

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

October 25, 2013

Albert Santa Cruz
Commissioner, DPS
P.O. Box 958
Jackson, MS 39205-0958

Re: Costs Associated with Printing and Issuing Gun Permits

Dear Commissioner Santa Cruz:

Attorney General Jim Hood has received your request and has assigned it to me for research and reply. Your question concerns a fee related to the issuing of gun permits. An Attorney General's opinion can neither validate nor invalidate past action of an officer or agency. Therefore, this opinion is given on a prospective basis only.

ISSUE

I am requesting an official opinion concerning the Department of Public Safety's ability to charge a \$6.00 photo fee to defray costs of printing gun permits in view of Miss. Code Ann. Section 45-1-21.

The photo fee charge of \$6.00 has been properly filed with the Secretary of State, by way of the Administrative Procedures Act, relative to gun permits as well as to all other cards currently issued by the Department of Public Safety.

Please render an official opinion stating whether Miss. Code Ann. Section 45-1-21, which specifically states the Department of Public Safety can charge a fee for services rendered, allows the agency to charge a \$6.00 photo fee to cover the costs associated with printing and issuing gun permits.

RESPONSE

Section 45-9-101 (5) of the Mississippi Code provides:

(5) The applicant shall submit only the following to the Department of Public Safety:

- (a) A completed application as described in subsection (4) of this section;
- (b) A full-face photograph of the applicant taken within the preceding thirty (30) days in which the head, including hair, in a size as determined by the Department of Public Safety, except that an applicant who is younger than twenty-one (21) years of age must submit a photograph in profile of the applicant;
- (c) A nonrefundable license fee of One Hundred Dollars (\$100.00). Costs for processing the set of fingerprints as required in paragraph (d) of this subsection shall be borne by the applicant. Honorably retired law enforcement officers shall be exempt from the payment of the license fee;
- (d) A full set of fingerprints of the applicant administered by the Department of Public Safety; and
- (e) A waiver authorizing the Department of Public Safety access to any records concerning commitments of the applicant to any of the treatment facilities or institutions referred to in subsection (2) and permitting access to all the applicant's criminal records.
(Emphasis Added)

First, the above provisions clearly provide that the applicant only submits the required items listed in Subsection (5). Subsection (5)(c) sets out the fees and costs related to the permit: A license fee of \$100.00 and costs for processing the fingerprints required for the license are the only fees and costs required to be submitted by the applicant. There is no provision authorizing a fee to cover a photo fee to cover costs associated with printing and issuing permits.

Section 45-9-101(20), cited in your request, authorizes the Department to "promulgate reasonable rules and regulations to carry out the provisions" of Section 45-9-101 but does not authorize the Department to charge fees not provided in the section.

Section 45-1-21 provides:

The Mississippi Department of Public Safety being required by law to keep various records and perform various services and being authorized to furnish certain records and services, said department, by direction of the Commissioner of Public Safety, shall establish and collect for such services a proper fee, commensurate with the service rendered and the cost of such service for the furnishing of any record or abstract thereof in the Department of Public Safety now or which may hereafter be required by law to be kept by said department, any photograph or photo copy or any report of any kind authorized by law, including services for polygraph tests and reports thereof.

No records shall be furnished by the Mississippi Department of Public Safety which are classified as confidential by law. All fees collected under this section shall be paid into the General Fund of the State Treasury in accordance with the provisions of Section 45-1-23(2).

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Provided, however, that any amount of said fee set in excess of those fees set in the schedule of fees on file with the Secretary of State under the Administrative Procedures Act as of November 1, 1990, shall be deposited by the State Treasurer to the credit of a special fund hereby created in the State Treasury and designated the Department of Public Safety Administrative Fund. Monies deposited in such fund shall be expended by the Department of Public Safety, as authorized and appropriated by the Legislature, to defray the expenses of the department. Any revenue in the fund which is not encumbered at the end of the fiscal year shall lapse to the State General Fund.

As opined in MS AG Op., Warren (October 25, 2013):


We are of the opinion that the authority to establish and collect fees pursuant to Section 45-1-21 is limited to the actual cost of furnishing records on file with the Department generated from the performance of various services and does not authorize the Department to create additional fees not provided in Section 45-9-101. We find no authority for a state agency to charge fees in excess of the statutory fees set by the Mississippi Legislature.

Therefore, based on the above, the Department of Public Safety may not charge a \$6.00 photo fee to cover costs associated with printing and issuing gun permits. As stated in MS AG Op., Warren (October 25, 2013) "these fees, being set by statute are not susceptible to being increased by the Department".

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



James Y. Dale
Special Assistant Attorney General