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**WESTLAW** Mississippi Attorney General Opinions*Mr. Bobby Eleuteris*

Office of the Attorney General

November 1, 2013

2013 WL 6780272 (Miss.A.G.)

Office of the Attorney General

State of Mississippi

**\*1**

Opinion No. 2013-00431

**\*1** November 1, 2013**Re: Incentive Payment to municipal employees****\*1** Mr. Bobby Eleuteris**\*1** City Manager**\*1** City of **D'Iberville****\*1** P.O. Box 6519**\*1** **D'Iberville** , MS 39540-6519

Dear Mr. Eleuteris:

**\*1** Attorney General Jim Hood received your request and assigned it to me for research and response.**Issues Presented****\*1** You inquire as to whether a municipality may pay its employees an "incentive payment" in lieu of a salary increase. Specifically, you provide the following:**\*1** As the new city manager for the City of **D'Iberville** , I write to you seeking an official opinion regarding a matter before the city council. I have just taken the city manager position and I am trying to approach all legal matters with the utmost of caution to ensure that the city is doing things correctly.**\*1** Specifically, I am inquiring about a proposed method to provide an increase in compensation to our 125 employees. The method of partial compensation in question is the legality and manner in which we provide an incentive payment in addition to their regular pay. We have an incentive payment of five hundred dollars (\$500) in the budget for each employee to be received two times during the course of the fiscal year. This incentive payment is in lieu of an increase in base salary that the city may not be able to afford from one year to the next in this time of declining tax revenues.**Response****\*1** The municipality is authorized to provide "incentive payments" to its employees, provided that such payment is contracted for by the employer and employee prior to the date when the services are performed, is determined in accordance with objective standards of measurement and is earned by personal services performed by the employee.

response.

### Issues Presented

**\*1** You inquire as to whether a municipality may pay its employees an “incentive payment” in lieu of a salary increase. Specifically, you provide the following:

**\*1** As the new city manager for the City of D’Iberville, I write to you seeking an official opinion regarding a matter before the city council. I have just taken the city manager position and I am trying to approach all legal matters with the utmost of caution to ensure that the city is doing things correctly.

**\*1** Specifically, I am inquiring about a proposed method to provide an increase in compensation to our 125 employees. The method of partial compensation in question is the legality and manner in which we provide an incentive payment in addition to their regular pay. We have an incentive payment of five hundred dollars (\$500) in the budget for each employee to be received two times during the course of the fiscal year. This incentive payment is in lieu of an increase in base salary that the city may not be able to afford from one year to the next in this time of declining tax revenues.

### Response

**\*1** The municipality is authorized to provide “incentive payments” to its employees, provided that such payment is contracted for by the employer and employee prior to the date when the services are performed, is determined in accordance with objective standards of measurement and is earned by personal services performed by the employee.

### Applicable Law and Discussion

**\*1** In accordance with Mississippi Constitution Article IV, Sections 66 and 96, a public entity is prohibited from “paying extra compensation” to its employees for past services performed by that employee, as such would constitute an unlawful donation. However, this office has recognized that “employee incentive payments” do not run afoul of these constitutional provisions when said incentive payments are implemented prospectively and payment is made pursuant to conditions to be met in the future. MS AG Op., Robertson (September 30, 2011); MS AG Op., Campbell (April 12, 2010); MS AG Op., Meredith and Jones (December 22, 2006); MS AG Op., Siler (July 18, 2003). Bonus payments to employees are prohibited by Sections 66 and 96 of the Mississippi Constitution. However, incentive payments are permissible when the incentive payment is contracted for by the employer and employee prior to the date when the services are performed, is determined in accordance with objective standards of measurement and is earned by personal services performed by the employee. MS AG Op., Robertson (September 30, 2011); MS AG Op., Campbell (April 12, 2010). We should note that, pursuant to Mississippi Code Ann. Section 25-11-103(k), incentive payments cannot be reported to PERS as earned compensation.

**\*2** We do not opine as to whether the proposed plan meet these requirements. Such a determination must be made by the municipality and is subject to review by the Office of the State Auditor or a court of competent jurisdiction.

**\*2** If we may be of further assistance, please advise.

Very truly yours,

**\*2** Jim Hood

**\*2** Attorney General

**\*2** By: Leigh Triche Janous