Provided, however, that no appeal to the circuit court shall be taken from any order of the board of supervisors or municipal authorities which authorizes the issuance or sale of bonds, but all objections to any matters relating to the issuance and sale of bonds shall be adjudicated and determined by the chancery court, in accordance with the provisions of Sections 31-13-5 to 31-13-11, both inclusive, of the Mississippi Code of 1972. And all rights of the parties shall be preserved and not foreclosed, for the hearing before the chancery court, or the chancellor in vacation. Provided, further, nothing in this section shall affect pending litigation.

SOURCES: Codes, Hutchinson's 1848, ch. 51, art. 5 (45, 46); 1857, ch. 59, art. 33; 1871, § 1383; 1880, § 2351; 1892, § 79; Laws, 1906, § 80; Hemingway's 1917, § 60; Laws, 1930, § 61; Laws, 1942, § 1195; Laws, 1940, ch. 245; Laws, 1955, Ex ch. 33; Laws, 1962, ch. 240, eff from and after passage (approved June 1, 1962).

Cross References — Actions to recover past due income, inheritance, and privilege taxes, see § 7-5-55.

Bills of exceptions generally, see § 11-7-211.
Appeals from special court of eminent domain, see § 11-27-29.
Taxation of costs in cases appealed from inferior tribunals, see § 11-53-71.
Presentation of claims against county, see § 19-13-23.
Appeal from decree on municipal incorporation, see § 21-1-21.
Appeal from decree of extension or contraction of municipal corporate boundaries, see § 21-1-37.
Right of appeal from municipal equalization of tax assessments, see § 21-33-39.
Right of appeal from action of municipality in assessing or collecting property taxes, see § 21-33-83.
Claimant against municipality having right of appeal, see § 21-39-11.
Appeal from action of board of supervisors in equalizing tax assessments, see §§ 27-35-119, 27-35-121.
Appeal from state tax commission's findings in income tax proceedings, see § 27-7-73.
Appeal from state tax commission's decision in estate tax proceedings, see § 27-9-47.
Appeals from state tax commission's findings of corporation franchise tax deficiency, see § 27-13-45.
Right of appeal from determinations under Homestead Exemption Law, see § 27-33-35.
Effect of appeal of tax assessment, see § 27-35-121.
Appeal from order of county board of education in abolition, alteration, or creation of school districts, see §§ 37-7-103 et seq.
Appeal of an order by the school board, see § 37-7-115.
Appeal from ordinance incorporating airport property into municipal boundaries, see § 61-9-7.
Appeal from determination by municipal governing authorities of future power requirements of municipality, see § 77-5-707.

JUDICIAL DECISIONS

1. In general.

A mayor's veto is an appealable action of a "municipal authority" under the statute. City of Madison v. Shanks, 793 So. 2d 576 (Miss. 2000).

This section is not applicable to a school board's decision granting or denying the issuance of a Sixteenth Section land hunting and fishing lease. Prisock v. Perkins, 735 So. 2d 440 (Miss. 1999).

This section's 10-day time limit in which to appeal the decision of a board of supervisors is both mandatory and jurisdictional, even where the decision of a board is claimed to be unlawful. Newell v. Jones County, 731 So. 2d 580 (Miss. 1999).

Where, within 10 days of the granting of a special exception by a county board of supervisors, a property owner filed a motion to amend his pending complaint, which amended complaint raised the issues that would have been raised by an appeal, the defects in procedure were not on the timeliness or on the issues raised, but on the label, "complaint" instead of "appeal," and on the absence of a bill of exceptions, and, therefore, the property owner was entitled to promptly correct his deficiencies. Bowling v. Madison County Bd. of Supvrs., 724 So. 2d 431 (Miss. Ct. App. 1998).

The zoning decision of a local governing body which appears to be "fairly debatable" will not be disturbed on appeal, and will be set aside only if it clearly appears that the decision is arbitrary, capricious, discriminatory, illegal, or not supported

by substantial evidence; neither the Supreme Court nor the circuit court should sit as a "super-zoning commission"; thus, the circuit court erred in overturning a city council's decision that the character of a neighborhood had changed substantially and that a public need existed to justify rezoning where the decision of the city council was fairly debatable. City of Biloxi v. Hilbert, 597 So. 2d 1276 (Miss. 1992).

Any court in state sitting as appellate court has inherent authority to allow additional parties to participate in appeal upon timely application or upon court's invitation, and upon timely application any such third party should be permitted to intervene if that party claims interest relating to property or transaction which is subject of appeal and is so situated that disposition of appeal may as practical matter impair or impede his ability to protect that interest, unless that party's interest is adequately represented by existing party; parties other than original parties to appeal may participate in appellate process by filing amicus curiae at request of court or by leave of court; motion for leave to file amicus brief should demonstrate (1) amicus has interest in some other case involving similar question, or (2) counsel for a party is inadequate or brief insufficient, or (3) there are matters of fact or law which might otherwise escape court's attention, or (4) amicus has substantial legitimate interests that will likely be affected by outcome of case and which interest will not be adequately protected by those already parties. Cooper v. City of Picayune, 511 So. 2d 922 (Miss. 1987).

Validation proceedings are the exclusive remedy for raising objections in connection with the issuance and sale of bonds, except those which could be or should be raised before the board of supervisors or municipal authorities, and such objections cannot be properly raised in a suit for an injunction. Chambers v. Perry, 183 So. 2d 645 (Miss. 1966).

The statute as amended has the effect of requiring that objections to an issue of school bonds shall be heard in validation proceedings, whether or not the order of the board of supervisors overruling such objections is appealed from. In re $250,000 Sch. Bonds, 246 Miss. 470, 150 So. 2d 412 (1963).

This section [Code 1942, § 1195] provides an adequate remedy at law precluding an injunction against an order denying a request to rezone property. Highland Village Land Co. v. City of Jackson, 243 Miss. 34, 137 So. 2d 549 (1962).

From the nature of the judgments and decisions of the various boards mentioned in this section [Code 1942, § 1195], persons who are not parties may have a direct pecuniary or other interest in such judgment or decision. Ridgway v. Scott, 237 Miss. 400, 114 So. 2d 844 (1959).

Where following a published notice of a hearing at which no one appeared and protested, the board of supervisors adopted a resolution finding a need for housing authority to function, and no appeal was taken from the board's adopted resolution, which was legal on its face, a collateral attack upon the resolution in the form of a proceeding to enjoin the board of supervisors from acting under the Housing Authority Act was not maintainable. Biloxi-Pascagoula Real Estate Bd., Inc. v. Mississippi Regional Hous. Auth. No. VIII, 231 Miss. 89, 94 So. 2d 793 (1957).

Where, following the time when it became publicly known that the board of supervisors and the housing authority were attempting to apply for loans, the complainant without avail appeared before the board and asked it to rescind its prior action declaring the need for the authority, and the approval of the application for preliminary loans, but took no appeal to the circuit court, the board's action was not subject to a collateral attack by a suit to enjoin it from proceeding under the Housing Authority Act. Biloxi-Pascagoula Real Estate Bd., Inc. v. Mississippi Regional Hous. Auth. No. VIII, 231 Miss. 89, 94 So. 2d 793 (1957).

Where objectors to a school bond issue charged that a large majority of the petitioners would not have signed the petition had they known that the proposed issue would raise their taxes, it was their duty to appeal to the circuit court from a decision of the board of supervisors and in absence of such an appeal the objection

constitutes a collateral attack and is too late. In re Magee Consol. Sch. Bonds, 212 Miss. 454, 54 So. 2d 664 (1951).

Right to appeal from refusal of board of supervisors to levy tax for school district is not a "speedy remedy" within meaning of Code 1942, § 1109, so as to bar issuance of writ of mandamus. State ex rel. Chatham v. Board of Supvrs., 209 Miss. 79, 46 So. 2d 73 (1950).

Statute (Code 1942, § 2932) relating to allowance of claims against county is not the only statutory provision authorizing an appeal to the circuit court from disallowance of a claim by county board of supervisors, since this section [Code 1942, § 1195] is the general statute providing for such an appeal. Board of Supvrs. v. Jones, 199 Miss. 373, 24 So. 2d 844 (1946).

Sheriff's claim presented to county board of supervisors for entering, returning and serving the road overseer's commission, for services required of the sheriff by the board of supervisors for which no fees were fixed, and for executing decrees, judgments, orders of process of the Supreme Court, chancery court or board of supervisors, was not required to be accompanied by any evidence of performance or delivery of services to an amount equal to the compensation claimed, irrespective of whether Code 1942, § 2932 or this section [Code 1942, § 1195] was applicable to the presentation of such claim. Board of Supvrs. v. Jones, 199 Miss. 373, 24 So. 2d 844 (1946).

Adjudication of county board of supervisors as to sufficiency of signatures to petition for an election to determine whether traffic in light wines and beer should be excluded from county, was interlocutory, and entire cause, including that issue, must on pertinent and competent protest be adjudicated by the board upon trial after the election before the final judgment could be entered in the case. Costas v. Board of Supvrs., 198 Miss. 440, 22 So. 2d 229 (1945).

This section [Code 1942, § 1195] (Code 1906, § 80) gives right of appeal to any person aggrieved by a judgment or decision of a board of supervisors and requires that bill of exceptions embodying the facts as duly presented shall be signed by the person acting as president of the board. Wilkinson County v. Tillery, 122 Miss. 515, 84 So. 465 (1920).

Code 1906, § 81 (Code 1942, § 1196), applies specifically to all appeals relating to taxes, while this section [Code 1942, § 1195] (Code 1906, § 80) applies to all other cases. Kuhn Bros. v. Warren County, 98 Miss. 879, 54 So. 442 (1911).

This section [Code 1942, § 1195] (Code 1892, § 79) allows appeal from board of supervisors to the circuit court for final judgment there. Section 85 (Code 1942, § 1201), limits appeals from circuit court to cases where amount in controversy exceeds $50 if originating in courts of justices of the peace. There is no such limitation as to boards of supervisors, and § 93 (Code 1942, § 1210) allows board to appeal from a judgment without bond. Marshall County v. Rivers, 88 Miss. 45, 40 So. 1007 (1906).

This section [Code 1942, § 1195] applies to appeals generally from judgments of boards of supervisors, while Code 1906 § 81 (Code 1942, § 1196) regulates appeals relating to assessments of property for taxation. Jennings v. Board of Supvrs., 79 Miss. 523, 31 So. 107 (1902).

1.5. Rules of Civil Procedure.

The Rules of Civil Procedure do not replace the statute. Bowling v. Madison County Bd. of Supvrs., 724 So. 2d 431 (Miss. Ct. App. 1998).

2. Bill of exceptions in general.

Even if a school board held a secret meeting for the purpose of rendering impossible a timely appeal, the plaintiff's failure to file a bill of exceptions was fatal to the appeal; further, even if the plaintiff did all he could to obtain execution of a tendered bill of exceptions, but his efforts were refused by the school board, he should have proceeded by mandamus to compel signature. Prisock v. Perkins, 1998 Miss. LEXIS 633 (Miss. Dec. 13, 1998), subst. op., 735 So. 2d 440 (Miss. 1999).

The bill of exceptions required by § 11-51-75 is necessary to vest the circuit court with subject matter jurisdiction in all appeals from boards of supervisors, regardless of the issues presented. (Overruling Evans v. Sharkey County, 89 Miss 302, 42 So 173 (1906)). Thus, the failure to obtain and file a bill of exceptions as prescribed

by § 11-51-75 was fatal to an appeal prosecuted under § 65-7-67. McIntosh v. Amacker, 592 So. 2d 525 (Miss. 1991).

Neither the circuit court nor the Supreme Court had the authority to consider a county supervisor's attempted appeal from an order of the board of supervisors finding that he had removed himself from his district and declaring his office vacant under the authority of § 25-1-59, where the supervisor filed a notice of appeal to the circuit court but failed to file a bill of exceptions as required by § 11-51-75. Moore v. Sanders, 569 So. 2d 1148 (Miss. 1990).

In the absence of a bill of exceptions a circuit court had no jurisdiction to reverse the action of the board of supervisors pertaining to a lease of certain 16th section lands. Cox v. Board of Supvrs., 290 So. 2d 629 (Miss. 1974).

A bill of exceptions which embodies the facts and the decision of the city council on a petition to rezone property, and is signed by the mayor, is sufficient to confer jurisdiction on the circuit court despite the fact that a copy of the actual ordinance formally setting forth the council's decision was omitted from the bill. Weathersby v. City of Jackson, 226 So. 2d 739 (Miss. 1969).

On appeal to the circuit court from an order of the board of supervisors of Neshoba county directing issuance of bonds in the amount of $40,000 for the benefit of a high school, the circuit court had authority to hear and determine the matter only on the case as presented by the bill of exceptions as an appellate court, and hence the court was correct in refusing to permit the introduction of evidence on the hearing of the cause. East Neshoba Vocational High Sch. Bonds v. Board of Supvrs., 213 Miss. 146, 56 So. 2d 394 (1952).

Where a bill of exceptions in an appeal from an order of the Board of Supervisors, adjudicating all the necessary jurisdictional facts to entitle the Board to issue bonds on behalf of a Consolidated School District, undertook to recite the matters and things which had transpired at the meeting at which the order had been made, by setting forth the objections made at the meeting and averring facts in conflict with the express adjudications contained in the order, but failed to state the grounds on which the judgment appealed from had been entered, as required by statute in case of appeal, the order appealed from, which was attached to the bill of exceptions as an exhibit and made a part thereof by statute, was affirmed. Adcock v. Board of Supvrs., 191 Miss. 379, 2 So. 2d 556 (1941).

That order disallowing city's claim for road taxes collected by county was not entered on minutes of board of supervisors and embodied in bill of exceptions held not to deprive circuit court of jurisdiction of appeal therefrom on bill of exceptions, where record contained agreement by parties reciting that claim was rejected. Grenada County v. City of Grenada, 168 Miss. 68, 150 So. 655 (1933).

Thirty days within which to procure signing of bill of exceptions after adjournment of term of board of supervisors held not unreasonable time. Board of Supvrs. v. Stephenson, 160 Miss. 372, 134 So. 142 (1930).

"Next term" of circuit court, to which appeal from decision of board of supervisors must go, is term next after appeal has been perfected. Board of Supvrs. v. Stephenson, 160 Miss. 372, 134 So. 142 (1930).

Bill of exceptions to order annexing territory to school district, with uncontroverted caption reciting that objectors were taxpayers of such territory, a statement of fact, sufficiently showed their interest to allow them to appeal. Brannan v. Board of Supvrs., 141 Miss. 444, 106 So. 768 (1926).

Without a bill of exceptions a circuit court has no jurisdiction of an appeal from a judgment of a board of supervisors disallowing a claim against a county and can only dismiss the appeal. Yandell v. Madison County, 79 Miss. 212, 30 So. 606 (1901).

A bill of exceptions to the action of a board of supervisors must be taken and signed during the term, unless by consent or under an order of court, the time for preparing and perfecting it be extended into vacation. McGee v. Jones, 63 Miss. 453 (1886); Board of Supvrs. v. Stephenson, 160 Miss. 372, 134 So. 142 (1930).

3. —Signing bill of exceptions.

When the appellant signed the bill of exceptions, he essentially waived an issue that was not included in the bill and agreed that it would not be considered on appeal. Van Meter v. City of Greenwood, 724 So. 2d 925 (Ct. App. 1998).

Signature of the bill of exceptions by the attorney for an appellant city does not meet this requirement. City of Jackson v. Varia, Inc., 241 Miss. 705, 133 So. 2d 16 (1961).

On appeal from the adoption by a city of a re-zoning ordinance, the mayor may not arbitrarily refuse to sign a bill of exceptions on the ground that it is incorrect, but should sign it with corrections. Reed v. Adams, 236 Miss. 333, 111 So. 2d 222 (1959).

The officer by whom bill of exceptions is to be signed is without discretion in the matter. Koestler v. Dallas Tank Co., 234 Miss. 112, 107 So. 2d 361 (1958).

A bill of exceptions to a decision of municipal authorities is properly signed by successor in office of the mayor at the time of decision, the latter having refused to sign. Koestler v. Dallas Tank Co., 234 Miss. 112, 107 So. 2d 361 (1958).

The act of the president of a Board of Supervisors, in signing a bill of exceptions to the Board's order for the issuance of school bonds, was an acknowledgment that the objections set out in the bill were in fact made by the persons who had appeared as objectors, but did not constitute an agreement that the facts therein recited were true. Adcock v. Board of Supvrs., 191 Miss. 379, 2 So. 2d 556 (1941).

When bill of exceptions is duly presented, it is the duty of the presiding officer to sign same. He has no discretion in the matter. Polk v. Hattiesburg, 109 Miss. 872, 69 So. 675 (1915); Polk v. Hattiesburg, 110 Miss. 80, 69 So. 1005 (1915).

Where bill of exceptions was not taken and signed during term of municipal board at which the order complained of was passed, and time was not extended, the mayor was correct in refusing to sign the bill. Hathorn v. Morgan, 107 Miss. 589, 65 So. 643 (1914).

Only the president of the board of supervisors can sign a bill of exceptions upon appeals under this section [Code 1942, § 1195] and if he refuses he may be compelled by mandamus. Roach v. Tallahatchie County, 78 Miss. 303, 29 So. 93 (1901).

Section 798, Code 1906, providing for all bills of exceptions to be signed by attorneys where the judge refuses to sign, does not apply to appeals under this section [Code 1942, § 1195]. Roach v. Tallahatchie County, 78 Miss. 303, 29 So. 93 (1901).

When the bill is duly prepared and tendered to the president during the term, the exceptor will not be prejudiced because of the failure of that officer to sign it during the term. McGee v. Beall, 63 Miss. 455 (1886).

4. Appeal bond.

Decision of Board of Supervisors that petition for tax levy was signed by majority of electors held final and appealable without bond. Moore v. Board of Supvrs., 151 Miss. 671, 118 So. 349 (1928).

The appeal provided for by this section [Code 1942, § 1195] can be prosecuted without bond. Monroe County v. Strong, 78 Miss. 565, 29 So. 530 (1900).

5. Persons entitled to appeal.

Statute outlined the proper procedure to appeal when someone was aggrieved by a decision of a municipality; it did not in any way confer standing. Burgess v. City of Gulfport, — So. 2d —, 2002 Miss. LEXIS 142 (Miss. Apr. 18, 2002).

The appellant was not a person aggrieved by a judgment or decision of the board where it sought review of the board's order calling for a special election as an election had yet to be held and the board had declined to act unilaterally on the appellant's petition. Mississippi Waste of Hancock County, Inc. v. Board of Supvrs., — So. 2d —, 2001 Miss. LEXIS 43 (Miss. Feb. 22, 2001).

Any court in state sitting as appellate court has inherent authority to allow additional parties to participate in appeal upon timely application or upon court's invitation, and upon timely application any such third party should be permitted to intervene if that party claims interest relating to property or transaction which is subject of appeal and is so situated that

disposition of appeal may as practical matter impair or impede his ability to protect that interest, unless that party's interest is adequately represented by existing party; parties other than original parties to appeal may participate in appellate process by filing amicus curiae at request of court or by leave of court; motion for leave to file amicus brief should demonstrate (1) amicus has interest in some other case involving similar question, or (2) counsel for a party is inadequate or brief insufficient, or (3) there are matters of fact or law which might otherwise escape court's attention, or (4) amicus has substantial legitimate interests that will likely be affected by outcome of case and which interest will not be adequately protected by those already parties. Cooper v. City of Picayune, 511 So. 2d 922 (Miss. 1987).

Community improvement association may have standing to appeal from decision of board of supervisors or municipal authorities, by falling within category of "persons aggrieved," on showing extent of interest, adverse effect, participation of membership, and authority of association to act pursuant to its charter, by laws, and minutes. Belhaven Imp. Ass'n v. City of Jackson, 507 So. 2d 41 (Miss. 1987).

One not an abutting owner, who will be compelled by the closing of an alley to take a less direct route to his place of business, is not a "person aggrieved" by a determination of the city to close the alley, so as to be entitled to appeal therefrom. City of Hattiesburg v. Colson, 236 Miss. 237, 109 So. 2d 868 (1959).

Mortgagees of abutting lots are not "persons aggrieved" so as to have a right to appeal from the city's determination to close an alley, unless the adequacy of their security will be impaired by such closing. City of Hattiesburg v. Colson, 236 Miss. 237, 109 So. 2d 868 (1959).

A foreign power and light company qualified to do business within the state which had a considerable investment in electric distribution lines in a county and the election district sought to be incorporated as an electric power district, was a person adversely affected by the order of the board of supervisors purporting to create a power district, and could appeal therefrom. Mississippi Power & Light Co. v. Mississippi Power Dist., 230 Miss. 594, 93 So. 2d 446 (1957).

This section [Code 1942, § 1195] authorizes an appeal by any qualified elector and taxpayer from a decision of the board of supervisors ordering an election to determine as to the sale of intoxicating liquors in the county. Ferguson v. Board of Supvrs., 71 Miss. 524, 14 So. 81 (1893).

Any taxpayer may appeal from a decision allowing a claim against the county. Wilson v. Wallace, 64 Miss. 13, 8 So. 128 (1886).

It is unnecessary that the appellant be a party to the record; he may show by evidence apart from the proceedings in the supervisors' court that his right has thus been injured by said judgment. Deberry v. President of Holly Springs, 35 Miss. 385 (1858).

6. Time for appeal.

Final actions by municipal authorities or a board of supervisors was appealable under the statute, but an appeal had to be filed within the prescribed 10 days from the day of adjournment of the board of supervisors session, or the circuit court or appellate court will not have jurisdiction to consider the appeal. House v. Honea, 799 So. 2d 882 (Miss. 2001).

A mayor's veto became final for purposes of perfecting an appeal on the date it was accepted by the board of aldermen and, consequently, an appeal filed within 10 days of that date was timely. City of Madison v. Shanks, 793 So. 2d 576 (Miss. 2000).

An appeal under the statute was filed in a timely manner where (1) the mayor issued a veto which was filed with the city clerk on June 27, (2) the board of aldermen accepted the veto and refused to override it on August 2, and (3) the appeal was filed on August 12. The veto became effective on August 2, rather than on June 27, and the appeal was filed within 10 days thereafter. City of Madison v. Shanks, 793 So. 2d 576 (Miss. 2000).

A bill of exceptions was properly before the Circuit Court in an action concerning an appeal of the decision of a county commission and board to sell real property owned by the county; although the transaction did in fact substitute one parcel of

property for another parcel, it was nevertheless a conveyance evidenced by a special warranty deed which was directly challenged by the bill of exceptions, and the fact that the plaintiff did not properly appeal the previous sale of land was irrelevant since it challenged the latter decision within 10 days as required by the statute. Coast Materials Co. v. Harrison County Dev. Comm'n, 730 So. 2d 1128 (Miss. 1998).

The ten-day period for an appeal of a decision by the defendant board of aldermen did not begin when the board awarded a contract to a competitor of the plaintiff, but on the later date when the board received requisite approvals from the Mississippi Department of Transportation and the Federal Highway Commission. J.H. Parker Constr. Co. v. Board of Aldermen, 721 So. 2d 671 (Miss. Ct. App. 1998).

Heavy equipment vendor's action against a county board of supervisors which was timely filed in the chancery court, but later transferred to the circuit court, would be deemed to have been timely filed in the circuit court. Canton Farm Equip., Inc. v. Richardson, 501 So. 2d 1098 (Miss. 1987).

Since a city utilities commission was not a municipal authority, the vacation pay cause of one of its employees should not have been dismissed on the ground that the employee had failed to appeal within 10 days of the adjournment date of the commission's regular meeting. Robinson v. Utilities Comm'n, 487 So. 2d 827 (Miss. 1986).

A bill of exceptions filed on June 13, 1980, to challenge a rezoning of certain property was not untimely where, although the Mayor and Board of Aldermen voted on May 6, 1980, to reclassify the property, the rezoning ordinance did not become effective until written, signed and formally adopted on June 3, 1980, at which time the ten-day appeal period commenced to run. City of Oxford v. Inman, 405 So. 2d 111 (Miss. 1981).

Order of board of supervisors, adjudicating sufficiency of petitions for election and providing for election to exclude traffic in light wines and beer in the county, was an interlocutory order and not a final order, requiring appeal therefrom within ten days in order to question sufficiency of petitions. Costas v. Board of Supvrs., 196 Miss. 104, 15 So. 2d 365, 154 A.L.R. 863 (1943), suggestion of error sustained in part, 196 Miss. 104, 16 So. 2d 378 (1943).

Although board of supervisors was acting judicially in adjudicating sufficiency of petitions for election and providing for election to exclude traffic in light wines and beer in county, it did not complete its judicial functions in regard to such matter, as regards appeal therefrom, until the election was held and it adjudicated that notice of the election stated the proposition to be voted on, that it was published as required by law and that the election had been conducted according to law in all other respects. Costas v. Board of Supvrs., 196 Miss. 104, 15 So. 2d 365, 154 A.L.R. 863 (1943), suggestion of error sustained in part, 196 Miss. 104, 16 So. 2d 378 (1943).

Final order of board of supervisors from which appeal will lie in the exclusion of light wines and beer in the county is the order showing affirmatively an adjudication as to the sufficiency of the notice of the election and publication according to law, that the notice contained a statement of the proposition to be voted on at the election, and that the report of the election commissioners disclosed that a majority of those voting in the election had voted in favor of the exclusion. Costas v. Board of Supvrs., 196 Miss. 104, 15 So. 2d 365, 154 A.L.R. 863 (1943), suggestion of error sustained in part, 196 Miss. 104, 16 So. 2d 378 (1943).

The board is the only tribunal empowered to take the initiative action necessary to the lawful establishment of a stock law. Until such action is taken no appeal properly lies. Bailey v. Delta Elec. Light, Power & Mfg. Co., 86 Miss. 634, 38 So. 354 (1905).

A creditor of a county has no access to the circuit court until after his claim has been rejected by the supervisors; if the board disallow his claim he can appeal or he may sue directly in any court of competent jurisdiction. Board of Supvrs. v. Brookhaven, 51 Miss. 68 (1875); Taylor v. Marion County, 51 Miss. 731 (1875).

7. Particular matters as appealable.

A mayor's veto is an appealable action of a municipal authority as contemplated by the statute. City of Madison v. Shanks, 793 So. 2d 576 (Miss. 2000).

In action by registered voters against county board of supervisors alleging that board violated due process right by refusing to hold election on bond issues, refusal did not rise to level of constitutional deprivation, and even if board members, as alleged, improperly eliminated signatures on plaintiffs' protest petition or viewed required number of signatures too restrictively, proper avenue for such claims was through state election procedures, not action in federal court. Thrasher v. Board of Supvrs., 765 F. Supp. 896 (N.D. Miss. 1991).

Statute, directing that appeals from judgments or decisions of municipal authorities are to be taken to Circuit Court, provided exclusive remedy for plaintiff, seeking declaratory and injunctive relief and alleging election regarding use, possession and sale of alcoholic beverages within city was without legal authority, and thus, Chancery Court lacked subject matter jurisdiction over plaintiff's action, even though election was not complete before plaintiff filed complaint, where remedy from city's action of holding election was provided for in Circuit Court. Benedict v. City of Hattiesburg, 693 So. 2d 377 (Miss. 1997).

Any act of county or municipality leaving party aggrieved is appealable to circuit court when all issues of controversy are finally disposed of by order of city council. Garrard v. City of Ocean Springs, 672 So. 2d 736 (Miss. 1996).

City council's decision to transfer property to park commission was appealable; order was final resolution of controversy as to disposition of property. Garrard v. City of Ocean Springs, 672 So. 2d 736 (Miss. 1996).

Any act of a county or municipality which leaves a party aggrieved is appealable under § 11-51-75, which provides for appeal from a "judgment or decision" of the board of supervisors or municipal authorities of a city, town or village, where all issues of the controversy are finally disposed of by order of the city council. Thus, a city council's award of a lease contract for golf carts was an appealable action under § 11-51-75. South Cent. Turf, Inc. v. City of Jackson, 526 So. 2d 558 (Miss. 1988).

The circuit court acted within its jurisdiction in reversing a rezoning ordinance of the city of Oxford which rezoned 8.33 acres from agricultural to multi-family residential and such decision of the circuit court would be affirmed where the building of low-rent housing and a recreational facility as well as a road expansion had been changes in accordance with the original zoning plan and where there had been no concrete evidence of public need for housing on the 8.33 acres sought to be rezoned, but only testimony that there was generally a public need for multi-family dwellings in the city. City of Oxford v. Inman, 405 So. 2d 111 (Miss. 1981).

Order prescribing hours of opening and closing of places for sale of beer or wine outside the municipality in the county, under Code 1942, § 10224, is appealable under this section [Code 1942, § 1195]. Board of Supvrs. v. McCormick, 207 Miss. 216, 42 So. 2d 177 (1949).

Order of board of supervisors excluding traffic in light wines and beer pursuant to election had is a final order from which an appeal lies. Costas v. Board of Supvrs., 196 Miss. 104, 15 So. 2d 365, 154 A.L.R. 863 (1943), suggestion of error sustained in part, 196 Miss. 104, 16 So. 2d 378 (1943).

Order of county board of supervisors providing for election to determine whether sales of beer and light wines should be abolished held appealable by certiorari. Mohundro v. Board of Supvrs., 174 Miss. 512, 165 So. 124 (1936).

Issues arising under law relating to objections to improvements by majority of property owners are appealable. Faison v. City of Indianola, 156 Miss. 872, 127 So. 558 (1930).

Decision of board of supervisors denying petitioners for increase in school tax right to withdraw, can be questioned only on an appeal to the circuit court. Havens v. Brown, 132 Miss. 747, 96 So. 405 (1923).

This section [Code 1942, § 1195] has no application to an appeal to the circuit court from the judgment of municipal au-

thorities changing the boundaries of a municipality. Yerger v. Town of Greenwood, 77 Miss. 378, 27 So. 620 (1900).

8. Questions presented for review.

An appeal from a board of supervisors or city by a bill of exceptions is an appeal to an appellate court, and the circuit court is bound by the record made before the board. Thornton v. Wayne County Election Com., 272 So. 2d 298 (Miss. 1973); Tally v. Board of Supvrs., 323 So. 2d 547 (Miss. 1975).

Where a determinative vote on a resolution, directing the dismissal of the city's suit to recover losses resulting from budget excesses, illegal expenditures and failure to keep proper records by officials of the city, was cast by one of the officials sued, the resolution was void, not only as to the voting city official but as to the other defendant as well. Friedhof v. City of Biloxi, 232 Miss. 20, 97 So. 2d 742 (1957).

Appeal from decision of Board of Supervisors on legislative or administrative matters is within the contemplation of this section [Code 1942, § 1195] but such appeal is limited to whether or not the order is reasonable and proper or is arbitrary or capricious, or beyond the power of the board to make, or whether it violates any constitutional right of the complaining party. Board of Supvrs. v. McCormick, 207 Miss. 216, 42 So. 2d 177 (1949).

In proceeding to close road, where question whether road was private rather than public road was not raised or passed upon by county board of supervisors or circuit court, issue could not be considered in Supreme Court. Byrd v. Board of Supvrs., 179 Miss. 889, 176 So. 910 (1937).

9. Proceedings on appeal.

A city was not entitled to a jury trial in the Circuit Court where the court was sitting as an appellate court pursuant to § 11-51-75 and where the cause of action at issue derived from statutory, rather than common, law. City of Durant v. Laws Constr. Co., 721 So. 2d 598 (Miss. 1998).

The Circuit Court, sitting as an appellate court pursuant to the statute, without a jury, may award and determine compensatory damages and attorney's fees. City of Durant v. Laws Constr. Co., 721 So. 2d 598 (Miss. 1998).

A circuit court order remanding a rezoning case to the city council for a determination of the number and percentage of eligible property owners who protested the zoning change and ordering that a report of its findings and conclusions be filed with the court clerk to become part of the record was not intended to constitute a final judgment contemplated by § 11-51-75, but, rather, the circuit court, sitting as an appellate court, retained jurisdiction pending record expansion and supplementation. City of Biloxi v. Hilbert, 597 So. 2d 1276 (Miss. 1992).

Any court in state sitting as appellate court has inherent authority to allow additional parties to participate in appeal upon timely application or upon court's invitation, and upon timely application any such third party should be permitted to intervene if that party claims interest relating to property or transaction which is subject of appeal and is so situated that disposition of appeal may as practical matter impair or impede his ability to protect that interest, unless that party's interest is adequately represented by existing party; parties other than original parties to appeal may participate in appellate process by filing amicus curiae at request of court or by leave of court; motion for leave to file amicus brief should demonstrate (1) amicus has interest in some other case involving similar question, or (2) counsel for a party is inadequate or brief insufficient, or (3) there are matters of fact or law which might otherwise escape court's attention, or (4) amicus has substantial legitimate interests that will likely be affected by outcome of case and which interest will not be adequately protected by those already parties. Cooper v. City of Picayune, 511 So. 2d 922 (Miss. 1987).

An appeal cannot be heard on oral testimony by agreement of the parties, whether or not confined to witnesses examined before the municipal authorities. City of Greenwood v. Henderson, 84 Miss. 802, 37 So. 745 (1905).

10. Disposition of appeal.

The party relying on the ⅔ majority voting requirement of § 17-1-17 has the burden of proving that 20 percent or more of the protesting landowners fit within the

class of landowners outlined in the statute, and this showing must be made before the local governing body and not for the first time on appeal; thus, the circuit court's remand of a rezoning case to the city council for the purpose of applying the enhanced voting requirements of § 17-1-17 was unwarranted where the applicability of § 17-1-17 was not raised until the appeal was taken to the circuit court, and the circuit court erroneously placed upon the city council the burden of satisfying the requirements of § 17-1-17, as it was up to the protesting landowners to affirmatively show that they were within the statutory class who could validly object. City of Biloxi v. Hilbert, 597 So. 2d 1276 (Miss. 1992).

The manifest error doctrine did not apply to an appeal from a decision by the board of supervisors as the appellants had no access to a jury trial and, therefore, should not be held to the manifest error standard. Leigh v. Board of Supvrs., 525 So. 2d 1326 (Miss. 1988).

In a proceeding to review the discharge for cause of a fire fighter, the circuit court improperly modified the Civil Service Commission's decision by entry of an addittur or remand to the commission, where, absent certain inadmissible judicially noticed statistical data erroneously considered by the Commission, the fire fighter's evidence as to his earnings and what he reasonably should have earned was not substantially contradicted and therefore the circuit court should have reversed the Commission's order and rendered the fire fighter a judgment for his back pay due him less the total of what, accordingly to relevant and properly adduced evidence, he earned and reasonably should have earned after he was terminated. Eidt v. City of Natchez, 421 So. 2d 1225 (Miss. 1982).

The Circuit Court can only consider the case as made by the bill of exceptions, and if the bill is not complete and is fatally defective in that pertinent and important facts and documents are omitted therefrom, the court does not have a record upon which it can intelligently act and the appeal must be dismissed. Stewart v. City of Pascagoula, 206 So. 2d 325 (Miss. 1968).

Where, upon appeal, the circuit judge correctly reversed the action of the mayor and board of supervisors in dismissing a petition asking that an election be held to determine whether or not beer could be lawfully sold in the city, it was error to fail to enter a judgment directing the mayor and the board of aldermen to call an election in accordance with Code 1942, § 10208.5. Lee County Drys v. Anderson, 231 Miss. 222, 95 So. 2d 224 (1957).

An appeal from an order of the board of supervisors authorizing a loan prayed for and affirmed by a school board for the construction of a building and the repair of others should not have been dismissed, but should have been either affirmed or reversed. White v. Board of Supvrs., 192 Miss. 327, 5 So. 2d 233 (1941).

Where one convicted in a mayor's court appeals to the circuit court, but fails to appear, the court should dismiss the appeal and direct a procedendo to the mayor. Henning v. City of Greenville, 69 Miss. 214, 12 So. 559 (1891).

If he appeals from such dismissal to the Supreme Court, he cannot assign for error defects in the affidavit, or complain that the circuit court refused in his absence to inquire into his guilt on the merits. Henning v. City of Greenville, 69 Miss. 214, 12 So. 559 (1891).

11. Other remedies.

Mandamus will not lie to compel board of supervisors to issue bonds for construction of roads, since this section [Code 1942, § 1195] (Code 1906, § 80) provides for an appeal to the circuit court. Robinson v. Board of Supvrs., 105 Miss. 90, 62 So. 3 (1913); Board of Supvrs. v. Lee, 147 Miss. 99, 113 So. 194 (1927).

It is the duty of persons claiming to have been illegally assessed to avail themselves of the statutory remedy before applying to a Federal court for relief. First Nat'l Bank v. Gildart, 64 F.2d 873 (5th Cir. Miss. 1933), cert. denied, 290 U.S. 631, 54 S. Ct. 50, 78 L. Ed. 549 (1933).

Inadequacy of the remedy at law is the basis upon which the power of injunction is exercised; an injunction will not issue when the complainants have a complete and adequate remedy by appeal. Thus, a county supervisor's request for injunctive relief from the board of supervisor's ruling

that the county supervisor was no longer a resident of the electing district and declaring the office vacant, was properly denied since the statutory method of appeal to the circuit court under § 11-51-75 afforded the county supervisor a plain, adequate, speedy, and complete remedy for a judicial determination of his right. Moore v. Sanders, 558 So. 2d 1383 (Miss. 1990).

Although persons aggrieved by the action or decision of municipal authorities may appeal pursuant to this section, it provided no authority for aggrieved persons to petition municipal authorities for rehearing a zoning ordinance adopted by the municipal authorities; thus, a city council had no authority to remand a petition to rezone property to its planning board for a rehearing after the city council had adopted an ordinance rezoning the property and after an appeal contesting the rezoning had been perfected in the circuit court. Gatlin v. Cook, 380 So. 2d 236 (Miss. 1980), but see Griffin v. Armana, 679 So. 2d 1049 (Miss. 1996).

Where, following the entry of an order refusing a building permit for the construction of a building which would in all respects conform to the applicable laws, ordinances, and regulations, the city authorities failed for some 60 days to sign or file a bill of exceptions, the result was an unreasonable and unwarranted delay in the issuance of the permit, effectively depriving the applicants of a plain, speedy, adequate remedy in the ordinary course of law; and a writ of mandamus was properly granted directing the issuance of the permit. Thompson v. Mayfield, 204 So. 2d 878 (Miss. 1967).

The remedy by a writ of prohibition does not lie where there is a plain, adequate and speedy remedy in the ordinary course of the law and a writ of prohibition will not be issued to an inferior court unless its attention has been called to the claimed lack or excess of jurisdiction. Wilby v. Board of Supvrs., 226 Miss. 744, 85 So. 2d 195 (1956).

When board of supervisors, acting under Code 1942, § 6370, providing that on petition of majority of qualified electors residing in consolidated school district board may issue bonds for such district for purposes therein set out, rejects such petition for reasons it deems sufficient, or for no reason at all, without adjudicating necessary jurisdictional facts to exist, remedy of petitioners is appeal to circuit court under this section [Code 1942, § 1195] and not writ of mandamus under Code 1942, § 1109, on which appeal petitioners can obtain in circuit court adjudication of all jurisdictional facts which are alleged to have existed by having embodied such facts in bill of exceptions. Board of Supvrs. v. State ex rel. Crisler, 205 Miss. 43, 38 So. 2d 314 (1949).

Where election commissioners certified to a Board of Supervisors the essential matters necessary for the issuance of bonds of a school district, and had determined all the jurisdictional facts essential to the validity of the election, and the Board of Supervisors had found all the jurisdictional facts essential to the issuance of the bond and had directed their issuance and validation, the pendency of a mandamus suit in the circuit court was no bar to a validation proceeding in chancery court, where no appeal was taken from the order of the Board of Supervisors to the circuit court, a mandamus suit being no substitute for the appeal provided by statute. In re Bonds of McNeill Special Consol. Sch. Dist., 185 Miss. 864, 188 So. 318 (1939).

Taxpayer instituting direct suit against municipality to recover privilege taxes abandoned statutory proceeding. Chassaniol v. City of Greenwood, 166 Miss. 770, 144 So. 548 (1932).

On rejection of claim by municipal authorities the claimant is entitled to bring an original suit, and is not bound to pursue the remedy prescribed by this section [Code 1942, § 1195]. Pylant v. Town of Purvis, 87 Miss. 433, 40 So. 7 (1906).

ATTORNEY GENERAL OPINIONS

The deadline for filing an appeal from the decision of the Mayor and Board of Aldermen under Section 17-1-17 is 10 days because any party aggrieved by the decision of the governing authorities may appeal the decision to circuit court within

10 days under Section 11-51-75. Peeples, June 14, 1995, A.G. Op. #95-0359.

RESEARCH REFERENCES

ALR. Standing of zoning board of appeals or similar body to appeal reversal of its decision. 13 A.L.R.4th 1130.

Am Jur. 4 Am. Jur. 2d (Rev), Appellate Review §§ 77, 78.

CJS. 4 C.J.S., Appeal and Error §§ 2, 8, 14, 31-39, 198.

§ 11-51-77. Appeal from assessment of taxes — attorney general, district attorney, county attorney may appeal.

Any person aggrieved by a decision of the board of supervisors or the municipal authorities of a city, town or village, as to the assessment of taxes, may, within ten days after the adjournment of the meeting at which such decision is made, appeal to the circuit court of the county, upon giving bond, with sufficient sureties, in double the amount of the matter in dispute, but never less than one hundred dollars, payable to the state, and conditioned to perform the judgment of the circuit court, and to be approved by the clerk of such board, who, upon the filing of such bond, shall make a true copy of any papers on file relating to such controversy, and file such copy certified by him, with said bond, in the office of the clerk of the circuit court, on or before its next term. The controversy shall be tried anew in the circuit court at the first term, and be a preference case, and, if the matter be decided against the person who appealed, judgment shall be rendered on the appeal bond for damages at the rate of ten per centum on the amount in controversy and all costs. If the matter be decided in favor of the person who appealed, judgment in his favor shall be certified to the board of supervisors, or the municipal authorities, as the case may be, which shall conform thereto, and shall pay the costs. The county attorney, the district attorney, or the attorney general, if the state, county or municipality be aggrieved by a decision of the board of supervisors or the municipal authorities of a city, town, or village as to the assessment of taxes, may, within twenty days after the adjournment of the meeting at which such decision is made, or within twenty days after the adjournment of the meeting at which the assessment rolls are corrected in accordance with the instructions of the state tax commission, or within twenty days after the adjournment of the meeting of the board of supervisors at which the approval of the roll by the state tax commission is entered, appeal to the circuit court of the county in like manner as in the case of any person aggrieved as hereinbefore provided, except no bond shall be required, and such appeal may be otherwise governed by the provisions of this section.

SOURCES: Codes, 1880, § 504; 1892, § 80; Laws, 1906, § 81; Hemingway's 1917, § 61; Laws, 1930, § 62; Laws, 1942, § 1196; Laws, 1918, ch. 120.

Cross References — Appeals of equalizations as final assessments of real and personal property, see § 21-33-39.

APPENDIX B

CHAPTER 41

Mandamus; Prohibition

SEC.

§ 11-41-1. In what cases a remedy and how obtained.

On the complaint of the state, by its Attorney General or a district attorney, in any matter affecting the public interest, or on the complaint of any private person who is interested, the judgment shall be issued by the circuit court, commanding any inferior tribunal, corporation, board, officer, or person to do or not to do an act the performance or omission of which the law specially enjoins as a duty resulting from an office, trust, or station, where there is not a plain, adequate, and speedy remedy in the ordinary course of law. All procedural aspects of this action shall be governed by the Mississippi Rules of Civil Procedure.

SOURCES: Codes, 1871, § 1517; 1880, § 2542; 1892, § 2846; Laws, 1906, § 3231; Hemingway's 1917, § 2533; Laws, 1930, § 2348; Laws, 1942, § 1109; Laws, 1991, ch. 573, § 77, eff from and after July 1, 1991.

Cross References — Issuance of remedial writs by judges of the supreme and circuit courts and chancellors, see § 9-1-19.

Compliance with provisions as to title to sixteenth section and lien lands, see § 29-3-9.

Enforcing orders of Tennessee river basin water pollution control commission, see § 49-17-71.

Enforcement of rights of bondholders of bridge and park commission, see § 55-7-51.

Mandamus proceedings in regard to agriculture and industry program bonds, see §§ 57-1-29, 57-3-21, 57-3-27.

Enforcement of county road sign provisions, see §§ 65-7-19, 65-7-21.

Enforcement of payment of toll bridge revenue bonds, see § 65-23-5.

Enforcement of rights of bondholders under Gulf of Mexico or Mississippi Sound project, see § 65-23-109.

Compelling county supervisors to comply with tick eradication statute, see § 69-15-315.

Enforcement of meat inspection law by mandamus, see § 75-35-315.

Enforcement of law as to dental service corporations, see § 83-43-31.

Procedural rules applicable to civil actions, see Miss. R. Civ. P. 1 et seq.

Application to supreme court for writ of mandamus to compel trial judge to render decision, see Miss. R. App. P. 15.

Writs of mandamus and prohibition directed to a judge or judges and other extraordinary writs, see Miss. R. App. P. 21.

JUDICIAL DECISIONS

1. In general.

Petitions for mandamus requesting that circuit clerk and justice court clerk be directed to accept in forma pauperis filings were not properly before Supreme Court; petitions should have been filed with circuit court. Ivy v. State, 688 So. 2d 223 (Miss. 1997).

Writ of prohibition is proper procedural vehicle to vest court with jurisdiction to address and settle question of whether alleged trade secrets were proper matters for discovery. American Tobacco Co. v. Evans, 508 So. 2d 1057, 75 A.L.R.4th 997, 2 U.S.P.Q.2d 1866 (Miss. 1987).

The writ of mandamus will not issue in every case even where there is a clear legal right, and where the circumstances make it unwise or inexpedient the court may refuse to issue the writ, especially when it is sought to enforce a private right. Chatham v. Johnson, 195 So. 2d 62 (Miss. 1967).

Mandamus is a purely personal action. Birdsong v. Grubbs, 208 Miss. 123, 43 So. 2d 878 (1950).

Writ of mandamus is a discretionary writ and even in a case where an absolute legal right is shown, writ will be withheld whenever public interest would be adversely affected. Board of Supvrs. v. Mississippi State Hwy. Comm'n, 207 Miss. 839, 42 So. 2d 802 (1949).

Before a writ of mandamus may issue three essentials must exist: (1) a clear right in petitioner to relief sought, (2) a legal duty on part of defendant to do the thing which petitioner seeks to compel, and (3) there must be an absence of another adequate remedy at law. Board of Supvrs. v. Mississippi State Hwy. Comm'n, 207 Miss. 839, 42 So. 2d 802 (1949).

Mandamus is a discretionary writ. Wood v. State, 169 Miss. 790, 142 So. 747 (1932).

A writ of mandamus will not be issued whenever public interest will be adversely affected, especially where only public political rights of those for whom petition is filed are asserted. Wood v. State, 169 Miss. 790, 142 So. 747 (1932).

The cause of action must exist at date of filing of petition for mandamus. Wood v. State, 169 Miss. 790, 142 So. 747 (1932).

The writ is never granted to take effect prospectively. Wood v. State, 169 Miss. 790, 142 So. 747 (1932).

A writ of mandamus will not issue unless there has been actual default in performance of duty. Wood v. State, 169 Miss. 790, 142 So. 747 (1932).

Demand for performance of act cannot be made before time has expired wherein officer is allowed to do the act. Wood v. State, 169 Miss. 790, 142 So. 747 (1932).

Mandamus would not issue, four months in advance of time for performance of duty, to compel secretary of state to disregard, in preparation of sample ballot, designations of candidates for Congress by districts on ground redistricting act was void. Wood v. State, 169 Miss. 790, 142 So. 747 (1932).

Writ of mandamus lies only to require performance of official duty which officer has refused to discharge. Anderson v. Robins, 161 Miss. 604, 137 So. 476 (1931).

Mandamus is an extraordinary writ, and not to be resorted to where the purpose can otherwise reasonably be accomplished. McHenry v. State, 91 Miss. 562, 44 So. 831 (1907).

2. Existence of other remedy.

Where, following the entry of an order refusing a building permit for the construction of a building which would in all respects conform to the applicable laws,

ordinances, and regulations, the city authorities failed for some 60 days to sign or file a bill of exceptions, the result was an unreasonable and unwarranted delay in the issuance of the permit, effectively depriving the applicants of a plain, speedy, adequate remedy in the ordinary course of law; and a writ of mandamus was properly granted directing the issuance of the permit. Thompson v. Mayfield, 204 So. 2d 878 (Miss. 1967).

Writ of mandamus should not be issued where there is plain, adequate and speedy remedy at law. Hamilton v. Long, 181 Miss. 627, 180 So. 615 (1938); State ex rel. Coleman v. Cameron, 223 Miss. 50, 77 So. 2d 716 (1955); Grenada County Sch. Bd. v. Provine, 224 Miss. 574, 80 So. 2d 798 (1955), suggestion of error overruled, 224 Miss. 585, 81 So. 2d 694 (1955).

A bill for mandatory injunction directing board of veterinary examiners to issue a license to practice veterinary medicine, surgery and dentistry was the proper remedy to obtain review of the board's order denying application for license, since there was no adequate remedy at law either by certiorari or mandamus. Board of Veterinary Exmrs. v. Sistrunk, 218 Miss. 342, 67 So. 2d 378 (1953).

Where district attorney was serving three counties, he was not precluded from maintaining mandamus proceedings on behalf of one of such counties to compel motor vehicle comptroller to pay over certain funds to county out of gasoline tax collections in excess of the share which comptroller was willing to concede. McCullen v. State ex rel. Alexander, 217 Miss. 256, 63 So. 2d 856 (1953).

Right to appeal under Code 1942, §§ 1195, 1196, from refusal of board of supervisors to levy tax for school district, is not a "speedy remedy" within meaning of this section [Code 1942, § 1109], so as to bar issuance of writ of mandamus. State ex rel. Chatham v. Board of Supvrs., 209 Miss. 79, 46 So. 2d 73 (1950).

Mandamus will not lie where there is adequate remedy by appeal. City of Jackson v. McPherson, 158 Miss. 152, 130 So. 287 (1930).

3. Who may petition.

Governor, suing in his capacity as Governor and Administrator of Medicaid Division to preclude attorney general from proceeding with suit, did not meet statutory requirements for seeking mandamus, which may be sought by Attorney General or district attorney. In re Fordice, 691 So. 2d 429 (Miss. 1997).

A private person did not have standing to seek a writ of mandamus under § 11-41-1 where he testified that he had no interest separate from or in excess of that of the general public. Jackson County Sch. Bd. v. Osborn, 605 So. 2d 731 (Miss. 1992).

Although the writs of mandamus and prohibition ordinarily may be sought only by the Attorney General or a district attorney, relief may be available to a private citizen if he can show "an interest separate from or in excess of that of the general public". Fondren v. State Tax Comm'n, 350 So. 2d 1329 (Miss. 1977).

One state agency cannot obtain a writ of mandamus against another state agency in its own right. Board of Educ. v. Sigler, 208 So. 2d 890 (Miss. 1968).

A petition for a writ of mandamus filed by a county board of education against the board of supervisors of that county to require the payment by the board of supervisors of funds earmarked for the use of the schools will be dismissed because the county board of education had no authority to compel the board of supervisors to act by issuance of a writ of mandamus. Board of Educ. v. Sigler, 208 So. 2d 890 (Miss. 1968).

A taxpayer sustaining no injury other than is common to all taxpayers from a failure to back-assess and collect certain income taxes may not sue to compel the state tax commission to do so. Stietenroth v. Monaghan, 237 Miss. 305, 114 So. 2d 754 (1959).

Where the statute provides that it shall be the duty of district attorney to appear in circuit court and prosecute for the state in his district all criminal prosecutions and civil cases in which the state or any county within his district may be interested, and where it also provides that if two or more counties are adversely interested, district attorney should not represent either, the statute is general and covers civil cases as a general class, whereas, a statute authorizing district attorney to petition for mandamus any

matter affecting public interest is specific and constitutes exception to the general provision. McCullen v. State ex rel. Alexander, 217 Miss. 256, 63 So. 2d 856 (1953).

Mandamus is regulated by statute, and, in matters affecting public interest, action must be brought on petition of state by its attorney general or a district attorney. Birdsong v. Grubbs, 208 Miss. 123, 43 So. 2d 878 (1950).

Prerequisite to commencement of mandamus suit against commissioner of highway safety patrol to compel him to enforce laws of state applicable to transportation, possession and sale of intoxicating liquor, is petition either of attorney general or district attorney, and private citizen cannot assert that right for himself and general public. Birdsong v. Grubbs, 208 Miss. 123, 43 So. 2d 878 (1950).

Right to bring a mandamus action on behalf of Hancock County, to compel the state highway commission to appraise and reimburse such county for its proportionate value of a bridge, connecting Hancock and Harrison Counties, which had been taken over by the commission, was not in the attorney general exclusively, but the district attorney of the judicial district in which Hancock County is located also had such right, and could maintain the action in Hinds County. State ex rel. Cowan v. State Hwy. Comm'n, 195 Miss. 657, 13 So. 2d 614 (1943).

The writ of mandamus is distinct from ordinary suits; it is a prerogative writ issued by the state through such representatives as it may impress with that power, and under this section [Code 1942, § 1109], suits involving the public interest are to be brought on the petition of the attorney general or a district attorney. Hancock County v. State Hwy. Comm'n, 188 Miss. 158, 193 So. 808 (1940).

This section [Code 1942, § 1109] does not authorize a county to bring an action of mandamus to compel the state highway commission to allow the county moneys expended in building a bridge, since mandamus affecting public interest can only be brought by the attorney general or by a district attorney under this section. Hancock County v. State Hwy. Comm'n, 188 Miss. 158, 193 So. 808 (1940).

4. Propriety of remedy.

Mandamus is proper remedy to compel any inferior tribunal, corporation, board, officer, or person to do or not to do an act, performance or omission of which law specially enjoins as duty resulting from office, trust, or station. Jacobs v. Bodie, 208 Miss. 779, 45 So. 2d 587 (1950).

5. —Discretionary matters.

Mandamus would not lie with respect to effecting of proper conduct of coroner's inquest proceeding, such proceeding involving more than a merely ministerial act. Chisolm v. Bozeman, 336 So. 2d 1313 (Miss. 1976).

A trial judge must have control of his docket and should be accorded reasonable latitude with respect to it and a certain amount of judicial discretion in the setting, disposition, and continuance of cases, so that only in a case of the clearest abuse of such discretion would a circuit judge's actions with respect to the docket settings in his court be subjected to control by mandamus. Boydstun v. Perry, 249 So. 2d 661 (Miss. 1971).

A writ of mandamus can compel an inferior tribunal to exercise its discretion but it cannot control the same. Powell v. State Tax Comm'n, 233 Miss. 185, 101 So. 2d 350 (1958).

Since the commissioner, in denying the applicant a permit to sell beer at retail, was not acting ministerially but in the exercise of discretion, the action of the trial judge in refusing to grant the writ of mandamus was affirmed. Powell v. State Tax Comm'n, 233 Miss. 185, 101 So. 2d 350 (1958).

Where a discretion is left in an inferior tribunal, the writ of mandamus can only compel it to act, but cannot control the discretion. Madison County Court v. Alexander, 1 Miss. (1 Walker) 523 (1832); Board of Police v. Grant, 17 Miss. (9 S. & M.) 77 (1847); Swan v. Gray, 44 Miss. 393 (1870); Vicksburg v. Rainwater, 47 Miss. 547 (1872); Clayton v. McWilliams, 49 Miss. 311 (1873); State Bd. of Educ. v. West Point, 50 Miss. 638 (1874); Board of Supvrs. v. State, 63 Miss. 135 (1885); Greenwood v. Provine, 143 Miss. 42, 108 So. 284, 45 A.L.R. 824 (1926); Alex Loeb, Inc., v. Board of Trustees, 171 Miss. 467,

158 So. 333 (1934); Clarksdale v. Harris, 188 Miss. 806, 196 So. 647 (1940).

Mandamus was not the proper remedy to obtain relief from the action of the board of disability and relief appeal, in denying benefits to a policeman's widow from a relief fund for firemen and policemen, where such board did not refuse to act but in the exercise of its discretion denied relief. City of Clarksdale v. Harris, 188 Miss. 806, 196 So. 647 (1940).

Statute providing that state auditor should issue warrants for fees of county officers in connection with lands sold to state for taxes after receiving land commissioner's calculations as to fees, if auditor should find fees correct, conferred upon auditor exercise of discretion and judgment in passing on fees, so that county officer was not entitled to mandamus to compel auditor to issue warrants without first bringing suit. Thomas v. Price, 171 Miss. 450, 158 So. 206 (1934).

Mandamus will not lie to compel extension of municipal water system for connection to new addition over distance of 700 feet the matter being discretionary with city authorities. City of Greenwood v. Provine, 143 Miss. 42, 108 So. 284, 45 A.L.R. 824 (1926).

Act of insurance commission in licensing insurance companies to do business in this state are not reviewable by mandamus on the ground that the company's policy on its face violates statute, nor can mandamus to compel him to revoke such license for subsequent acts be sustained without proof dehors the policy itself. Cole v. State, 91 Miss. 628, 45 So. 11 (1907).

In approving or disapproving bonds of county officers, the president of the board of supervisors acts judicially, and however unjust or arbitrary his acts may be, they are not subject to revision by mandamus. Shotwell v. Covington, 69 Miss. 735, 12 So. 260 (1892).

6. —Moot questions.

Mandamus properly dismissed on question becoming moot. State ex rel. Horton v. Lawrence, 121 Miss. 338, 83 So. 532 (1920).

A petition for mandamus against officers for the performance of duties enjoined by the statute will be dismissed when the statute, pending an appeal by the defendants, is repealed in so far as the petitioner can claim any right thereunder. McClurg v. Wineman, 80 Miss. 73, 31 So. 537 (1901).

7. —Election matters.

The petitioners were not entitled to a writ of mandamus to require a city to call an election under Code 1942, § 7322-23, pursuant to the issuance of bonds for the purpose of carrying out an urban renewal project, where in their petition for the writ they did not allege and claim that they had an interest separate from or in excess of that of the general public or that they would suffer any special legal injury or personal damages apart from the body of citizens of the city as a whole. Wilson v. City of Laurel, 249 So. 2d 801 (Miss. 1971).

Mandamus did not lie to require county election commissioners to restore name erased from registration books on ground petitioner had become disqualified as elector. Calvert v. Crosby, 163 Miss. 177, 139 So. 608 (1932).

As to mandamus to compel mayor and board of aldermen to order an election. Mayor of City of Jackson v. State, 102 Miss. 663, 59 So. 873, Am. Ann. Cas. 1915A,1213 (1912).

Where commissioners of election reject an entire ballot box on the ground of illegal votes, mandamus will lie to compel them to reassemble and canvass and return the ballots. State ex rel. Hudson v. Pigott, 97 Miss. 599, 54 So. 257, Am. Ann. Cas. 1912C,1254 (1911).

Mandamus not maintainable in primary election contests. State ex rel. Barbee v. Brown, 90 Miss. 876, 44 So. 769 (1907).

Where a municipal charter requires the mayor and aldermen to appoint election commissioners, and after the close of the polls to ascertain the results in the presence of the mayor and at least one alderman, who, with the commissioners, shall certify the returns, the duty of the mayor to certify the returns is ministerial, and he may be compelled to do so by mandamus. Bourgeois v. Fairchild, 81 Miss. 708, 33 So. 495 (1903).

A writ of mandamus will not lie for the purpose of inquiring into the qualifications of electors, or the legality of an

election as affected by matters not apparent on the face of the returns. State ex rel. Att'y Gen. v. Board of Supvrs., 91 Miss. 582, 3 So. 143 (1887).

8. —Payment of claims.

Order of board of supervisors allowing claim, not act of clerk issuing warrant, must be foundation of mandamus proceeding against board to compel payment of warrant. Tullos v. Board of Supvrs., 208 Miss. 705, 45 So. 2d 349 (1950).

Petition for mandamus against county board of supervisors to compel payment of warrants is properly dismissed when neither petition nor proof showed steps necessary to make valid contracts had been taken, and orders of board allowing accounts neither showed nor recited jurisdictional facts, there was nothing in orders to show existence of contracts between board and creditor, nothing in records showing call for bids, submission of bids, or making of contracts, and no statement or bills in record showed existence of these accounts. Tullos v. Board of Supvrs., 208 Miss. 705, 45 So. 2d 349 (1950).

Formal written demand upon the state highway commission was not prerequisite to relief in mandamus to compel the commission to appraise and reimburse county for the value of paving on state highway, pursuant to Code 1942, § 8036, where formal written notice would not have availed the county. State Hwy. Comm'n v. McGowen ex rel. Hinds County, 198 Miss. 853, 23 So. 2d 893 (1945), error overruled, 198 Miss. 889, 24 So. 2d 330 (1946).

Order of county board of supervisors allowing three claims each for less than $250 although their total exceeded that amount, was sufficient on its face to constitute a valid and binding judgment, the payment of which the holders thereof were entitled to compel by mandamus, although the order did not recite jurisdictional facts reciting competitive bids. Clayton v. Paden, 198 Miss. 163, 21 So. 2d 823 (1945).

The chancery court was without jurisdiction to grant a mandatory writ of injunction to a county to compel the state highway commission to appraise the pavement of sections of state highway built at local expense and to pay the county therefor, as provided by statute, mandamus being the proper remedy for the county to pursue. Madison County v. Mississippi State Hwy. Comm'n, 191 Miss. 192, 198 So. 284 (1940).

That governor as chairman of building commission could not be compelled to sign certificate for claimant's warrant held not to deprive claimant of right to have mandamus issued against secretary of commission. Trotter v. Frank P. Gates & Co., 162 Miss. 569, 139 So. 843 (1932).

Mandamus will not lie to compel county to pay salary of prosecuting attorney. Board of Supvrs. v. State, 134 Miss. 180, 98 So. 593 (1924).

Mandamus will not lie to compel supervisors to issue warrant in payment of claim for refund of taxes allowed by auditor and attorney-general. Pearl River County v. Lacey Lumber Co., 128 Miss. 885, 91 So. 572 (1922).

County board of supervisors may be compelled by mandamus to pay judgment from its general fund or to levy a tax. Town of Crenshaw v. Jackson, 122 Miss. 711, 84 So. 912 (1920).

Mandamus proper remedy to compel clerk of separate district to issue warrant to pay compensation to school superintendent. Ladner v. Talbert, 121 Miss. 592, 83 So. 748 (1920).

Constitution 1890 § 212 fixing the rate of interest to be paid by the state upon trust funds held by it for educational purposes and the dates for the distribution of same, is not self-executing, and the courts will not compel the auditor to issue a warrant in payment of the state's obligation thereunder in the absence of legislative appropriation for that purpose. State ex rel. Barron v. Cole, 81 Miss. 174, 32 So. 314 (1902).

The board of supervisors is without discretion to reject an allowance by the circuit court to its clerk, under Code 1892, § 1995 (Code 1906, § 2171), and may be compelled by mandamus to provide for its payment. Chatters v. Coahoma County, 73 Miss. 351, 19 So. 107 (1896).

The writ should be allowed as to the items of an account that the board has illegally rejected, although the account may contain another item that it has legally rejected, in view of the strongly

remedial nature of the statute assimilating mandamus proceedings to ordinary actions at law. Chatters v. Coahoma County, 73 Miss. 351, 19 So. 107 (1896).

The equitable assignee of a part of a claim against a county cannot by mandamus compel the supervisors to make an allowance and issue a warrant in his favor. Foote v. Board of Supvrs., 67 Miss. 156, 6 So. 612 (1889).

Mandamus is the proper remedy to enforce the payment of valid claims against counties which have been audited and allowed. Beard v. Board of Supvrs., 51 Miss. 542 (1875); Board of Supvrs. v. Arrghi, 51 Miss. 667 (1875); Klein v. Board of Supvrs., 54 Miss. 254 (1876); Honea v. Board of Supvrs., 63 Miss. 171 (1885); Taylor v. Board of Supvrs., 70 Miss. 87, 12 So. 210 (1892).

Mandamus is the proper remedy to enforce the payment of valid claims against towns which have been audited and allowed. Kelly v. Wimberly, 61 Miss. 548 (1884).

9. —Tax matters.

Mandamus will lie to require drainage commissioners to assemble and act in matter of making additional assessments. Anderson v. Robins, 161 Miss. 604, 137 So. 476 (1931).

Drainage commissioners cannot be required by mandamus to make such assessment of benefits as will be sufficient to pay indebtedness due contractor. Anderson v. Robins, 161 Miss. 604, 137 So. 476 (1931).

Mandamus proper remedy to compel board of supervisors to increase valuations as ordered by tax commission. Taylor v. State, 121 Miss. 771, 83 So. 810 (1920).

Mandamus cannot be issued to compel levy of tax beyond statutory limit. Town of Jonestown v. Ganong, 97 Miss. 67, 52 So. 579 (1910), error overruled, 97 Miss. 89, 52 So. 692 (1910).

Mandamus will lie to compel tax collector to collect assessment on property that has escaped taxation though some of the assessments may be barred. Adams v. City of Clarksdale, 95 Miss. 88, 48 So. 242 (1909).

Mandamus will lie to compel the assessor to assess property that has escaped taxation for former years. State ex rel. Dist. Att'y v. Simmons, 70 Miss. 485, 12 So. 477 (1893).

10. —Bond issues.

Mandamus will lie to compel board of supervisors to issue bonds for purpose of acquiring land for constructing and operating a community hospital after election in favor thereof was had pursuant to the provisions of Laws 1944, ch 277, as amended by Laws 1946, ch 412 (Code 1942, §§ 7129-50 et seq.), notwithstanding subsequent order of board rescinding its action, since a validating act eliminated any irregularity in the proceeding with respect to the election. Board of Supvrs. v. State ex rel. Patterson, 206 Miss. 443, 40 So. 2d 273 (1949).

Company selling goods to county held not entitled to mandatory order requiring board of supervisors to issue bonds to pay claim, where seller did not show it would be entitled as matter of right to have clerk issue warrant if money were available to pay it. AMOCO v. Bishop, 163 Miss. 249, 141 So. 271 (1932).

Mandamus proper remedy to enforce ministerial act of board of supervisors in issuing road district bonds. Board of Supvrs. v. Dean, 120 Miss. 334, 82 So. 257 (1919).

Mandamus will not lie to compel supervisors to issue bonds for roads. Robinson v. Board of Supvrs., 105 Miss. 90, 62 So. 3 (1913).

11. —School matters.

A petition for a writ of mandamus filed by a county board of education against the board of supervisors of funds earmarked for the use of the schools will be dismissed because the county board of education had no authority to compel the board of supervisors to act by issuance of a writ of mandamus. Board of Educ. v. Sigler, 208 So. 2d 890 (Miss. 1968).

A writ of mandamus was properly refused in action by school principal against county superintendent of education, to which county board of education was not a party, to require payment of principal's salary for a period of time during which he was required by order of the board to take a leave of absence, for the board alone has control of school funds, and to have

granted writ would have left superintendent in precarious position and subjected him to possible further litigation. Chatham v. Johnson, 195 So. 2d 62 (Miss. 1967).

Where the members of a board have exercised their discretion as to whether or not they should risk incurring court costs and the expenditure of funds for attorneys' fees in connection with a suit to require a contractor to carry out the terms for construction of a high school and to make good on defects therein, their discretion cannot be controlled by a mandamus, nor can they be required to act in a prescribed manner to obtain relief on account of the defects complained of. State ex rel. Coleman v. Cameron, 223 Miss. 50, 77 So. 2d 716 (1955).

Mayor could not be compelled to execute and deliver a warrant, upon requisition by board of trustees, on maintenance fund in municipal separate school district for the payment of an installment due on building contract for the construction of a gymnasium and vocational training building instead of against a bond and building fund containing ample funds for that purpose. Williams v. State ex rel. Att'y Gen., 209 Miss. 251, 46 So. 2d 591 (1950).

Order of county school board detaching territory of outlying school district and adding it to another district in adjacent county without concurrent action by school board of other county was ineffectual as ground for refusal of board of supervisors to continue annual tax levy for the school district and to constitute a defense to mandamus proceedings to compel the board of supervisors to levy such tax. State ex rel. Chatham v. Board of Supvrs., 209 Miss. 79, 46 So. 2d 73 (1950).

Where school tax was originally ordered on petition of a majority of the electors of school district, the board of supervisors was under a duty to continue the tax for successive years so long as the school district is maintained unless changed by petition of a majority of the electors of the district, and mandamus will lie at the suit of the district attorney to compel the board to levy such tax upon their neglect or refusal. State ex rel. Chatham v. Board of Supvrs., 209 Miss. 79, 46 So. 2d 73 (1950).

Mandamus will lie against trustees of consolidated school district to issue trustee order for payment of balance due under contract to build auditorium for total cost price set out in accepted bid, since simple mathematical process of subtraction of sum of payments made demonstrates amount due, and no judicial attributes or exercise of discretion is involved. Jacobs v. Bodie, 208 Miss. 779, 45 So. 2d 587 (1950).

Under Code 1942, § 6370, providing that on petition of majority of qualified electors residing in consolidated school district, board of supervisors may issue bonds for such consolidated school district for purposes therein set out, it becomes mere ministerial duty of board of supervisors to issue bonds for consolidated school district as petitioned for, performance of which duty can be compelled by mandamus, when all jurisdictional facts have been affirmatively adjudicated by board, or by circuit court upon appeal from order of board on bill of exceptions, to be present. Board of Supvrs. v. State ex rel. Crisler, 205 Miss. 43, 38 So. 2d 314 (1949).

Under Code 1942, § 6370, providing that on petition of majority of qualified electors residing in consolidated school district, board of supervisors may issue bonds for such consolidated school district for purposes therein set out, it is judicial function of board to decide question of whether or not majority of qualified electors of school district have petitioned for issuance of bonds, to determine whether amount petitioned for will exceed any statutory limitation thereon, and to determine whether or not bonds are to be issued for purposes authorized by law and this judicial function of board cannot be controlled by writ of mandamus. Board of Supvrs. v. State ex rel. Crisler, 205 Miss. 43, 38 So. 2d 314 (1949).

When board of supervisors, acting under Code 1942, § 6370, providing that on petition of majority of qualified electors residing in consolidated school district, board may issue bonds for such district for purposes therein set out, rejects such petition for reasons it deems sufficient, or for no reason at all, without adjudicating necessary jurisdictional facts to exist, remedy of petitioners is appeal to circuit court

under Code 1942, § 1195, and not writ of mandamus under this section [Code 1942, § 1109], on which appeal petitioners can obtain in circuit court adjudication of all jurisdictional facts which are alleged to have existed by having embodied such facts in bill of exceptions. Board of Supvrs. v. State ex rel. Crisler, 205 Miss. 43, 38 So. 2d 314 (1949).

Mandamus proper remedy to require superintendent to contract with qualified teacher selected by trustees of district. State ex rel. Cowan v. Morgan, 141 Miss. 585, 106 So. 820 (1926).

Mandamus will lie to compel school trustees to receive children wrongfully excluded from school. Clark v. Board of Trustees, 117 Miss. 234, 78 So. 145 (1918).

A public schoolteacher duly licensed to teach has a valuable right, the loss of which cannot be compensated in damages, and for the protection of which he is entitled to a mandamus. Brown v. Owen, 75 Miss. 319, 23 So. 35 (1898).

12. —Miscellaneous cases.

Petition for writ of prohibition was denied where discovery of alleged trade secrets was sought, although issuance of protective order concerning disclosure of alleged trade secrets was found to be appropriate. American Tobacco Co. v. Evans, 508 So. 2d 1057, 75 A.L.R.4th 997, 2 U.S.P.Q.2d 1866 (Miss. 1987).

Where the charges made by the game and fish commission to support the discharge of a game warden were not sufficient to comply with the statute, the action of the trial court in a mandamus action in entering judgment reinstating him to his position was not contrary to the overwhelming weight of the law and evidence. Vinzant v. Poole, 185 So. 2d 919 (Miss. 1966).

No relief through mandamus can be granted against public officers to compel them to perform their duties generally, but petition for mandamus against public officers must charge them with failure to perform specific duty. Birdsong v. Grubbs, 208 Miss. 123, 43 So. 2d 878 (1950).

It is reversible error for trial court to overrule motion for change of venue to official domicil made by commissioner of state highway patrol in mandamus proceeding brought in county other than his official domicil, where no case for relief is stated against patrolmen who were joined with commissioner as defendants for sole purpose of retaining venue in county in which proceeding is filed. Birdsong v. Grubbs, 208 Miss. 123, 43 So. 2d 878 (1950).

Mandamus is a proper remedy to enforce stockholder's right to inspect the books of the corporation. Sanders v. Neely, 197 Miss. 66, 19 So. 2d 424 (1944).

Stockholder of domestic insurance corporation was entitled to mandamus to compel inspection of books and records of corporations, upon petition alleging that purpose of such request was "in order to ascertain and know how the affairs of the company are conducted and whether or not the capital of which he has contributed a share is being prudently and properly employed, and in order that he may protect the business and interest of said corporation and his interest as such stockholder," unless the executive officers of the corporation plead and prove as an affirmative defense that the stockholder is actuated by bad motives or that the inspection is not desired in order to obtain information germane to his interest as stockholder, but is for speculative purposes or to gratify idle curiosity, or out of spirit of hostility to the welfare of the corporation. Sanders v. Neely, 197 Miss. 66, 19 So. 2d 424 (1944).

Action in mandamus by attorney general to compel board of supervisors to repair a bridge on highway No. 7 could not be maintained where there was no allegation that the board had failed to provide and maintain a bridge adequate for travel in lieu of the collapsed bridge, and the court had no power or authority to tell the board of supervisors in specific terms what kind of a bridge it should maintain at the location in question. State ex rel. Att'y Gen. v. Board of Supvrs., 196 Miss. 806, 17 So. 2d 433 (1944).

Mandamus was proper remedy to compel city officials to comply with statute providing for retirement benefits for firemen and policemen. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

A bank was entitled to maintain mandamus action against a corporation to

compel it to issue a new certificate of stock in exchange for the original certificate which the original stockholder had indorsed in blank and delivered to the bank, notwithstanding that the pleading showed that the stock was claimed by a third person who held a certificate thereto pursuant to the request of the administrator of the original stockholder and that the original certificate was lost or destroyed. Jackson Opera House Co. v. Cox, 188 Miss. 237, 192 So. 293 (1939).

Mandamus will not lie when act is only done in case another person approves thereof. Wood v. State, 169 Miss. 790, 142 So. 747 (1932).

The governor cannot be compelled by mandamus to perform any act. Vicksburg & M.R.R. v. Lowry, 61 Miss. 102 (1883); Wood v. State, 169 Miss. 790, 142 So. 747 (1932).

Writ of mandamus will not be issued to direct inferior tribunal to decide issue of fact in particular way, when law has invested tribunal with original jurisdiction to decide question. City of Jackson v. McPherson, 158 Miss. 152, 130 So. 287 (1930).

Where ordinance designated property as residential property, and question was doubtful, court would not interfere by mandamus to compel issuance of building permit. City of Jackson v. McPherson, 158 Miss. 152, 130 So. 287 (1930).

Mandamus will lie to compel purchaser of property and franchises of electric lighting plant to operate the plant for the benefit of the public. State ex rel. Howie v. Benson, 108 Miss. 779, 67 So. 214 (1915).

Mandamus will not lie to compel street railway company to operate cars on a portion of track abandoned and ordered removed by the board of supervisors as a nuisance. Wright v. Edwards Hotel & City Ry., 101 Miss. 470, 58 So. 332 (1912).

Mandamus is maintainable against city officers. Adams v. City of Clarksdale, 95 Miss. 88, 48 So. 242 (1909).

Mandamus will lie to compel board of aldermen to expunge void act from its records. Adams v. City of Clarksdale, 95 Miss. 88, 48 So. 242 (1909).

A contractor for public work cannot mandamus the board of supervisors to have the work inspected and approved, under Code 1892, § 342, the section being alone for the security of the county. Young v. Leflore County, 81 Miss. 466, 33 So. 410 (1903).

Mandamus lies to compel a board of supervisors to perform the duty imposed by Code 1892, § 2061 (Code 1906, § 2240), as to jointly building and maintaining a fence at or near the county line to prevent stock straying from a county in which the stock law has not been adopted into an adjoining county where it is in force. Board of Supvrs. v. State, 70 Miss. 769, 12 So. 904 (1893); Montgomery County v. State, 71 Miss. 153, 15 So. 28 (1893).

Officers and tribunals have no right to refuse to enforce a statute because it may be thought unwise; and they may be forced by mandamus to act. Board of Supvrs. v. State, 63 Miss. 135 (1885).

A judge may be compelled by mandamus to sign a bill of exceptions. Williams v. Ramsey, 52 Miss. 851 (1876).

13. Defenses.

Where the game and fish commission was in no way adversely affected by the plaintiff's delay of seven months in filing a mandamus action for reinstatement to the position from which he had been unlawfully discharged, and there was no evidence of laches on plaintiff's part, the judgment of the lower court reinstating the plaintiff was affirmed. Cannada v. Marlar, 185 So. 2d 649 (Miss. 1966).

It is no defense in a mandamus suit by stockholder of a domestic insurance corporation to compel inspection of the books and records of the corporation that, if one stockholder is given that right, all the stockholders can demand the same right, thereby interrupting the orderly conduct of the business of the corporation. Sanders v. Neely, 197 Miss. 66, 19 So. 2d 424 (1944).

It was no defense in mandamus suit by stockholder of domestic insurance corporation to compel the officers thereof to permit inspection of the books and records of the corporation, that the officers of the corporation refused to permit such inspection pursuant to interpretation of insurance commissioner, based upon erroneous advice obtained from the state's legal department that the stockholder's common-

law right of inspection had been abrogated by the insurance laws. Sanders v. Neely, 197 Miss. 66, 19 So. 2d 424 (1944).

The unconstitutionality of the statute creating the duty the performance of which is sought is an available defense. Toombs v. Sharkey, 140 Miss. 676, 106 So. 273 (1925).

No defense to mandamus to compel county to pay a valid claim, that officers in charge of funds have illegally used them to pay other claims. Hebron Bank v. Lawrence County, 109 Miss. 397, 69 So. 209 (1915).

It is no defense to a mandamus to compel a county which has not adopted the stock law to build half of a fence between it and an adjoining county in which the law has been declared in force, or to pay half the expense of erecting such fence, to plead the invalidity of the election in the other county. Montgomery County v. State, 71 Miss. 153, 15 So. 28 (1893).

Nor is it an answer that the other county has already built the larger part of the fence, and it is no objection to the form of a judgment that it is in the alternative, commanding defendant to join in defraying the expense, or to erect half the fence. Montgomery County v. State, 71 Miss. 153, 15 So. 28 (1893).

It is no defense to an application for a mandamus to compel the issuance of a patent to state land that there is an outstanding title in a stranger. Myers v. State, 61 Miss. 138 (1883).

14. Judgment.

Although mandamus would issue to compel state highway commission to appraise and reimburse county for paving part of final location of state highway under Code 1942, § 8036 where the commission has on hand money for the appraisement and which is at its command for that purpose, the order will not include payment of the appraised amount where the commission does not have on hand, or within prospect without legislative aid, the sums needed to pay the appraisement along with similar demands of other counties. State Hwy. Comm'n v. McGowen ex rel. Hinds County, 198 Miss. 853, 23 So. 2d 893 (1945), error overruled, 198 Miss. 889, 24 So. 2d 330 (1946).

Judgment in mandamus action to compel city to comply with statute creating retirement benefits for firemen and policemen, was too broad in assuming to adjudge merits of petitioner's claim, in that it included a prejudgment of matters within the discretion of the board, created by the act, and as applying to duties imposed upon the city which could not be enforced by mandamus. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

Judgment in mandamus to compel payment of prior judgment, not void because against mayor and board of aldermen where suit was against town. Town of Jonestown v. Ganong, 97 Miss. 67, 52 So. 579 (1910), error overruled, 97 Miss. 89, 52 So. 692 (1910).

Judgment in mandamus against town operates on the clerk and other officers thereof. Town of Jonestown v. Ganong, 97 Miss. 67, 52 So. 579 (1910), error overruled, 97 Miss. 89, 52 So. 692 (1910).

The circuit court cannot fix the time and place for the meeting of the eminent domain court, and in awarding mandamus it can only command the justice to reconvene the court and proceed according to law. Sullivan v. Yazoo & Miss. V. Ry., 85 Miss. 649, 38 So. 33 (1905).

15. Injunction against issuance.

Prosecution of mandamus proceedings can be restrained. Humphreys County v. Cashin, 136 Miss. 476, 101 So. 571 (1924).

County's suit to enjoin prosecution of mandamus or an alternative for judgment on indemnity bond held within jurisdiction of equity. Humphreys County v. Cashin, 136 Miss. 476, 101 So. 571 (1924).

16. Miscellaneous.

A circuit court had jurisdiction to issue a writ of mandamus compelling a city to comply with an order of its civil service commission to reinstate an employee where the city had placed the employee in a different job position from the one she had previously held; placement of the employee in another position at the same salary was not "reinstatement" which entitles an employee to be reinstated in the position from which he or she was removed. City of Jackson v. Martin, 623 So. 2d 253 (Miss. 1993).

Equity will not grant a mandatory injunction to a county against the state highway commission on the ground that an adequate remedy by mandamus is unavailable, because the attorney general is required by law to represent the commission in suits brought against it, and that, therefore, he is not available to represent the county in a proceeding by mandamus against the commission, where the complaint contained no allegation that a request was ever made that either the attorney general or any of the district attorneys of the state permit the use of their names to bring a mandamus proceeding on petition of the state on relation of such an officer, or that such a request would have been of no avail. Madison County v. Mississippi State Hwy. Comm'n, 191 Miss. 192, 198 So. 284 (1940).

Where petition for mandamus was sufficient to charge that commissioners of drainage district had failed to make annual assessment as required to do by statute and which was necessary as predicate to action by board of supervisors in making annual tax levy, neither board of supervisors nor tax collectors were necessary parties in mandamus proceeding to compel payment of bonds. Johnson v. Bruce, 177 Miss. 581, 171 So. 685 (1937).

Where jurisdiction of law court to remedy official inaction was not wholly of statutory origin, supreme court could not reverse decree in equity enjoining officials to make assessment because equity court was without jurisdiction. Anderson v. Robins, 161 Miss. 604, 137 So. 476 (1931).

On appeal from judgment improperly refusing mandamus to compel commissioners of election to reassemble and canvass and return the ballots, the supreme court will not remand case but will render judgment requiring them to do so. State ex rel. Hudson v. Pigott, 97 Miss. 599, 54 So. 257, Am. Ann. Cas. 1912C,1254 (1911).

In mandamus to compel supervisors to meet and declare the result of an election, no evidence is admissible except the report of the election commissioners. McHenry v. State, 91 Miss. 562, 44 So. 831 (1907).

In mandamus by a teacher to enforce her rights under contract, it is competent to show that a trustee, notwithstanding the irregularity in his election, had been recognized as trustee by the county superintendent and others. Whitman v. Owen, 76 Miss. 783, 25 So. 669 (1899).

ATTORNEY GENERAL OPINIONS

If the Clerk of the Board of Supervisors believes the Board of Supervisors has issued an order directing the Clerk to act, when in good faith such action is believed by the Clerk to be improper or illegal, the appropriate action in such a case would be for the Clerk to seek judicial review of the board's order. Blackwell, April 27, 1995, A.G. Op. #95-0193.

RESEARCH REFERENCES

ALR. Mandamus as remedy to compel assertedly disqualified judge to rescue self or to certify his disqualification. 45 A.L.R.2d 937.

Prohibition as appropriate remedy to restrain civil action for lack of jurisdiction of the person. 92 A.L.R.2d 247.

Prohibition as appropriate remedy to prevent allegedly disqualified judge from proceeding with case. 92 A.L.R.2d 306.

Prohibition or mandamus as appropriate remedy to review ruling on change of venue in civil case. 93 A.L.R.2d 802.

Availability of mandamus or prohibition to compel or to prevent discovery proceedings. 95 A.L.R.2d 1229.

Scope and extent, and remedy or sanctions for infringement, of accused's right to communicate with his attorney. 5 A.L.R.3d 1360.

Mandamus to compel zoning officials to cancel permit granted in violation of zoning regulation. 68 A.L.R.3d 1656.

Mandamus, under 28 USCS § 1361, to

compel prompt hearing in appeal from denial of Social Security disability benefits. 47 A.L.R. Fed. 929.

Mandamus as remedy to compel disqualification of federal judge. 56 A.L.R. Fed. 494.

Am Jur. 52 Am. Jur. 2d (Rev), Mandamus §§ 31 et seq., 41 et seq., 46 et seq., 59 et seq., 378 et seq.

17 Am. Jur. Pl & Pr Forms (Rev), Mandamus, Forms 21 et seq. (application for writ).

17 Am. Jur. Pl & Pr Forms (Rev), Mandamus, Form 172.1 (Demurrer — To petition or application for writ of mandamus).

17 Am. Jur. Pl & Pr Forms (Rev), Mandamus, Form 191.1 (Order — Dismissing application for writ of mandamus — Multiple bases).

17 Am. Jur. Pl & Pr Forms (Rev), Mandamus, Form 205.1 (Alternative writ of mandamus — To prevent destruction of animals).

20 Am. Jur. Pl & Pr Forms (Rev), Prohibition, Forms 21 et seq. (petition or application for writ).

CJS. 55 C.J.S., Mandamus §§ 17 et seq., 51 et seq., 69 et seq., 118 et seq., 136 et seq., 211 et seq., 245-250.

§ 11-41-3. Filing of complaint.

The complaint shall be filed in the circuit court of the county in which the tribunal, corporation, board, officer, or person made defendant, or some one or more of them, shall reside or be found; but if the judge of that court be interested, the complaint may be filed in an adjoining circuit court district.

SOURCES: Codes, 1871, § 1518; 1880, § 2543; 1892, § 2847; Laws, 1906, § 3232; Hemingway's 1917, § 2534; Laws, 1930, § 2349; Laws, 1942, § 1110; Laws, 1991, ch. 573, § 78, eff from and after July 1, 1991.

Cross References — Jurisdiction of circuit court generally, see § 9-7-81.
Procedural rules applicable to civil actions, see Miss. R. Civ. P. 1 et seq.

JUDICIAL DECISIONS

1. In general.

Petitions for mandamus requesting that circuit clerk and justice court clerk be directed to accept in forma pauperis filings were not properly before Supreme Court; petitions should have been filed with circuit court. Ivy v. State, 688 So. 2d 223 (Miss. 1997).

In an action by a forensic psychiatric aide for reinstatement to his former position at a state hospital, the trial court erred in overruling defendant hospital's motion for a change of venue to the county in which it was domiciled and in which its director was a resident. Mississippi State Hosp. v. Crawford, 372 So. 2d 297 (Miss. 1979).

Where there were two suits pending against the superintendent of education for mandamus in connection with proposed lease of certain sixteenth section lands, one in the circuit court brought by the prospective lessees and the other in the Supreme Court brought by the county board of supervisors, the petition filed in the Supreme Court as an original suit would be dismissed because the appeal by the superintendent of education from the order of the board of supervisors directing the execution of the lease, pending before the Supreme Court, could not be cut off in this manner and, secondly, statutory jurisdiction of a mandamus suit against an official such as the superintendent of education was vested in the circuit court whose jurisdiction could not be circumvented by the filing of an independent and original case in the Supreme Court. State ex rel. Herring v. Cox, 285 So. 2d 462 (Miss. 1973).

In a case showing the clearest abuse of judicial discretion in a circuit judge's actions with respect to the docket headings in his court, original jurisdiction of the

APPENDIX C

ATTORNEY GENERAL OPINIONS

Governing authorities may only enter into a contract for legal services or other professional services by order in the minutes, and the governing authorities should clearly set forth in the minutes the scope of legal services which the city attorney will perform on a routine basis as well as additional authority to represent the city in litigation as the need arises. Moton, Mar. 14, 2003, A.G. Op. #03-0115.

A law firm retained by a municipality in accordance with this section is not an "employee" of the municipality and therefore members of the firm and their dependents are not eligible for the health insurance coverage specified in §§ 25-15-101 and 25-15-103. Campbell, Sept. 3, 2004, A.G. Op. 04-0440.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 219 et seq.

3 Am. Jur. Legal Forms 2d, Attorneys at Law § 30:33 (contract with attorney performing special services).

§ 21-15-29. Repealed.

Repealed by Laws, 1983, ch. 469, § 10, eff from and after July 1, 1983.

[Codes, Hemingway's 1921 Supp. §§ 6069i, 6069j; 1930, § 2526; 1942, § 3374-96; Laws, 1920, ch. 248; 1932, ch. 217; 1950, ch. 491, § 96]

Editor's Note — Former § 21-15-29 prohibited certain acts of municipal attorneys.

§ 21-15-31. Compensation of building inspector.

In no case shall the building inspector retain any compensation from his collections, but the full amount of such collections shall be paid into the municipal treasury and his compensation shall thereafter be paid by allowance thereof by the governing authorities of the municipality, and the issuance of warrants, as in other cases.

SOURCES: Codes, 1892, § 2998; Laws, 1906, § 3395; Hemingway's 1917, § 5923; Laws, 1930, § 2532; Laws, 1942, § 3374-101; Laws, 1950, ch. 491, § 101, eff from and after July 1, 1950.

Cross References — Limited application to various municipalities, see § 21-15-39.

RESEARCH REFERENCES

ALR. Liability of municipal corporation for negligent performance of building inspector's duties. 41 A.L.R.3d 567.

§ 21-15-33. Municipal minutes.

The minutes of every municipality must be adopted and approved by a majority of all the members of the governing body of the municipality at the next regular meeting or within thirty (30) days of the meeting thereof,

whichever occurs first. Upon such approval, said minutes shall have the legal effect of being valid from and after the date of the meeting. The governing body may by ordinance designate that the minutes be approved by the mayor.

It shall not be necessary for each ordinance to be signed so long as it appears on the minutes of the municipality, which minutes shall have been signed by the mayor or a majority of the governing body of the municipality and certified by the municipal clerk.

SOURCES: Codes, 1892, § 3006; Laws, 1906, § 3404; Hemingway's 1917, §§ 5934, 6054; Laws, 1930, §§ 2542, 2642; Laws, 1942, § 3374-72; Laws, 1912, ch. 120; Laws, 1950, ch. 491, § 72; Laws, 1966, ch. 590, § 1; Laws, 1972, ch. 331, § 1; Laws, 1991, ch. 552, § 2, eff from and after July 1, 1991.

Cross References — Applicability to various municipalities, see § 21-15-39.
Contracting with newspapers for publication of legal notices, see § 21-39-3.

JUDICIAL DECISIONS

1. In general.

It was the legislative intent to provide latitude in the signing of minutes in order that official actions should not be invalidated, even if not signed in 10 days. City of Biloxi v. Cawley, 278 So. 2d 389 (Miss. 1973).

Where a city commission convened its regular session on May 17, and by appropriate recessing orders, it continued in regular session on May 18, 24, 26, and June 2, and an annexation ordinance was duly adopted on May 18, and the regular meeting was not finally adjourned until June 2, the 10 days contemplated by Code 1942 § 3374-72 began to run from June 2, and the proceedings of the commission in adopting the annexation ordinance were valid. City of Biloxi v. Cawley, 278 So. 2d 389 (Miss. 1973).

The certificate of the city clerk, certifying as true and correct a copy of the minutes of various meetings of the mayor and board of aldermen, offered by objectors to show that the minutes had not been signed, and the testimony of the deputy chancery clerk that he had photostated the minute book in connection with the preparation of the certificate, should have been admitted and considered by the chancellor, together with the original minute book and all other evidence, in determining if the minutes were valid. Stephens v. Mayor & Bd. of Aldermen, 261 So. 2d 486 (Miss. 1972).

ATTORNEY GENERAL OPINIONS

In a municipality with a claims docket, the governing authorities must record in the minutes the approval of the claims docket and must refer to the claim numbers in the claims docket; in a municipality without a claims docket, the governing authorities must record in the minutes the approval of the claims and the names of the claimants, the dates the claims were presented, the amounts and the nature of the claims. Donald, August 13, 1999, A.G. Op. #99-0392.

The mayor of a code charter municipality does not have authority to veto the official action of the board adopting the minutes when the board has made the factual finding that the minutes accurately reflect all actions taken at the meeting and has adopted the minutes by majority vote pursuant to the statute. Gary, August 20, 1999, A.G. Op. #99-0435.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 177 et seq.

66 Am. Jur. 2d, Records and Recording Laws §§ 54-81.

CJS. 76 C.J.S., Records §§ 9-18, 30-32.

§ 21-15-35. Preservation of essential public records of municipal governments.

The Legislature declares that records containing information essential to the operation of government and to the protection of the rights and interests of persons should be protected against the destructive effect of all forms of disaster, whether fire, flood, storm, earthquake, explosion or other, and whether such occurrence is caused by an act of nature or man, including an enemy of the United States. It is, therefore, necessary to adopt special provisions for the preservation of essential records of municipalities, and this section shall be liberally construed to effect its purposes. However, it is the express intention of this section that the provisions herein contained are not mandatory but are permissive only and shall authorize preservation of records as herein contemplated within the discretion of the governing authorities of the municipalities of the state and in accordance with a records control schedule approved by the Local Government Records Committee as provided in Section 25-60-1.

The governing authorities of any municipality within the state, regardless of the form of government under which they operate, are each hereby authorized and empowered in their discretion to make or cause to be made a copy or copies of the records of such municipality, or any portion thereof, deemed by such governing authority to be an essential record necessary to the operation of government in an emergency created by disaster or containing information necessary to protect the rights and interests of persons or to establish and affirm the powers and duties of government in the resumption of operations after the destruction or damage of the original records. Such copies shall be made in accordance with standards established by the Department of Archives and History.

The governing authorities of such municipalities are authorized and empowered in their discretion to make and enter into contracts and agreements with any person, firm or corporation to make and prepare such copy or copies of records, and to provide for and enter into contracts concerning the safekeeping and preservation of such copy or copies at points of storage approved by the Local Government Records Committee as required in Section 25-60-1, at a location other than the legally designated or customary location and deposit of the original of such records.

In the event that the original record or records shall have been destroyed, any such photographic or photostatic copy or reproduction shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. An enlargement or facsimile of such reproduction is likewise admis-

AMENDED CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has this day been mailed by United States mail postage prepaid, to the following:

Honorable Samac Richardson
Circuit Court Judge
P. O. Box 1885
Brandon, MS 39043

Samuel D. Joiner, Esq.
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This, the 10th day of June, 2008.

Stephen W. Rimmer