

**IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT**

CHOKWE A. LUMUMBA,
in his official capacity as
Mayor of Jackson, MS

PLAINTIFF

VS.

CAUSE NO. 22-CV-281

THE CITY COUNCIL OF JACKSON, MS

DEFENDANT

**WASTE MANAGEMENT OF MISSISSIPPI, INC.
WASTE DISPOSAL SERVICES, INC.
RICHARD’S DISPOSAL, INC.**

**INTERVENOR
INTERVENOR
INTERVENOR**

OPINION AND JUDGEMENT

Before the court is the Emergency Complaint for Declaratory Judgment filed by Hon. Chokwe A. Lumumba (“Mayor”) in his official capacity as Mayor of the City of Jackson. The issues have been joined by an Answer filed by the City Council of Jackson (the “Council”), and the court has allowed Waste Management of Mississippi, Inc., Waste Disposal Services, Inc., and Richard’s Disposal, Inc. to intervene pursuant to MRCP 24(b). All parties have agreed to allow the court to decide the issues based on the briefs and legal authorities presented to the court in argument.

INTRODUCTION

Much of the argument in this case surrounds Mayor Lumumba’s February 17, 2022 “Mayoral Proclamation of Local Emergency City of Jackson, Mississippi” wherein he asserted that, pursuant to Miss. Code Ann. §33-15-5, he was declaring a local emergency as defined in Miss. Code Ann. Section 33-15-5(g)¹ for the City of Jackson based on the impending expiration

¹“‘Local emergency’ means the duly proclaimed existence of conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a county and/or

of an emergency contract for the collection of residential solid waste. To be very clear, the Mayor's Complaint does not present me with the issue of whether a local emergency actually existed as defined in the statute.

As will be noted below, if an emergency did exist—and continues to exist—then the Mayor could have, and may still, negotiate and tender a relevant contract to the Council for approval without the necessity of complying with the so-called RFP (Request for Proposals) requirements found in Miss. Code Ann. Section 31-7-13(r). Conversely, if an emergency did not, or does not exist, then the Mayor may only present to the Council for approval a contract produced through the RFP process. But whether a contract for solid waste disposal is negotiated through the RFP process or pursuant to Section 33-15-17(b)'s emergency authority,² the contract is not valid, binding, or enforceable unless approved by the Council.³ And if approved by the Council in minutes that later are approved by the Mayor or majority of the Council, the contract's validity relates back to the date the Council approved the contract.⁴

municipality caused by such conditions as air or water pollution, fire, flood, storm, epidemic, earthquake, hurricane, resource shortages or other natural or man-made conditions, which conditions are or are likely to be beyond the control of the services, personnel, equipment and facilities of the political subdivision and require the combined forces of other subdivisions or of the state to combat." Miss. Code Ann. §33-15-5(g) (2013).

²"Each county or municipality is authorized to exercise the powers vested under this section in the light of the exigencies of the extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law pertaining to the performance of public work, entering into contracts . . . and the appropriation and expenditure of public funds." Miss. Code Ann. §33-15-17(b) (2013).

³For clarity, there does exist a possible exception not presented in this case thus far, where the Council rejects an emergency contract presented by the Mayor, the Mayor exercises his veto of the rejection, and the Council overrides the veto. The Mayor then would have the option of engaging the judicial system, claiming the Council was arbitrary and capricious in overriding the veto.

⁴Miss.Code Ann. § 21-15-33

THE MAYOR'S REQUEST FOR RELIEF

In paragraph 17 of his Complaint, the Mayor seeks a declaratory judgment that “the rights and/or legal authority of the City Council and the Mayor with regard to declaring a local emergency concerning the collection of residential solid waste are stated in paragraph 15 [of the Complaint].” The Council’s Answer denies paragraph 17, so I shall address below the content of paragraph 15 in its entirety. First, while Paragraph 16 of the Complaint is not a part of the Mayor’s request for relief, I think it important to point out that paragraph 16(c)(iv) is not a correct statement of the law. That subsection states *inter alia*:

Further, pursuant to Miss. Code Ann. §21-15-33, the city council’s decision shall be contained within its official certified minutes, with the minutes having the legal effect of being valid from and after the date of the meeting **after** the minutes are adopted and approved by a majority of the members of the city council. (emphasis in the original).

In *Rankin Group, Inc. v. City of Richland*, the Court of Appeals stated:

We look to section 21-15-33 to determine the effect and validity of municipal minutes. The statute states in part that:

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.

Miss.Code Ann. § 21-15-33.

The minutes must be approved at the next meeting or within thirty days, and once approved, the "minutes shall have the legal effect of being valid from and after the date of the meeting." *Id.* (emphasis added). Rankin argues that meeting means the meeting when the minutes are approved, not the actual meeting addressed by the minutes. However, this interpretation is inconsistent with the plain language of the statute.

Following *Rankin's* logic, if the City did not hold a regularly scheduled meeting within thirty days, but it approved the minutes within thirty days of the original

meeting as required by section 21-15-33, then the minutes would have no legal effect. In this situation, there would be no meeting within Rankin's interpretation of section 21-15-33 to mark the legal effect of the minutes. Rankin's argument is without merit.⁵

Paragraph 15 of the Complaint.

Turning now to the Complaint's Paragraph 15, it recites content of the following statutes found in the Mississippi Code:

Miss. Code Ann. §21-8-7, Miss. Code. Ann. §21-8-9, Miss. Code Ann. §21-8-13, Miss. Code Ann. §21-8-15, Miss. Code Ann. §21-8-17, Miss. Code Ann. § 21-8-27, Miss. Code Ann. §21-8-41, Miss. Code. Ann. § 21-17-7, Miss. Code Ann. §31-7-13, Miss. Code Ann. §33-15-5, and Miss. Code. Ann. §33-15-17. The court finds all of these statutes to exist as enforceable law in the State of Mississippi.

Paragraph 15 also cites Articles 1 and 2 of the Mississippi Constitution. The court finds both these articles to exist as enforceable law in the State of Mississippi.

Paragraph 15 recites the following opinion of the Mississippi Attorney General: Office of the Attorney General, Opinion No. 2012-00013, January 27, 2012. The court finds this opinion to exist as an enforceable ordinance of the City of Jackson.

Paragraph 15 recites the following ordinances of the City of Jackson: Section 2-336, Code of Ordinances of the City of Jackson., Sec. 106-111, Code of Ordinances of the City of Jackson, Section 2-62, Code of Ordinances of the City of Jackson. The court finds these ordinances to be valid, enforceable ordinances of the City of Jackson.

CONCLUSION

Based on the contents of the Complaint, the Mississippi Constitution and statutes, the court finds and declares as follows:

⁵*Rankin Group, Inc. v. City of Richland*, 8 So.3d 259, 261 (Miss. App. 2009).

- a. The Council has no authority to negotiate and/or execute a contract for the collection of residential solid waste, absent the existence of the exceptions in Miss. Code Ann. §21-8-19;
- b. The Council has no authority to amend the Mayor's order declaring a local emergency, and instead, after the Mayor declares a local emergency the Council is required to approve or disapprove the proclamation; and,
- c. The Mayor has the authority to find independent contractors/vendors who can provide necessary emergency services and present contracts to the Council for approval.
- d. Only the Mayor may negotiate a contract for solid waste disposal on behalf of the City of Jackson.
- e. Whether a contract binding the City of Jackson for solid waste disposal is negotiated through the RFP process or pursuant to emergency authority under Miss Code Section 33-15-17(b), the contract is not a binding contract that is enforceable against the City of Jackson unless and until it has been properly approved by the Council.⁶

SO FOUND, ORDERED, AND DECLARED this 31st day of March,

2022.

Jess H. Dickinson, Special Chancellor

⁶For the possible exception to this requirement, see footnote 3.