

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2015-CA-00966

CAROLYN MCADAMS

APPELLANT

VS.

SHERIEL F. PERKINS

APPELLEE

ON APPEAL FROM THE CIRUIT COURT OF LEFLORE COUNTY, MISSSSIPPI

**BRIEF OF APPELLEE
(SHERIEL F. PERKINS)**

ORAL ARGUMENT NOT REQUESTED

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VS.

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following persons have an interest in the outcome of this case. These representations are made in order that the assigned Judge of this Court may evaluate possible disqualification or recusal:

1. Sheriel F. Perkins, Appellee
2. Willie J. Perkins, Sr., Counsel for Appellee
3. THE PERKINS FIRM, PLLC, Counsel for Appellee
4. Carolyn McAdams, Appellant/Respondent
5. Marc A. Biggers, Counsel for Appellant/Respondent
6. UPSHAW, WILLIAMS, BIGGERS & BECKHAM, LLP, Counsel for Appellant/Respondent
7. City of Greenwood, Mississippi
8. Ronnie Stevenson, Respondent (Member, Greenwood City Council)
9. Johnny Jennings, Respondent (Member, Greenwood City Council)
10. Lisa Cookston, Respondent (Member, Greenwood City Council)
11. Andrew Powell, Respondent (Member, Greenwood City Council)

12. Charles McCoy, Respondent (Member, Greenwood City Council)
13. Carl Palmer, Respondent (Member, Greenwood City Council)
14. Butler Snow, LLP
15. Mark W. Garriga, Butler Snow, LLP
16. Lem E. Montgomery III, Butler Snow, LLP
17. Kathleen Ingram Carrington, Butler Snow, LLP

s/Willie J. Perkins, Sr.
WILLIE J. PERKINS, SR.
ATTORNEY FOR SHERIEL F. PERKINS

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STATEMENT OF THE ISSUES

- I. WHETHER THE LOWER COURT COMMITTED REVERSIBLE ERROR IN REVERSING DECISION OF THE GREENWOOD CITY COUNCIL TO RETAIN A LAW FIRM TO REPRESENT THE CITY IN AN ELECTION CONTEST CASE BETWEEN TWO PRIVATE CITIZENS?**
- II. WHETHER THE RESOLUTION OF THE GREENWOOD CITY COUNCIL AUTHORIZED AN UNLAWFUL DONATION OR GRANT?**
- III. WHETHER APPELLANT HAS CONFESSED ISSUES ON APPEAL?**

STANDARD OF REVIEW

Judicial review of cases presented by bill of exceptions is limited to a determination of whether the municipality's decision is (1) beyond its scope or power; (2) violates the constitutional or statutory rights of the aggrieved party; (3) not supported by substantial evidence; or (4) is arbitrary or capricious. *Baymeadows, LLC v. City of Ridgeland*, 131 So.3d 1156 (Miss. 2014)

On appeal, this Court reviews findings of fact by a trial judge sitting without a jury for manifest error, including whether the findings were the product of prejudice, bias, or fraud, or manifestly against the weight of the credible evidence. *Boyd v. Tishomingo Co. Democratic Exec. Comm.*, 912 So.2d 124, 128 (Miss. 2005) (citing *Miss. Dep't of Transp. v. Johnson*, 873 So.2d 108, 111 (Miss. 2004)).

This Court reviews errors of law, which include summary judgments and motions to dismiss, *de novo*. *Mississippi Transportation v. Fires*, 693 So.2d 917, (Miss. 1997). See also *Ladner v. Necaise*, 771 So.2d 353, 355 (Miss. 2000) (citing *Saliba v. Saliba*, 753 So.2d 1095, 1098 (Miss. 2000)).

STATEMENT OF THE CASE

A. COURSE OF PROCEEDINGS AND DISPOSITION IN TRIBUNAL BELOW

On December 16, 2014, the Greenwood City council entered a Resolution authorizing the Employment of Butler Snow, LLP to defend the City's interest in an Election Contest solely between Appellant (winning candidate) and Appellee (losing candidate).

On December 23, 2014, Appellee timely filed a Bill of Exception with the Circuit Court of Leflore County, Mississippi styled *Sheriel F. Perkins v. Mayor and City of Greenwood, MS, and Ronnie Stevenson, Johnny Jennings, Lisa Cookston, Andrew Powell, Charles McCoy, & Carl Palmer and members in official capacity and Carolyn McAdams as mayor* appealing the vote on December 16, 2014 on the Resolution to pay attorney's fees and costs for McAdams to defend her election contest styled *Sheriel F. Perkins v. McAdams*, 2013-0047-CI (Circuit court of Leflore county, MS).

On May 26, 2015, the Circuit Court of Leflore County, Mississippi, entered its Order and Opinion reversing the City Council's Resolution, finding that the decision of the council is beyond its scope or powers and violates the appellee's constitutional and statutory rights.

On June 19, 2015, Appellant Carolyn McAdams noticed her appeal of the Circuit Court's Opinion and Order to this court.

B. STATEMENT OF THE FACTS

The City of Greenwood held a general election on June 4, 2013. Appellant McAdams and Appellee Sheriel F. Perkins were the only two candidates for the mayoral race. After the election results, Appellant was declared the winner. (CR 12 & 13 & 24)¹ Appellee Perkins filed

¹ References to the Appeal Transcript of the February 13, 2015; Hearing will be cited as "TR"; references to the Court Record will be cited as "CR" and references to Appellant's Record of Excerpts will be cited as "RE", along with corresponding page number(s); and

an election contest on June 24, 2013, in the Circuit Court of Leflore County, Mississippi contesting the election outcome. Appellant McAdams was the only named defendant in the lawsuit. (CR 44)

The city attorney of Greenwood at the request of appellant, sought an Attorney General Opinion as to whether a municipality may (1) reimburse a mayor for legal fees and costs incurred as a result of an election contest; and (2) retain counsel to represent the municipality's interest in the election contest which includes defending the validity of the challenged election. (CR 44)

On December 1, 2014, the Mississippi Attorney General issued an Opinion to Donnie Brock, City Attorney for the City of Greenwood, MS. See MS AG OP., Brock (Dec.1,2014). (CR 26-28)

Based upon this AG OP, Appellant's Attorney in the Election Contest case, appeared before the Greenwood City Council Meeting on December 16, 2014, and urged the city to pass a Resolution to hire his law firm as attorney to represent the city's interest in the Election Contest case between Appellant and Appellee. (TR 7)

During this meeting, the seven (7) members of the Greenwood City Council, by a vote of three (3) for, one (1) against and three (3) abstention, voted on the Resolution to pay Appellant McAdams' attorney in the election challenge, to represent a declared interest of the City in the election lawsuit between she and appellee retroactive to November 12, 2014. (CR 24 & 25).

SUMMARY OF ARGUMENT

The Greenwood City Council, relying strictly upon an Attorney General Opinion voted to pay Appellant Carolyn McAdams' attorney's fees in an election case. This case is between

references to the Exhibits will be cited as "EX", along with the corresponding exhibit number.

McAdams and another private citizen. The case involves no official act of McAdams as mayor. The election lawsuit sought no claim or demand or action or relief against any city official. The only proper defendant in an election contest under Mississippi laws is the successful party in the election. *Fisher v. Crowe* 303 So.2d 474, 475 (Miss. 1974).

The sole issue in an election contest under Mississippi laws is which candidate received the greatest number of legal votes in the contested election *Straughter v. Collins* 819 So.2d 1244, 1252 (Miss. 2002).

No one but McAdams would benefit from the city retaining the attorney represent her in her election challenge and to also represent the “interest” of the city in the same case. This is nothing short of an illegal scheme to donate public funds to a private citizen in a private election contest.

The Attorney General Opinion is grounded on not one case authority. The lower court properly found that the decision of the council was beyond its scope or powers and violated Appellee Sheriel Perkins’ constitutional and statutory rights.

The lower court found that the city council’s discretion constitutes misuse of municipal authority regarding the expenditure of public funds for private purposes in clear violation of the Mississippi Constitution.

The resolution of the Greenwood City Council authorized an unlawful donation or grant to Appellant. Article 4, Section 66 and 96 of the Mississippi Constitution of 1890 prohibits unauthorized donations or gratuities of this nature.

Finally, Appellee contends McAdams has confessed the issues raised in her brief on this appeal. McAdams certified that the Bill of Exception embody the facts and decision regarding the Greenwood City Council to approve the Resolution appointing Butler Snow, LLP to

represent the city in her election contest case. She confessed the city voted by resolution to pay her attorney's fees and cost; that the resolution violated state laws prohibiting the authorization of and use public funds and monies for a private cause or purpose; and that the city's reliance on the Attorney General Opinion to Brock was misplaced and in violation of state law since she was the only named defendant in the election contest case. A party is bound by her concession in her pleadings.

There has been no persuasion to demonstrate a need to disturb the decision of the lower court. This court should affirm the lower court's decision and dismiss this appeal.

LEGAL ARGUMENT AND AUTHORITIES

I. WHETHER THE LOWER COURT COMMITTED REVERSIBLE ERROR IN REVERSING DECISION OF THE GREENWOOD CITY COUNCIL TO RETAIN A LAW FIRM TO REPRESENT THE CITY IN AN ELECTION CONTEST CASE BETWEEN TWO PRIVATE CITIZENS?²

Following her lost of the June 4, 2013, Mayoral General Election, Appellee Sheriel F. Perkins filed an election contest. The sole parties in the contest were the losing party, (Appellee) and Appellant Carolyn McAdams, winning party. In the lawsuit, Appellee alleged various violations of the Mississippi Election Codes, including, voters voting in the wrong precincts, the handling of absentee ballots, and the failure to count affidavit ballots. Appellee sought to be declared the candidate who received the greatest number of legal votes. Although, Appellee complain of conduct of certain city officials in carrying out their duties during the city election,

² Appellee believes this appeal should be dismissed without deciding issues raised on appeal due to appellant's lack of standing to bring this appeal. Appellee has raised in a separate pleading (Motion To Dismiss) as to whether Appellant has authority to bring this appeal without a resolution or authority of the Greenwood City Council. The City of Greenwood has failed to pass a resolution authorizing this appeal.

the lawsuit sought no claim or demand or action or liability against them. Appellee only sued Carolyn McAdams, the winning party.

The only proper defendant in an election contest under Mississippi general election contest statute is the winning party in the election. See *Fisher v. Crowe*, 303 So.2d 474 (Miss. 1974). In *Fisher*, plaintiff sued the successful candidates for board of aldermen and the election commissioners. The presiding Judge ordered a new election be held. The successful candidates and the election commissioners gave notice of appeal but they failed to file a proper appeal bond. This Court held that the election commissioners were state officials and not required to post bond but the aldermen elect were not entitled to appeal without bond.

The court stated as follows:

“ . . . we. . . are of the opinion that the election contest insofar as the alderman-elect are concerned is a private matter between themselves and the contestants in which the city is not beneficially interested, and, as such, they are not entitled to appeal without bond. 289 So.2d 921, 923

Since the aldermen-elect failed to timely file a bond the appeal as to them were dismissed. The Court held that since the successful candidates failed to perfect their appeal, there was no justiciable issue before the Court.

Further, in *Fisher v. Crowe*, this Court stated as follows:

The only proper defendant in an election contest under this section is the successful party in the election. The issues, which are made up and joined are between the unsuccessful and the successful candidate in the election and no others. This is true even though the proof involving irregularities or fraudulent conduct would perhaps involve the election commissioners. We are, therefore, of the opinion that the election commissioners were improperly joined as defendants in the first instance in the election contest.

Also, the court stated:

The only function of the election commissioners was to conduct

the election and certify the results. Once this was done, they had no such beneficial interest in the outcome of the election that would give them a right to appeal from a judgment voiding the election. 303 So.2d at 475.

The election contest was not brought against Appellant Carolyn McAdams in her capacity as Mayor or against her as a result of her action while acting in the capacity as Mayor. The lawsuit was a purely private action between two private citizens to determine which one received the greatest number of the legal cast votes during the June 4, 2013, General Election, in the City of Greenwood, Mississippi.

Miss. Code Ann. § 25-1-47 does not authorize the Greenwood City Council to employ counsel for the defense of claims challenging the conduct of city officials Carrying out their official duties during the June 4, 2013 mayoral election.

On December 16, 2014, the Greenwood City Council passed a Resolution appointing Butler Snow, LLP to represent the City of Greenwood in Litigation. (CR 24).

The fifth “WHEREAS” of the Resolution states in pertinent parts as follows:

“ . . . the City Council of the City of Greenwood desires to retain the law firm of Butler Snow, LLP to defend the case in State Court to represent the City’s interest in upholding the validity of the municipal election and actions of its election officials pursuant to Mississippi Code Ann. § 25-1-47 and as authorized by written opinion of the Mississippi attorney General . . . ”

The case referred to in the resolution is the private election litigation, *Perkins v. McAdams*, (Circuit Court of Leflore County, Cause No. 2013-0047 CI). In that lawsuit, Butler Snow, LLP represents McAdams, the sole defendant.

First, there is no specific authorization under Mississippi Code Ann. § 25-1-47 for the city to employ counsel to represent a private person (such as Mayor-elect) in litigation where there is no claim against the mayor while acting within the scope of her duties.

§ 25-1-47(1) provides:

(1) Any municipality of the State of Mississippi is hereby authorized and empowered, within the discretion of its governing authorities, to investigate and provide legal counsel for the defense of any claim, demand, or action, where civil or criminal, made or brought against any state, county, school district, or municipal officer, agent, servant, employee, or appointee as a result of his actions while acting in the capacity of such officer, agent, servant, employee, or appointee; and such investigation and defense. (my emphasis added)

The City of Greenwood has absolutely no interest in the election contest between two private parties. No city officer, agent, servant, employee or appointee is a named defendant in the case. There is no claim in the election contest that McAdams performed any act in her capacity as mayor of the city. The city council, by passing the Resolution was in effect deciding the merits of the election contest case and authorizing the illegal use of public funds to support McAdams.

The lower court found as follows:

It is undisputed that *Sheriel F. Perkins v. McAdams*, 2013-0047-CI, is an election contest between private litigants. There is no city officials or election commissions named as defendants and the action asserts no claims arising out of McAdams' actions as mayor. Therefore, § 25-1-47 clearly prohibits the Council from authorizing The employment of legal counsel to defend the election contest. (CR 47)

In the Resolution, the city council relied upon the Attorney General Opinion dated December 1, 2014, to City Attorney H. Donald Brock, Jr. to hire Butler Snow LLP. (CR 26). This opinion provides no authority for the City Council's decision to provide public funds for a private purpose.

In *Madison Co. et al v. Hopkins*, 875 So.2d 43 (MS 2003), the court stated:

Although Attorney General opinions are not binding, they may certainly be considered by the Court. *City of Durant v. Laws Constr. Co.*, 721 So.2d 598, 604 (Miss.1998). See Miss. Code Ann. §7-5-25 (Supp. 1997). The Attorney has stated in several opinions that Miss. Code Ann. § 25-1-47 "permits, but does not require, a county to provide legal counsel for

the defense of any claim against an officer or employee of a county while acting in his official capacity. . .” Miss. Att’y Gen. Op. No. 1999-0468, 1999 WL 1075179, *2 (Sept. 10, 1999). See also, Miss. Att’y Gen. Op. No. 96-0063, 1996 WL 650029 (Nov.1,1996); Miss. Att’y Gen. Op., 1993 WL 669094 (Feb. 3, 1993) (to Robert Shepard); Miss. Att’y Gen. Op., 1991 WL 578171 (Dec. 18, 1991)(to Everett T. Sanders).

857 So.2d at 50.

The lower court further found as follows:

The Mississippi Attorney General has consistently opined that §25-1-47 Prohibits a municipality from authorizing the payment of legal expenses in election contests absent claims resulting from official capacity actions. Even in its December 1, 2014 Opinion in the instant case, the Attorney General opined, consistent with its earlier opinions, that §25-1-47 authorized municipalities to employ counsel to defend election contests raising claims made or brought against an official as a result of his official capacity actions. (CR 47)

The lower court referenced to footnote 3: *MS AG Op., Still* (October 3, 2008) (reimbursement of legal expenses may be authorized where municipality gives official advance approval of legal representation and determines that the official acted in his official capacity); *MS AG Op., Tennyson* (August 8, 1997). See, also, *MS AG Op., Childers* (May 2, 1997); *MS AG Op., Causey* (April 22, 1992); *MS AG Op., Causey* (November 14, 1991); *MS AG Op., Belk* (June 27, 1991). (CR 47).

Appellant’s reliance on the attorney general opinion’s interpretation of the word “claim” in §25-1-47 to authorize the city’s action in passing the Resolution is misplaced.

The Attorney General Office offered no case authority for its broad interpretation of the use of the word “claim” under the statute. Further, the Attorney General Office gave no reason why it retreated from any prior interpretations of the statute to the contrary.

Webster’s Dictionary defines the word, claim, as:

n. the demanding of something as a right, *to make a claim*; (*insurance*) a request for payment of compensation; a right to demand assistance, *to have a claim on someone*; an assertion of right to possession of a thing, *a claim to a title*; an assertion (esp. of superiority); the thing claimed, esp. land

claimed by a settler or prospector **to lay claim to** to demand ownership of **to stake out a claim** to mark boundaries of (land) to prove ownership **claimant** n. a person making a claim [O.F. *claime*]

Even under these definition of the word “claim”, it could not stretch to any actions or conduct of city officials who are not defendants in the election contest. There is simply no demand against any city official. As the lower court correctly found, the city “has no legitimate legal interest in the determination of this ultimate issue and bears no liability in the election contest. (CR 49).

Miss. Code Ann. § 21-17-5, when read *in pari material* with Miss. Code Ann. § 25-1-47 and as interpreted by the Mississippi Attorney General, does not authorize the Greenwood City Council to employ counsel to defend the City’s interests in the election contest challenging the conduct of city officials carrying out their official duties during the June 4, 2013 mayoral election.

At page 6 of her brief, Appellant contends that Miss. Code Ann. § 21-17-5 commonly known as the Home Rule, authorize the city to hire counsel to defend claims against city official in the subject election case. Again, Appellant cites no case authority to support her claim. Appellant relies solely upon her misinterpretation of a prior *Attorney General Opinion, Ellis*, (July 14, 1993).

The lower court rejected this contention by the city. The lower court stated as follows:

The Council argues that its decision was authorized by the Attorney General’s December 1, 2014 opinion interpreting § 21-17-5. Over the years, the Mississippi Attorney General has expanded its interpretation of Mississippi law regarding a municipality’s authority to pay legal expenses in election contests. In December 1991, the Attorney General first interpreted another statute, § 19-3-47, to specifically “bestow discretionary authority upon county boards of supervisors to employ legal counsel in civil cases in which the county is interested”. *MS AG Op., Sanders*, December 18, 1991). Then in 1993, the Attorney General without any reference to §25-1-47, opined that through a municipality did not have the same specific statutory authority §19-3-47 provides to a county, applying the same rationale with regard to a municipality’s authority pursuant to §21-17-5 would not conflict with the Mississippi Constitution or any statutory law. *MS AG Op., Ellis* (July 14, 1993).

This interpretation is in direct contradiction to the specific language of §25-1-47. Although §19-3-47 specifically authorizes a board of supervisors to employ legal counsel in all civil cases where the board finds it has an interest in the litigation, §25-1-47 does not include similar language. In fact, §25-1-57 specifically prohibits the employment of counsel in cases that do not result from official capacity actions.

The Attorney General's Opinion rationalizes what would unquestionably be the expenditure of public funds for a private purpose. The sole issue in an election contest in the State of Mississippi is which candidate received the greater number of legal votes in the contested election. *Straughter v. Collins*, 819 So. 2d 1244, 1252 (Miss. 2002).

Each candidate presents evidence and legal support for her claim that she is the winner by this standard. Usually the plaintiff's position involves claims that certain aspects of the election process did not proceed according to law, while the winner defends by showing that no irregularities occurred. These are evidentiary issues and not the ultimate determination in the case.³ (CR 48-49)

The lower court's finding is proper and correct and should not be disturbed on this appeal.

The Lower Court did not commit reversible error, did not substitute its judgment for the Greenwood City Council and correctly held as a matter of law that the city had no legitimate legal interest in the election contest challenging the June 4, 2013 Greenwood Mayoral Election

The lower court in its legal analysis correctly set forth the standard as review as follows:

In an appeal from the decision of a municipal authority, the bill of exceptions serves as the record and an appellate court can only consider the case as made by the bill of exceptions. *Van Meter v. City of Greenwood*, 724 So.2d 925, 927-928 (Miss. App. 1998). Judicial review is limited to a determination of whether the municipality's decision is (1) beyond its scope or power; (2) violates the constitutional or statutory rights of the aggrieved party; (3) not supported by substantial evidence; or (4) is

³ The Attorney General Opinion to *Everett Sanders AG Op.* 1991 W. L. 578175 is an example of a reversal of prior opinions. In that opinion the issue raised "whether or not the County Board of Education pursuant to §25-1-47 of the Miss. Code (1972) Ann. or any other statute, can pay for the legal fees incurred by the Superintendent of Education in defending this election contest." The Attorney General responded by stating: A contest of the election of an incumbent superintendent of education is not a action against said official acting in his official capacity. Therefore, it is the opinion of this office that the county board of education would not have the authority to pay the legal fees incurred by the Superintendent of Education in defending the contest.

arbitrary or capricious. *Baymeadows, LLC v. City of Ridgeland*, 131 So. 3d 1156, 1159 (Miss. 2014). (R. 46)

Appellant incorrectly argues that the lower court exceeded the scope of its appellate review and substituted its own judgment for that of the council. See pages 9 & 10 of Brief of Appellant. Appellant points to the court's ruling that "[t]he City of Greenwood has no legitimate interest in the determination of this ultimate issue and bears no liability in the election contest." (CR 49) Appellant cites portion of the Greenwood City Council's Resolution that she contends set forth the city's interest in the election contest case. See page 9 of Brief of Appellant. Then Appellant accused the lower court of ignoring the city's interest.

Without rehashing the argument on the lack of city's interest in this case, the opinion of the Attorney General to Brock never informed or defined any interest of the City of Greenwood in the pending private election contest case. The City Council's Resolution failed to define or identify an interest of the city in the election case. The desire of the city Council to finance McAdams' election case was not a real interest of the taxpayers and citizens of Greenwood. The only person to benefit from passage of the Resolution is Carolyn McAdams. The passing of the resolution under the pretext of protecting the interest of the city in the private litigation was nothing short of a back door approach in an attempt to pay Carolyn McAdams' attorney's fees, all in violation of the Constitution.

Also, the city stated in its Resolution that the claims in *Perkins v. McAdams* involve the actions of the election commissioners and others carrying out their official duties. This falls very short of a real interest of the city for the donation of public funds. In *Fisher v. Crowe, supra*, this Court made it clear that the only proper defendant in an election contest case is the winning party. Further, the court held the only function of the election commissioners was to conduct the

election and certify the results. Once this is done, they have no such beneficial interest in the outcome of the election.

Contrary to Appellant's contention, there was nothing reasonable and proper by the city council's Resolution. In addition the Resolution conflicted with statutory and constitutional law and was illegal, as properly declared by the lower court.

The lower court properly decided as follows:

In this case, what the City of Greenwood has resolved to do is financially assist Mayor McAdams in marshaling evidence and retaining legal services to defend against Ms. Perkins' claim that she (Perkins) received the greater number of legal votes cast in the June 4, 2013 general election. The City of Greenwood has no legitimate legal interest in the determination of this ultimate issue and bears no liabilities in the election contest.

The legal services Butler Snow is to provide in defending the City's interest in this election contest are the same services counsel must provide to defend Mayor McAdams in establishing that she received the greater number of legal votes. Is the City, and ultimately the public, financially responsible for these overlapping legal services?

Another troubling aspect of the Attorney General's interpretation of §25-17-5 is that it also effectively allows municipalities to subjectively determine which election contest they will defend even when cases present identical claims. The City Council, on a case by case basis, has discretion to determine: first, whether Municipal interests are involved; then, whether the city will expend public funds to defend. For example, if the results of the June 2013 election were the opposite and an otherwise identical election contest was filed, the Council could simply ignore it or refuse to defend. Winning candidates supported by a majority of the Council could routinely gain publicly paid legal counsel to defend or at least buttress their case. On the other hand, such support could be withheld from winners who are not the majority's choice. Thus, the City Council's discretion constitutes misuse of municipal authority regarding the expenditure of public funds for private purposes in clear violation of the Mississippi Constitution. (CR 49); See also (TR 32-37).

No error was committed by the lower court and its decision should be upheld on this appeal.

II. WHETHER THE RESOLUTION OF THE GREENWOOD CITY COUNCIL AUTHORIZED AN UNLAWFUL DONATION OR GRANT?

During the February 13, 2015, hearing on this matter, Appellee argued that the city's effort to appropriate taxpayers' public funds to fund McAdams' private election lawsuit was a donation or grant in violation of the prohibitions under Article 4, Sections 66 & 96 of the Mississippi Constitution of 1890 (TR 14-15)

Article 4, Section 66 of the Miss. Constitution prohibits the granting of a donation or gratuity. It states as follows:

No law granting a donation or gratuity in favor of any person or object shall be enacted except by the concurrence of two-thirds of the members elect of each branch of the Legislature, nor by any vote for a sectarian purpose or use.

Article 4, Section 96 of the Miss. Constitution prohibits unauthorized payments. It provides:

The Legislature shall never grant extra compensation, fee, or allowance, to any public officer, agent, servant, or contractor, after service rendered or contracts made, nor authorize payment, or part payment, of any claim under any contract not authorized by law; but appropriations may be made for expenditures in repelling invasion, preventing or suppressing insurrections.

Municipal officers and employees, governmental agencies and officers are subjected to this constitution prohibition. See *Farrish Gravel Co. v. MS State Highway Commission*, 458 So.2d 1066 (Miss. 1984); *Palmertree v. Garrard*, 381 (1949); *Mayor & Aldermen of Vicksburg v. Crichlow*, 196 Miss. 259, 16 So.2d 749 (1944).

Pursuant to Article 4, Section 66 of the Miss. Constitution of 1890, the Mississippi Legislature by a two-third vote of the members of the House of Representatives and Senate may authorize donations of this nature. However, the city has failed to present any Local & Private Legislation authorizing payment of McAdams' attorney fees in her private election contest lawsuit. There is ample and general authority, including the Attorney General's Opinions that

the city council's Resolution illegally and improperly authorizes a donation in violation of both Sections 66 and 96 Prohibitions under the Miss. Constitution of 1890.

III. WHETHER APPELLANT HAS CONFESSED ISSUES ON APPEAL?

The Bill of Exceptions was certified on December 23, 2014, by Carolyn McAdams, in her capacity as Mayor of the City of Greenwood, MS. In her certification, she stated:

“I, Carolyn McAdams, the Mayor of the City of Greenwood, MS, certify that I have examined the foregoing Bill of Exceptions presented to me by Appellant Sheriel F. Perkins. The Bill of Exceptions does embody the facts and decision regarding the decision of the Greenwood City Council to approve the Resolution Appointing Butler Snow, LLP To Represent the City of Greenwood in Litigation adopted by a majority vote on December 16, 2014.” (CR 23)

McAdams certified that the Bill of Exceptions “does embody the facts and decision regarding the decision” of the City Council approving the Resolution in question. Also, Madams certified “[t]hat during the City Council meeting of the City of Greenwood on December 16, 2014, the council voted to pay the attorney's fees and cost in the private litigation and election contest of Defendant Carolyn McAdams which is being defended by Butler Snow, LLP. . .” See paragraph numbered 3 of the Bill of Exceptions. (CR 20-21)

Further, appellant certified “[t]hat the passage of the Resolution is in violation of state laws prohibiting the authorization of and use of public funds and monies for a private cause or purpose.” See paragraph No. 8 of the Bill of Exceptions. (CR 21).

Finally, appellant certified “[t]hat the Appellee's [city council's] reliance on the aforesaid Attorney General Opinion is misplaced and in violation of state law since there are no city officials or election commissioners named as defendant in the private election contest between Perkins and McAdams”. See paragraph No. 9 of the Bill of Exceptions (CR 21-22).

The proposed Bill of Exception was forwarded to H. Donald Brock, Jr., Greenwood City Attorney, prior to McAdams signed and certified the Bill of Exceptions. (CR 19).

Based upon her concession, appellant is estopped from raising her issues on appeal. She is bound by her pleadings. This appeal should be dismissed.

CONCLUSION

In light of the foregoing reasons, authorities and principles, Appellee Sheriel F. Perkins respectfully requests that this Honorable Court affirm the decision of the lower court and enters its Order dismissing this appeal and to assess all costs and expenses against appellant.

Respectfully submitted, this the 30th day of March 2016.

SHERIEL F. PERKINS

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CERTIFICATE OF SERVICE

I, Willie J. Perkins, Sr., attorney for Appellee Sheriel F. Perkins, do hereby certify that I have this day served a true and correct copy of the above and foregoing Brief of Appellee by mailing same by United States Mail with postage fully prepaid thereon to the following:

Honorable Margaret Carey-McCray
P. O. Box 1775
Greenville, MS 38072-1775

Leflore County Circuit Court Judge

Marc A. Biggers, Esquire
MBN: 2533
UPSHAW, WILLIAMS, BIGGERS, & BECKHAM, LLP
Post Office Drawer 8230

SO CERTIFIED this the 30th day of March 2016.

s/Willie J. Perkins, Sr.
WILLIE J. PERKINS, SR.

CERTIFICATE OF FILING

I, WILLIE J. PERKINS, SR., attorney for Appellee, do hereby certify that I electronically filed and served the foregoing Brief of Appellee with the Clerk of the Court using the CM/ECF system, which sent notification of such filing on the opposing party's counsel.

SO CERTIFIED this the 30th day of March 2016.

s/Willie J. Perkins, Sr.
WILLIE J. PERKINS, SR.