

2018 WL 7078055 (Miss.A.G.)

Office of the Attorney General

State of Mississippi
Opinion No. 2018-00388
December 7, 2018

Re: Maintaining Tax Book by the Chancery Clerk

*1 Samuel T. Barber, Esquire
DeSoto County Board of Supervisors
Post Office Box 346
Hernando, Mississippi 38632

Dear Mr. Barber:

Attorney General Jim Hood is in receipt of your opinion request and has assigned it to me for research and reply. In your letter, you state that you are requesting an opinion on behalf of the DeSoto County Chancery Clerk. You ask whether the chancery clerk has the authority to keep the tax book, referenced in Section 27-43-9 of the Mississippi Code, electronically.

In response, Section 27-43-9 provides:

Upon completing the examination for said liens, the clerk shall enter upon the tax sale book upon the page showing the sale a notation to the effect that such examination had been made, giving the names and addresses, if known, of said lienors, the book and page where the liens are created, and the date of mailing by registered mail the notice to the lienors. If the clerk finds no liens of record, he shall so certify on said tax sale book. In each instance the clerk shall date the certificate and sign his name thereto.

Section 9-5-137 provides:

It shall be the duty of the clerk to preserve and keep all records, files, papers and proceedings belonging to his office, and to record all last wills and testaments which may be probated; all letters testamentary, of administration, and guardianship; all accounts allowed; all inventories, appraisements, and reports duly

returned; all instruments which are duly proved, and which by law are required to be recorded in his office, in well-bound books to be kept for that purpose, each class in a separate book or books, *or by means of electronic filing or storage* or both in addition to or in lieu of any such physical records as provided in Sections 9-1-51 through 9-1-57, as the clerk may elect; all records shall be properly indexed. He shall issue all process which may be required of him by law or by order of the court, or the chancellor in vacation; and shall discharge all other duties which may be required of him by law, or which properly appertain to the duties of his office. The clerk shall be under the direction of the court in termtime, and of the chancellor in vacation.

Section 9-5-163 also provides:

The clerk of the chancery court shall be the custodian of all documents, records, books and papers belonging, or in any way appertaining, to the probate court, and of the board of police, formerly existing, except as to such as may be required by law to be kept by the clerk of the circuit court; and, as such custodian, he shall do and perform all acts in relation to such records, books and papers which were heretofore required of, or might lawfully have been done by, the clerk of the said probate court or board of police. *All such documents, records, books and papers may be kept by means of electronic filing or storage or both as provided in Sections 9-1-51 through 9-1-57, as the clerk may elect.*

*2 In a previous opinion, this office was asked whether pursuant to Section 27-41-79, a printed hard copy was sufficient to be counted as proof of a tax sale. MS AG Op., Allen (February 21, 2014). The statute requires that the tax collector transmit a “certified list” of the lands that were struck off to the state and sold to individuals. Our office opined that there is no requirement that the list be in a particular form, i.e., printed hard copy or electronic, and, thus, a certified printed hard copy of all lands included in the tax sale was sufficient. In another opinion, this office was asked whether, pursuant to Section 27-35-123, land rolls could be maintained in an electronic format. MS AG Op., McKenzie (October 30, 2015). Section 27-35-123 deals with the duty of the chancery clerk to prepare and file copies of the land rolls. Our office opined that there is no requirement in the statute that copies, or reproductions of such copies, of each roll be in a particular form. Thus, the land rolls required to be maintained by the chancery clerk may be maintained in digital or electronic format as opposed to a paper copy.

As in the Allen and McKenzie opinions, there is no requirement that the tax book be kept in a particular form. Additionally, Section 9-5-137 provides that all records, files, papers, proceedings, inventories, appraisements and instruments mandated to be kept or recorded by the chancery clerk may be in electronic filing or storage. Section 9-5-163 also provides that books, i.e., tax book, required to be kept by law may be kept by the chancery clerk by means of electronic filing or storage or both as provided in Section 9-1-51 through Section 9-1-57. Thus, it is the opinion of this office that the DeSoto County Chancery Clerk may keep the tax book in electronic format, and any certification required pursuant to Section 27-43-9 may be certified by electronic signature. *See* Miss. Code Ann., Section 27-3-83(5) (as amended) (electronic signature is swearing under oath that all information contained in the document is true and correct and that he or she has the same authority to sign the document or affix the electronic signature to the document as the person filing the document or as the duly authorized representative of the person or entity for whom the document is being filed). However, please note that the chancery clerk must ensure that there is free access to the tax book on public computer terminals.

If this office may be of any further assistance to you, please let us know.

Sincerely,

Jim Hood

Attorney General

By: Avery Mounger Lee

Special Assistant Attorney General

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