

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

T

RODNEY LAMEY

APPELLANT

VERSUS

**BOARD OF SUPERVISORS
OF JACKSON COUNTY**

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal.

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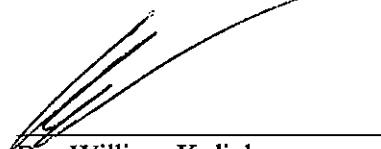
5. Jackson County Board of Supervisors, Appellee

Manly Barton—District 1
Melton Harris—District 2
Mike Mangum—District 3
Tommy Brodnax—District 4
John McKay—District 5

6. Hon. Circuit Judge Kathy King Jackson
Post Office Box 998
Pascagoula, MS 39568

Respectfully Submitted,

RODNEY LAMEY



By: William Kulick

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APPELLEE

TABLE OF CITATIONS

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STATEMENT OF THE ISSUES

1. WHETHER MS CODE SECTION 19-5-167 WAS ERRONEOUSLY INTERPRETED

The case at bar is essentially a request that the Court make a determination of the meaning of Mississippi Code Section 19-5-167 and the legislative intent of said statute. The lower court judge, in an appeal from an administrative finding of the Jackson County Board of Supervisors that Lamey had moved out of his District leaving his position vacant, decided that the meaning and intent of the Section 19-5-167 was overridden by Section 25-1-59 which allowed the Board of Supervisors to inquire into the status of the residency of the Appellant and after a factual determination, determine vacancy.

2. WHETHER FACTUAL DETERMINATIONS WERE ERRONEOUS:

It is Appellant's position that according to 19-5-167, that once appointed as a commissioner on a utility district Board of Commissioners, the Board of Supervisors has no further power to scrutinize his qualifications for office or remove him from his position for any reason. Whereas that should have ended the inquiry, the factual determination by the Board of Supervisors and Judge Jackson that Lamey was no longer living within the District boundaries was wrong. Appellant cites as reversible error the decision of Judge Jackson affirming the decision of the Jackson County Board of Supervisors and her denial of a Motion for Reconsideration of that decision.

STATEMENT OF THE CASE

Mr. Rodney Lamey was a duly qualified and appointed commission member of the West Jackson County Utility District prior to August 29, 2005.

On the 7th day of April, 2008, the Board of Supervisors of Jackson County had a hearing to determine whether or not Mr. Mr. Lamey was or was not qualified to continue serving as a commissioner. At said hearing, it was determined that Mr. Mr. Lamey was no longer qualified to serve as a commissioner because after Hurricane Katrina, Mr. Lamey had moved out of the District.

Pursuant to Miss. Code Ann. Section 11-51-75, MR. LAMEY submitted a Bill of Exceptions within the time allowed by law and perfected his appeal to Circuit Court, Hon. Kathy King Jackson presiding. [R. 3] On January 29, 2009, Judge Jackson affirmed the decision of the Supervisors to "remove" Mr. Lamey. [R. 64]

Mr. Lamey submitted a Motion for Reconsideration of that Order of the Court of January 29, 2009, and for Stay Pending Appeal. Judge Jackson denied the Motion for Reconsideration on May 18, 2009. [R. 79]

Notice of Appeal to the Mississippi Supreme Court was filed by Mr. Mr. Lamey May 18, 2009. [R. 80]

Factual Background

Rodney Mr. Lamey was a duly appointed Commissioner of the Board of the West Jackson County Utility District, by the Supervisor for District 4 at the time, Frank Leach. At the time of his appointment, Mr. Lamey lived at 9912 Daisey Vestry Road, Biloxi, Mississippi, 39532. This address is just within the Jackson County line at the western edge of Jackson County.

3. Due to his home being ruined by Hurricane Katrina on the 29th day of August, 2005, Mr. Lamey, a general contractor, was forced to abandon his residence on Daisey Vestry Road and move into a house he was building for resale at 3026 Johnson Still Road, Biloxi, Mississippi,

39532. Mr. Lamey's temporary residence on Johnson Still Road was about 100 feet outside the Jackson County line, [R 49] but with the legal boundaries of the District (1 mile rule) *and* he received water services from the West Jackson County Utility District. [R. 7, 15] West Jackson County Utility District is prohibited by law from serving customers that live outside the District.

4. On or about March 25, 2008 the *newly elected* Supervisor for District 4, Tommy Brodnax, sent a letter to Mr. Lamey informing Mr. Lamey that if he did not resign his position as Commissioner on the West Jackson County Utility District, that he would seek to have him removed from office at the April 7, 2008 Board meeting. [R 4, 14]

5. The stated reason by Supervisor Brodnax in his letter to Mr. Lamey of March 25, 2008 was that since Mr. Lamey had moved outside of the boundaries of Jackson County and was now living in Harrison County, that Mr. Lamey no longer met the qualifications necessary to be a Commissioner of the Utility District. [R 4, 14]

6. On April 7, 2008, Mr. Lamey appeared at the Board meeting and gave each supervisor prepared remarks and made oral plea that he not be removed for various reasons. The said prepared remarks alleged that Supervisor Brodnax's motive for removing him from the Utility District was politically based, and that he was only temporarily living outside of Jackson County, but still within the legal boundaries of the West Jackson County Utility District.

7. Upon Motion made by Supervisor Brodnax, and seconded by President John McKay, the motion passed to remove Mr. Lamey from his position of Commissioner with the West Jackson County Utility District since he did not reside within the District Boundaries. [R 17]

SUMMARY OF ARGUMENT

THE LANGUAGE OF MISSISSIPPI CODE SECTION 19-5-167 IS CLEAR AND THE WORDS SHOULD BE GIVEN THEIR INTENDED MEANING

As stated in Miss Code Section 19-51-167:

"Any vacancy occurring on a board of commissioners shall be filled by the board of supervisors at any regular meeting of the board of supervisors, and the board of supervisors shall have the authority to fill all unexpired terms of any commissioner or commissioners. 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." (Emphasis added)

The language contained above is as emphatic as any proscription contained in any statute. The meaning of the words is clear: after the creation of the District, the only involvement a County Board of Supervisors has in the business of the District is to appoint Commissioners should a vacancy occur. Nothing authorizes the County Supervisors to monitor the business of the District, nor interfere in whatever the internal workings of the District may be, nor decide if a vacancy has occurred. It is the province of the District to determine if a vacancy has occurred—not a supervisor who may have a political agenda as happened here.

LAMEY WAS LIVING WITHIN THE BOUNDARIES OF THE WEST JACKSON COUNTY UTILITY DISTRICT

As stated in Miss Code Section 19-5-177 a District may extend its boundaries up to one mile beyond its incorporated boundaries and by Section 19-5-164 into adjacent counties. Lamey was living in said extended District boundary and received his water service from the District.

ARGUMENT

THE LANGUAGE OF MISSISSIPPI CODE SECTION 19-5-167 IS CLEAR AND THE WORDS SHOULD BE GIVEN THEIR INTENDED MEANING

As stated in Miss Code Section 19-5-167:

"Any vacancy occurring on a board of commissioners shall be filled by the board of supervisors at any regular meeting of the board of supervisors, and the board of supervisors shall have the authority to fill all unexpired terms of any commissioner or commissioners. 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)

It is a well established principle of Mississippi law that "when a court considers a statute passed by the Legislature, the first question before the court is whether the statute is ambiguous" *Mississippi Power Co. v. Jones*, 369 So. 2d 1381,1388 (Miss. 1979). If the statute in question is clear, the court should interpret and apply the statute according to its plain meaning. The principles of statutory construction should only be applied if the statute is ambiguous or unclear

on its face, See *Harrison County School District v. Long Beach School District* 700 So. 2d 286, 288-89 (Miss. 1997). "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)).¹

In the case of *State ex rel Hood v. Madison County, Mississippi*, 873 So.2d 85 (Miss. 05/13/2004) the court formulated the following:

The most fundamental rule of statutory construction is the plain meaning rule, which provides that if a statute is not ambiguous, then this Court must apply the statute according to its terms. *City of Natchez v. Sullivan*, 612 So.2d 1087, 1089 (Miss. 1992). Another related rule is the doctrine of *in pari materia*, which provides that if a statute is ambiguous, then this Court must resolve the ambiguity by applying the statute consistently with other statutes dealing with the same or similar subject matter. *James v. State*, 731 So.2d 1135, 1138 (Miss. 1999)... A third rule of statutory construction is that a specific statute controls over a general statute. *Miss. Gaming Comm'n v. Imperial Palace of Miss., Inc.*, 751 So.2d 1025, 1028 (Miss. 1999); *Lenoir v. Madison County*, 641 So.2d 1124, 1127 (Miss. 1994); *Townsend v. Estate of Gilbert*, 616 So.2d 333, 335 (Miss. 1993); *Benoit v. United Cos. Mortg. of Miss., Inc.*, 504 So.2d 196, 198 (Miss. 1987). This rule applies only when statutes are irreconcilably inconsistent. *Miss. Gaming Comm'n v. Imperial Palace of Miss., Inc.*, 751 So.2d at 1028 (citations omitted). [Hood at 89]

¹ In *Aikerson v. State*, 274 So.2d 124, 127 (Miss. 1973), this Court said: "It is a general rule in construing statutes this 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. The Court will then give effect to the intent of the legislature. *State Highway Comm'n v. Coahoma County*, 203 Miss. 629, 32 So.2d 555, 37 So.2d 287 (1947)."

There is no doubt that 19-5-167 is extremely specific as it deals with utility and other districts. The intent of the legislature is indisputable: once the Commissioner is appointed, involvement of the Board of Supervisors in the workings of the District ends.

In its argument during the Motion hearing on WJCUD's Motion for Declaratory Judgment, the Board of Supervisors made its improper position clear: "finding a vacancy and reappointing someone is part of the appointive function." [R Transcript of Motion hearing 5; RE p. 1] As set out in their brief in response to the Motion, the Board of Supervisors cites Mississippi Code Section 25-1-59 for the proposition that Lamey removed from the district for which he was appointed and the vacancy should be filled as by law directed. [R 22; RE 2] Since 19-5-167 is not the least bit unclear, it is a specious argument to suggest that the Board of Supervisors should look to 25-1-59 to determine whether or not a District Commissioner is no longer "qualified" to be a Commissioner, since the specific statute should be governing effect over a general statute.

The notion that "finding a vacancy" is part of the appointive function is an extreme stretching of the clear language of Section 19-5-167. The language could not be more emphatic: Notwithstanding the appointive authority herein granted to the board of supervisors,shall be specifically limited to the appointive function...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

The District is given clear authority by statute to make all determinations as to its operation, management and all other matters! Whether or not a vacancy exists, the District—not the Board of Supervisors for whatever politically based reason or otherwise---is the party to make that decision. That decision is an internal matter as fundamental to its operation as to

whether or not the Board of Supervisors can meddle in employment matters or other internal workings. To suggest otherwise is completely contradictory to Section 19-5-167.

If the notion that finding a vacancy is allowed by 19-5-167, then taken to its ridiculous extreme, the Board of Supervisors could hold hearings on a monthly basis to determine if a Commissioner had changed his or her residency or other qualifying status. The Board of Supervisors could insist that monthly reports be made showing whether or not a Commissioner has maintained his voter registration, or has not vacationed for too long away from home. Conceivably, a disgruntled supervisor could set up an office at the District to scrutinize whether or not a Commissioner attended meetings regularly, and insist that if not, the Commissioner be removed. Of course, the Supervisor would not be “removing” the Commissioner, the action would be veiled under the guise of the “appointive function” of determining if a vacancy existed! Surely these extremes are not what the legislature intended, or what the drafters of the Mississippi Constitution intended.

The Mississippi Attorney General waded in on the issue a while back in a situation where the Board of Supervisors wanted to enjoin an employee from coming to the District. In George Manuel 2005 WL 3817048 Opinion No. 2005-0569 December 09, 2005, the A.G. states:

Sections 19-5-151 through 19-5-207 of the Mississippi Code statutorily provides the board of commissioners of a fire protection district with governing authority over volunteer fire departments in their district. Section 19-5-167 excludes the board of supervisors or an individual supervisor from any power or authority over a fire district. Therefore, it is the opinion of this office that where there is an active board of commissioners of a fire protection district, neither the county board of supervisors nor an individual supervisor has the authority to ban a fire chief or any other fire department personnel of a volunteer fire department from the district's fire station. [Emphasis added]

The Statute is clear and the Attorney General agrees that once the Board of Supervisors makes the appointment of a commissioner, in this case, Lamey, they have no continuing power or scrutiny of the District for any reason. The Board of Supervisors may not stretch their appointive power to determine if a vacancy exists so that a new appointment may be made as happened here. Only the District can determine if a vacancy has occurred and concomitantly whether the Board of Supervisors should appoint someone to fill it.

Judge King Jackson opined that the Attorney General takes the position that the appointive authority must determine whether a person has “removed” from the district and by doing so created a vacancy. {R. 65] However, the A.G. opinion relied upon is not on point. The case cited by Judge King Jackson, The Honorable Edward Seals, 2008 WL 2687396, Opinion No. 2008-00231, June 13, 2008, was dealing with school board officials—*not* utility district commissioners. In fact the A.G. opinion demonstrates that this position is not sound and subject to change were the matter to be decided by the Supreme Court:

In the case of a municipal school board, we have previously opined that the determination of whether an individual member has “removed” out of the jurisdiction is left to the remaining members of that board and that if that board makes a determination that the individual no longer meets the requirements of the office, the office shall become vacant, and the municipal governing authorities may appoint an individual to fill that vacancy. *MS AG Op., Logan (October 29, 1999)*.

While A.G. opinions help provide guidance (and I would agree with this *previous* opinion were I to apply it here since it follows the proscription of 19-5-167) in this situation, the opinion either way is inapposite to utility districts. Why? Because the set up of utility districts are governed by Mississippi Code Sections 19-5-151 through 19-5-207. School Boards are

completely separate animals governed by their own legislation. School Boards are historically more politically tied to the workings of county boards of supervisors. Board members are *elected* not appointed once established. School Boards and their funding are integrally linked to the county through 16 Section lands and so forth. Elected officials within the county by necessity have to be more carefully scrutinized by the county to protect voters rights. This scrutiny is not required, nor allowed by law in the case of a utility district. Funding is independent of the County² as water districts charge their customers for water use each month. Essentially, for the lower court to have applied this particular A.G opinion while compelling, was error.

The logic of the legislative intent is as definitive as the Statute itself. A Utility District is a separate and distinct State body politic. If this were not so, then the District would simply be a political subdivision of the County and subject to its politics, budget constraints and so forth. Political jockeying and control over vital services is what the legislature was trying to prevent from happening by 19-5-167. Keeping the County out of the independent district's business is as fundamental as the State's constitutional prohibition of encroachment of power between divisions of government: "Section 2. Encroachment of Power. No person or collection of persons, being one or belonging to one of these departments, shall exercise any power properly belonging to either of the others." ³

² Some ad valorem taxes are appropriated for utility districts to assist with the public service of supplying water, and in the case of fire districts to support operations almost entirely because they do not render services until there is a fire.

³ While Section 2 applies to the three branches of government, it is applicable to independent State agencies.

**LAMEY WAS LIVING WITHIN THE BOUNDARIES
OF THE WEST JACKSON COUNTY UTILITY DISTRICT**

Appellant takes the position that since the clear meaning of Section 19-5-167 and the legislative intent thereof should end the inquiry as to any of the factual errors made by the Board or the Judge. With that being said, finding that Lamey had removed from the District was patently false and reversible error.

Miss Code Section 19-5-177 entitled “Additional powers of Districts” section (k) provides that a district may “extend its services to areas beyond but within one (1) mile of the boundaries of such district”. Lamey was living within this one mile zone—though approximately 100 feet out of Jackson County. [R. 49]

Mississippi Code Section 19-5-164 allows a District to extend its boundaries into more than one county. Lamey was living in said extended District boundary although outside Jackson County.

Lamey was living within the extended boundary of the District and he received his water services from the District. [R. 7, 15⁴]

Mississippi Code Section 19-5-171 sets out the qualifications to be appointed as a Commissioner as follows:

(1) Every resident citizen of the county in which is located any district created under Sections 19-5-151 through 19-5-207, of good reputation, being the owner of land or the conductor of a business situated within the district and being over twenty-five (25) years of age and of sound mind and judgment, shall be eligible to hold the office of commissioner.

⁴ Although Lamey never testified about receiving his water from the District, his Bill of Exceptions allegations of such were admitted by counsel opposite in paragraph V. in her response at Record page 15.

Lamey was well qualified to act as a Commissioner of the West Jackson County Utility District according to the requirements of Mississippi Code Section 19-5-171 for the following reasons:

- A) Resident where the District is located: As set out above, the boundaries of West Jackson County Utility District may, and do extend 1 mile beyond the defined area of its incorporation in the event persons need the service and there is no competing supplier. Lamey had moved from his Jackson County location on a temporary basis, but was within the 1 mile grace zone. In fact Lamey lived only 100 feet or so outside the defined boundaries—but still within the District. Lamey’s temporary residence was hooked into the West Jackson County Utility District’s water services even though it lay in Harrison County. Lamey was a resident of the county *where the district is located*, albeit temporarily, whether it was in Harrison County or not.
- B) Owner of Land: Lamey *is* an owner of land in Jackson County. Lamey owns and pays taxes for his homestead at the 9912 Daisy Vestry property.
- C) Conductor of Business: Lamey makes his living as a general contractor. This business is conducted primarily in the general vicinity of West Jackson County Utility District's boundaries.
- D) Good Reputation: Lamey acted as President of the Utility District for 3 years. The other members of the District hold Lamey in high esteem, as do the people who know him. Lamey's background is above reproach.
- E) Age and Sound Mind and Judgment: Lamey is over 25 years old. Lamey operates his own business and volunteers within the community.

There can be no doubt that Lamey was never “removed” from the District and was never disqualified by law to maintain his position on the District’s Board of Commissioners.

CONCLUSION

While it is a clever argument to suggest that the County Board of Supervisors has the right to look at whether or not Lamey was qualified or not to be a Commissioner, such action, however veiled, is contradictory to the clear language of 19-5-167. The County is attempting, for whatever reason, to assert control over the workings of the Utility District. Such encroachment of power is unconstitutional and proscribed by the clear meaning of the Statute and intent of the legislature.

Although the inquiry into the factual findings should not be reached, it is clear that the finding that Lamey had removed from the District was erroneous.

As such, the only proper legal remedy of the situation is to reverse the decision of the lower court judge and make a clear declaration of the intent of Mississippi Code Section 19-5-167: once an appointment is made by a Board of Supervisors, their involvement ends as to any scrutiny of a utility district whatsoever; that "finding a vacancy" is not part of the appointive function as defined by the clear language of Section 19-5-167. However, if the Court deems the language and intent of the legislature to mean otherwise, the Court should reverse on the basis that Lamey had never removed from the District.

RESPECTFULLY SUBMITTED, this the 24th day of November, 2009.

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 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 24th day of November, 2009.



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