

**IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI
CASE NO. 2009-CA-00815**

RODNEY LAMEY

APPELLANT

VERSUS

**BOARD OF SUPERVISORS
OF JACKSON COUNTY**

APPELLEE

AN APPEAL FROM THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI
SAID LOWER COURT ACTING IN AN APPELLATE CAPACITY
FROM A DECISION BY THE JACKSON COUNTY BOARD OF SUPERVISORS

APPELLANT'S REPLY BRIEF

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ORAL ARGUMENT NOT REQUESTED

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REPLY BRIEF

SUMMARY OF RESPONSE

1. The intent of Section 19-5-167 is clear and should not be read in conjunction with Section 25-1-59 as Section 25-1-59 is applicable only to elected officials.
2. The attorney general opinion in *Seals* is consistent with this interpretation of the application of the two statutes.
3. Lamey never removed from the "District".

RESPONSE

Appellee takes the position that Miss Code Section 19-5-167 should be read in conjunction with Section 25-1-59. While this looks compelling, the two statutes should be considered separate and distinct.

Section 19-5-151 allows the set up of utility districts as a means for communities to govern their own water or other utilities. A utility district set up under 19-5-151 is a non-profit corporation and only a quasi state agency:

§ 19-5-151. Incorporation of districts authorized

(2) If the certificated area of a nonprofit, nonshare corporation chartered under the Mississippi Nonprofit Corporation Act for the purpose of owning and operating rural waterworks lies in one county, the corporation may become incorporated as a water district in the manner set forth in Section 19-5-153(3). If the nonprofit, nonshare corporation's certificated area lies in more than one (1) county, the procedure in Section 19-5-164 shall be used.

The logical reason for this set up was to allow community waterworks to be self governing, and not have vital services such as water delivery subject to political influence.

The language is extremely limiting to how the County can interact with the District. The county can appoint the commission of the District: this primarily to man the District to get it started and give oaths and so forth and then the county is to keep its hands off:

Notwithstanding the appointive authority herein granted to the board of supervisors, its legal and actual responsibilities, authority and function, subsequent to the creation of any district, shall be specifically limited to the appointive function and responsibilities outlined in Sections 19-5-179, 19-5-189 and 19-5-191." The operation, management, abolition or dissolution of such district, and all other matters in connection therewith, shall be vested solely and only in the board of commissioners to the specific exclusion of the board of supervisors, and the abolition, dissolution or termination of any district shall be accomplished only by unanimous resolution of the board of commissioners.

(Emphasis added)

Non-profit corporations are not, and should not be subject to county intrusions in any form or fashion. Only if the non-profit ceases to function, can the county come in and deal with the problems of water/utility delivery.

Section 25-1-59 is a statute which deals with elected officials. Although the statute mentions "appointed" officials, this language is applicable to those *elected* officials who need replacing for one reason or another. If such were not the case, there would have been no reason to include the language of Section 19-5-167 in the code—there would have already been a vehicle to use to replace the district officials. Therein lies the rub. Districts are separate animals from other state executive, legislative, or judicial officials. Districts operate on their own and

more like non-profit corporations than like county committees or boards--which brings us to the change in position by the Attorney General on the matter of the appointive function.

2. In the Attorney General's opinion cited in Appellees' brief, and by Judge King Jackson, The Honorable Edward Seals, 2008 WL 2687396, Opinion No. 2008-00231, June 13, 2008, school board officials—*not* utility district commissioners was the topic. As mentioned previously, the change of position that only the school board should decide who has "removed" from the board to allowing the county supervisors to decide who has "removed" from the board is consistent with this logic.

School boards consist of persons elected from the community. Private non-profit corporations do not elect their boards from the community. School boards naturally would fall under the purview of 25-1-59. Concomitantly, utility districts fall under the purview of 19-5-167.

The language of the statutes as well as the intent is clear. "Whether the statute is ambiguous or not, the ultimate goal of the court in interpreting a statute is to discern and give effect to legislative intent." *Anderson v. Lambert*, 494 So. 2d 379, 372 (Miss. 1986), "It is a general rule in construing statutes that the court will not only interpret the words used, but will consider the purpose and policy which the legislature had in view of enacting the law." *State ex rel. Hood v Madison County ex rel. Madison County Board of Supervisors*, 873 So. 2d 85, 88 (Miss, 2004)(citing *Aikerson v. State*, 274 So. 2d 124, 127 (Miss. 1973).

3. Appellee maintains that if he receives his services from the District he is qualified to be a commissioner of the District.

CONCLUSION

The County may not make any determinations as to whether or not a commissioner has "removed" from the District by statute or by fact. While the situation is now academic, the law

should be made clear that Counties may not intervene in the internal workings of utility districts as well defined by Section 19-5-167.

RESPECTFULLY SUBMITTED, this the 12th day of February, 2010.

RODNEY LAMEY

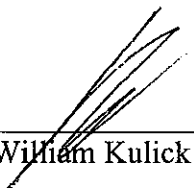
BY: 

WILLIAM KULICK

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing Reply Brief of Appellant to Kathy Blackwell Parker, Esquire, Office of the Board Attorney of Jackson County, MS at Post Office Box 998, Pascagoula, MS 39568; and to the Hon. Circuit Judge Kathy King Jackson at Post Office Box 998, Pascagoula, MS 39568.

This the 12th day of February, 2010.



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