

LAWS PERTAINING TO PROPERTY

Preliminary Draft

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University of Mississippi

Law Center

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FOREWORD

This volume is one of ten representing a compilation of Mississippi laws which most significantly affect the use and development of the state's marine and coastal zone. This project was conceived and substantially completed by Professor Frank L. Maraist of the University of Mississippi Law Center under the auspices of Mississippi-Alabama Sea Grant Consortium and the University of Mississippi.

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INTRODUCTION

The law of property in the State of Mississippi can be divided into the basic categories of public and private property. These categories are used herein and are further sub-categorized in terms of the various land uses to which the property is placed.

Section one of property law deals with public property. It is divided into sub-categories according to the following land uses: airports; roads; highways, bridges and ferries; fisheries, harbors and ports; submerged lands and marsh lands; sixteenth-section lands; industrial parks; recreational parks; public buildings and lands; cemeteries; and mineral resources. Control of property is discussed in terms of how the property is effected by various state and local agencies. The discussion includes methods of acquiring land and raising revenues. Also included are the discussions of procedures for construction, restoration, development and protection of property as well as all restrictions placed on the property.

Section two of this property study involves a similar treatment of private property, and is divided into the various sub-categories.

Several factors prevent the placement of all property laws into the various categories and sub-categories included herein. The multiplicity of land uses, in itself, prevents the creation of a sub-category for every use. In addition, there are numerous property laws which apply to all land uses and, therefore, warrant separate discussion. These laws have been included in a separate category entitled "General Property Laws".

The laws of eminent domain are discussed in each sub-category according to their affect on different uses of land. However, because of the significance of the law of eminent domain, the subject is also discussed comprehensively in a separate category composed of various laws and regulations on the subject.

The final section of study is a collection of laws concerning water resources, rights and management. The topic of water management is subdivided to include discussions of flood control, drainage, and the improvement of Mississippi waterways. A further subdivision deals with the general laws of water resources and includes laws relating to prior appropriation and riparian doctrines.

It should be noted that the all inclusive term "property" has been discussed in every section of the overall Sea Grant research study. For example, the sections on Living Resources, Mineral Resources, Environmental Control and Recreation all comment on certain laws referring to "property". The reader should be aware of this and refer to other appropriate studies in the program. For example, the subject of "Parks" receives general treatment under this Property Section as well as a detailed discussion in the Recreation Section. Consequently, the law dealing with each of these other fields should be consulted when necessary, by referring to cross references made from this chapter to other appropriate sections.

I. GENERAL PROPERTY LAWS

A. Nuisance.

Municipal governing authorities have the power to make and enforce regulations designed to control and abate nuisances. These regulations govern control of garbage collection, the keeping of animals, the operation of sanitation facilities,¹ and the prevention of certain manufacturing plants from operating when smoke or noise damages the occupation of any other private property.² The City of Gulfport, for example, enacted a law requiring all property owners to provide for the disposal of excreta.³ The City of Pascagoula enacted a law making it a nuisance to trap, hunt, or shoot any bird within the city limits,⁴ and further provides that any person maintaining a nuisance within the city limits shall be guilty of a misdemeanor.⁵

The Mississippi Code defines a nuisance⁶ as a place in or upon which lewdness, assignation or prostitution is conducted, permitted, or existing.⁷ Any person using, occupying, or establishing such a place is guilty of maintaining a nuisance.⁸ When such a nuisance exists, the Attorney General of the State or any other person may bring a suit in equity to perpetually enjoin the perpetrator from further misconduct.⁹ A complainant may receive a restraining order from a court in the county in which the property is located.¹⁰ No bond is required for any such restraining order.¹¹ Should such an order be given by the court, the building housing the nuisance may be closed down until a permanent injunction should issue.¹² Violation of any injunction closing order or restraining order is punishable by a fine and imprisonment.¹³ If a tenant or occupant of a building

uses such place as nuisance, such use will annul and make void the lease or other title under which he holds and, without any act of the owner, will cause the right of possession to revert and vest in him, and he may, without process of law, make immediate entry upon the premises.¹⁴

B. Pollution.

The Mississippi Air and Water Pollution Control Commission was created to develop comprehensive programs for the prevention, control, and abatement of pollution of the air and water of the state. The commission has the power to adopt, modify and promulgate standards of quality of the air and water of the state, and to adopt rules and regulations as necessary to prevent, control and abate pollution. To aid in these objectives, the commission is given additional powers to control discharges of waste, require construction of disposal systems and cleaning devices, require submission of plans and data relative to disposal systems and cleaning devices, hold hearings to determine violations of existing provisions, issue and deny permits to discharge wastes, and exercise all incidental powers necessary to carry out the prevention of pollution.¹⁵

The commission has the power to enter, at reasonable times, upon any private or public property for the purpose of inspection and investigation of conditions relating to possible pollution. The commission may also have access to such records as it requires in relation to the operation of anti-pollution devices, and may make tests upon samples of contaminants. Monitoring equipment may be used by the commission to detect pollutants.¹⁶

Any person discharging waste into any waters of the state of Mississippi, must pay an annual fee for inspection of their waste disposal to determine if such

constitutes pollution.¹⁷ The term pollution refers to contamination or other alteration of the nature of any waters, or such discharge of any substance that will create a nuisance or render such waters harmful to public health or welfare, or to domestic, commercial, industrial, agricultural, recreational or other beneficial use.¹⁸

C. Trespass.

Persons unlawfully entering and intruding upon state lands may be proceeded against by an action instituted by the district attorney of the county. Damages will be assessed for rents and profits, and for injury to the property or improvements. If the trespass concerns the cutting, belting, girdling, boxing or otherwise injuring of the timber, triple damages can be recovered.¹⁹

On certain conditions trespass may be allowed. The U. S. Government, severally or in connection with counties or the highway department, has the right to authorize its employees and agents to enter upon property for the purposes relating to the construction or maintenance of a federal roadway, parkway or trace.²⁰ Similarly, employees of the State Highway Commission²¹ and Geological Survey²² may enter upon all lands for the purpose of making surveys and examination. However, no authorization is given for unnecessary interference with private rights. In addition, the State Forestry Commission²³ and the Mississippi Air and Water Pollution Control Commission²⁴ may inspect any private or public property to search for inspect pests and possible polluters, respectively.

D. Emergency Restrictions.

During a civil defense emergency, the Governor of the State of Mississippi

may use and employ any property, services and resources within the state. In addition, the governor has the power to halt the use of lights and appliances, suspend utility services, and control movement of traffic over the state's highways.²⁵

Municipalities may also restrict certain activity during a civil emergency. The chief administrative officer of a municipality may close retail liquor stores, halt the sale of intoxicating liquor or beer, and halt the transfer of any type of explosives or firearms.²⁶

In the event of an actual enemy attack against the United States and the State of Mississippi, the governor may, under the emergency powers, utilize private property for the protection of the public, including transportation and communication facilities, buildings and plants, and other buildings. Adequate compensation will be paid for any property so utilized or taken.²⁷

Except in cases of wilful misconduct, neither the state nor political subdivisions thereof, nor employees of any of them engaged in any civil defense activities will be liable for damages as a result of such activity.²⁸

When a natural disaster occurs in any area and the governor proclaims such area to be a disaster area, the governing authorities of any county or municipality adversely affected by such disaster may use public equipment and

employees as necessary to venture on private property to aid in removing debris and preventing damage, and may similarly perform necessary services to prevent health hazards to the community at large. Such ventures onto private property will be at the request of the property owners.²⁹

The governing authorities of municipalities have the power to insure all public property against fire and tornado, with premiums to be paid out of the municipal treasury.³⁰

E. Government purchase, sale or lease of property.

Every municipality in the state is a municipal corporation and has the power to purchase and hold real estate within or without the corporate limits for proper municipal purposes such as parks, cemeteries, houses of correction, hospitals, school houses, water works, and sewerage systems. Municipalities may also purchase and hold personal property and do all acts in relation to property or affairs of the municipality necessary to exercise governmental administrative powers.³¹

Any municipality owning a museum or land on which one is located may, if such was acquired without public funds, donate the same to a state university or four year college located in or near Mississippi.³² Similarly, if a municipality is near a state university or four year college, it may contribute funds to any airport used by the university or college to aid in development of the facilities.³³

Any municipality holding the title to real or personal property not purchased with public funds or used for governmental purposes, but occupied and used by industry engaged in manufacturing, may contract privately with said industry to dispose of said property to them. Also, the municipality may lease the same

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for a term not to exceed 75 years.

The State Forestry Commission is authorized to acquire and dispose of property of all kinds in the discharge of its duties. It may sell, rent, lease and dispose of property in the same manner provided by law for disposition of surplus property by other state agencies. All funds received from such disposition must be paid into the state treasury to the credit of a special account. Such funds may be used for maintenance of all property owned under this act. 35

The State Mineral Lease Commission is authorized to lease all state-owned land to any reputable person or company for oil, gas, or other minerals. The exceptions are sixteenth section lands, lieu lands, and tax lands, the title to which is subject to lawful redemption. Such lease contract must not be for more than 7/8 of the minerals, gas, or oil, the state retaining a 1/8th royalty. The commission may lease submerged beds for sand and gravel, but where the waters lie between this state and adjoining state, there must be a cash realization to this state equal to that being had by the adjoining state. 36

The Land Commissioner, with the governor's approval, has the authority to rent or lease all lands belonging to the state for a period not exceeding one year. However, no state land will be rented or leased to entities for hunting and fishing purposes. State land within municipalities may likewise be rented or leased. No notice is necessary on the part of the state to terminate the leases or rental contracts, but such automatically terminate on the date provided for in such contract. 37

The Land Commissioner, with governor's approval, may rent or lease surface or submerged lands owned or controlled by the State of Mississippi lying

in or adjacent to the Mississippi Sound or Gulf of Mexico or streams emptying therein, for a period not exceeding five (5) years of annual rental. Such lease may provide for cancellation by the state at its option. The lessee may construct such necessary aids to navigation but not obstructions thereto.³⁸ The Land Commissioner, with the consent of the governor, may prosecute suits, in the name of the state, concerning public lands, through the attorney general, a district attorney, or any attorney-at-law employed by him for that purpose.³⁹

The State Land Commissioner, with the approval of the governor and the attorney general, may convey easements for the construction and maintenance of pipe lines in, under, on and across all state owned land, with a few exceptions, to any person, firm or corporation constructing or operating a refinery for the refining of oil, gas or petroleum products.⁴⁰

Each member of the county board of supervisors is required to file an annual inventory of personal property owned by the county with the chancery clerk of his county. Similarly, any member not succeeding himself in office must file such an inventory not less than ten days prior to the expiration of his term. Failure to comply with this order is considered a misdemeanor. It is also unlawful for a supervisor, defeated in a primary, to sell or dispose of any property between the date of the election and the date his successor takes office.⁴¹

F. Building Restrictions.

1. Building Codes, General.

The governing authorities of any municipality are responsible for the care, management and control of municipal affairs, property and finances.

Therefore, such authorities have the power to enact city ordinances not repugnant to state law. The cities also have the power to alter, modify or repeal these ordinances.⁴² Similarly, the municipalities may adopt building codes, plumbing codes, or other codes dealing with the general public health, safety and welfare. After approval by the municipal authorities the codes must be certified by the mayor and clerk, and then filed as a permanent record.⁴³

In order to promote the general welfare, health and safety of the inhabitants of Pascagoula, Mississippi, that municipality adopted the Southern Standard Building Code⁴⁴ and the Southern Standard Housing Code.⁴⁵ Violators of such codes are guilty of a misdemeanor with a separate offense occurring for each day that the violation is committed.⁴⁶ Nothing within the building code repeals or limits any provisions of the zoning ordinances of the city which imposes or requires stricter limitations in the location and use of properties. However, all persons are required to observe the provisions and requirements of both the provisions of the building code and the zoning ordinances.⁴⁷

The city of Biloxi, Mississippi has also adopted a building code, a copy of which is kept on file in the city clerk's office.⁴⁸

Responsibility of enforcing the building codes is generally given to a building official. These officials, with the approval of the city manager, may appoint such officers, assistance, inspectors and other employees as required. The city of Pascagoula requires that its building official or "inspector of construction" have at least five years experience as a building inspector, builder, engineer, architect, superintendent, foreman or mechanic in charge of construction.⁴⁹

The city of Pascagoula gives its building official the power to enter any

building in the performance of his duties.⁵⁰ Upon notice by the building official that work on any building is being done contrary to that specified by the various technical codes, or that construction is being done in a dangerous and unsafe manner, such work and construction will be stopped immediately. Such notice must be in writing and must be given to the owner of the property or his agent or the person doing the work. It will state upon what conditions the work may be resumed.⁵¹ The building official has the further power to approve materials and methods of construction and to see that said materials and methods comply with the standards set forth in the various technical codes.⁵²

2. General Restrictions.

The Pascagoula municipal code provided that the owner of every house, building, or lot in the city, is required to have a number in accordance with the official numbering system prescribed by the city.⁵³ Property owners are further restricted by the code from planting, growing and maintaining any plants, hedges, shrubs or other growths in certain restricted areas of the city.⁵⁴ Other code sections prevent the obstruction of any public way by any fence or building,⁵⁵ require owners to repair any sidewalk abutting their property,⁵⁶ allow the city to repair said sidewalks at cost to the owner should the owner fail to do so after proper notice,⁵⁷ and restrict any property owner from having an abandoned ice box or refrigerator on his property.⁵⁸ In addition, city ordinances have been used to prevent the construction of houses and buildings lacking proper sanitary facilities,⁵⁹ to limit the location of free standing mobiles within city limits,⁶⁰ to control the erection or enlargement of buildings in the city,⁶¹ to control outdoor and indoor advertising devices throughout the city.⁶²

The governing authorities of any municipality, on its own motion or upon receipt of a petition, may require that certain parcels of land be cleared and may order the owner to clear the land for reasons of public health. Should the owner fail to comply, the city may have it done and charge the owner with the cost.⁶³ The municipal authorities, as well as the board of supervisors of any county also have the power to regulate the construction and maintenance of telephone or telegraph lines.⁶⁴

3. Removal of Slum and Unsafe Housing.

Because a public necessity exists for the repair or elimination of certain buildings, municipalities are granted power to exercise police power over buildings which are unfit for human habitation, use or occupancy, due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or other conditions rendering such buildings unsafe, unsanitary, dangerous or detrimental to the health, safety, morals or welfare of municipality residents.⁶⁵

Municipalities may adopt certain ordinances for slum clearance. An officer may be appointed to exercise slum clearance powers. Upon a petition of five residents, the officer will investigate charges that a building is unfit for human habitation. The officer may issue orders to repair or close the buildings.⁶⁶ If such orders are not followed, the officer may cause the building to be repaired if the costs are reasonable in relation to the value of the building. A special tax may be levied to defray the costs. If these taxes are not paid, a tax sale may be had. If the building must be demolished, materials in the building may be sold to pay for such. Any excess will be paid into the circuit court for the owner.⁶⁷

The public officer may determine that a building is unfit for human habitation, use or occupation, if he finds that existing conditions are dangerous or injurious to the health, safety or morals of persons using the building. Such conditions include defects increasing hazards of fire, accident or other calamities; lack of adequate ventilation, light, or sanitary facilities; delapidation; disrepair; structural defects; uncleanness; and other as the ordinance provides.⁶⁸

In Pascagoula all buildings deemed to be unsafe are declared illegal and are abated by repair and rehabilitation or by demolition in accordance with the following procedure. Upon determination that the building is unsafe, the building official will give the owner, his agent, or the person in charge of the building notice of the defects and state a time by which he must complete repairs or demolish the building.⁶⁹ If necessary the notice will require that the building be vacated until the specified repairs are made. Notice to this effect will be placed on the entrance to such building. It is unlawful to remove the notice or to enter the building except to make repairs. The owner may appeal this notice to the city council.⁷⁰

If the owner cannot be found or if he fails to comply with the notice, the building official, after having ascertained the cost, will cause such building to be demolished, secured, or required to remain vacant. The decision of the building official is final in cases which involve imminent danger to human life or health. Such building must be made safe or removed. Loss incurred will be charged to the owner of the premises involved.⁷¹

Complaints or orders issued by a public officer must be served either personally or by registered mail. If the owner cannot be found through a

reasonably diligent search, service may be by publication as provided for in this statute with a copy conspicuously posted on the premises and a copy filed in the lis pendens notices. The rules of evidence of law and equity do not apply in hearings before such public officer.⁷²

Restraining orders and hearings on orders may be given by the public officer. Any person affected by an order issued by the public official may apply to the circuit court for an injunction restraining the officer from carrying out the order. Hearings must be within twenty days or as soon as possible thereafter. The court will issue the final order, the finding of the public officer being conclusive if supported by evidence. Costs are in the court's discretion. Damages may not be given for the public officer's actions or failure to act.⁷³

The public officer is authorized to investigate the building conditions to determine its fitness for human habitation, use, or occupation; to administer oaths, affirmations, examine witnesses, and receive evidence; to enter premises to make examinations with the least possible inconvenience to the person in possession; to appoint and fix the duties of such officers, agents and employees as he deems necessary; and to delegate his powers to agents and officers.⁷⁴

An estimate of costs must be made by any municipality adopting a slum clearance ordinance for the annual expenses required to provide equipment, personnel, and supplies for carrying out the provisions of the ordinances. Municipalities may make necessary appropriations from their revenue and may accept and apply grants to assist in carrying out ordinances.⁷⁵

4. Subdivisions and Plats.

Certain coastal cities have adopted subdivision regulations. In Pascagoula

the city planning commission recommends to the city council rules and regulations governing the approval of subdivision maps and plats. The planning commission may initiate studies to determine subdivision of land.⁷⁶

Subdivision means the division of a lot, tract or parcel of land into two or more lots, plats, sites or other divisions of land, any parcel of which is less than five acres, for the purpose, immediate or future, of sale or building development. It includes resubdivision of any land previously divided into lots, tracts, sites or parcels, and when appropriate to the context, also relates to the process of subdividing or to the land or territory subdivided provided that no new streets, roads or other rights-of-way are improved.⁷⁷ The purpose of the subdivisions regulations is to promote the health, safety, morals and general welfare of present and future residents and to bring about the coordinated and effective development of the city of Pascagoula.⁷⁸

Any owner of land wishing to subdivide must submit a plat of the subdivision to the Planning Commission. The plat will not be filed and recorded in the chancery clerk's office until preliminary approval has been given by the Planning Commission and such filing has been authorized by the city council.⁷⁹

Recording of a preliminary plat does not constitute an acceptance of the streets or improvements dedicated on such plat or impose any duty on the city as to the opening of any such streets, the maintenance thereof, or the installation or maintenance of any utilities. The preliminary approval of a plat is not noted upon the recorded plat. No subdivision may sell lots until final approval has been given by the Planning Commission, and such approval noted by written endorsement on the plat.⁸⁰

Gulfport has also adopted subdivision regulations, as authorized by Title 16, Article VIII, Section 3374, of the Mississippi Code. The regulations govern all subdivisions of land within the city. Subdivision plats must be approved by the city. Any other applicable statutes, ordinances, or regulations which require higher standards govern.⁸¹ The procedure for review and approval of a subdivision by the Planning Commission consists of two steps: the preparation and submission for review and tentative approval of a general subdivision plan; and the preparation and submission for review and final approval of a final plat.⁸²

Gulfport ordinances provide for specific requirements which are to be contained in the sketch plan, the general subdivision plan, and the final plat of a subdivision.⁸³ Also described in detail are the design standards for subdivisions including principles of acceptability, street layouts, block layouts, lot sizes and shapes, and public spaces.⁸⁴

5. Zoning.

For the promotion of health, safety, morals, or the general welfare of the community, the legislative body of any municipality may regulate the height, number of stories and size of buildings and other structures; the percentage of lot that may be occupied; the size of the yards, courts and other open spaces; the density of the population; and the location and use of buildings, structures and land for trade, industry, residence or other purposes. For playgrounds and public parks, municipalities possess the power of eminent domain and the right to apply public money thereto, and the power to issue bonds permitted by law.⁸⁵

For zoning purposes, a municipality may be divided into districts. Within the districts, the municipality may regulate and restrict the erection, construction, alteration, repair or use of buildings, structures or land.⁸⁶

Regulation must be uniform as to classes of buildings within a district, but may differ from district to district. Municipalities may impose necessary restrictions on new subdivisions before dedication and may receive easements necessary to effect the law.⁸⁷

A comprehensive zoning plan is authorized. Regulations are permitted to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. The character of the district should be considered and the most appropriate use of land encouraged.⁸⁸

The legislative body of the municipality will provide for establishment and change of zoning district boundaries and regulations.⁸⁹ In making or changing zoning regulations governing authorities may provide that the public hearing be before the city engineer or advisory committee of citizens.⁹⁰ An aggrieved party is entitled to a hearing by governing authorities. A municipality with a population over 140,000 (1960 census) may restrict such hearing to the record as made before the engineer or advisory committee. If there is a protest by owners of twenty percent of the area within the change or immediately adjacent territory, the change will be effective only on a favorable vote of two-thirds of the governing authorities.⁹¹

A city engineering department or an advisory committee of citizens may be used by municipality authorities in zoning matters to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. A preliminary report may be made, and public hearing held thereon before submission of the final report.⁹²

In Pascagoula, the City Planning Commission acts as the zoning commission for any general revision of the zoning ordinance. Subsequent applications for re-zoning or amendment of the zoning ordinance is reviewed by a zoning reviewing committee of the planning commission which will report its finding at the next regular meeting of the planning commission for recommendations by the commission to the city council. Duties specifically designated in the zoning ordinance to the planning commission are reviewed by the zoning review committee, which may call public hearings.⁹³

If a building is erected or used in violation of the zoning law or any ordinance, the county or municipality authorities, in addition to other remedies, may institute action to prevent the violation.⁹⁴ Such violation is a misdemeanor punishable by fine of not more than \$100, provided there is no other criminal penalty. For continuous violation without reasonable effort to correct by defendants, each day of the violation is a separate offense.⁹⁵ If zoning statutes or local ordinances or regulations conflict, the highest standards will be controlling.⁹⁶

G. Revenues of Municipalities.

1. Bonds and Finance.

Municipal governing authorities may issue negotiable bonds, notes or certificates of indebtedness to raise money for certain purposes.⁹⁷ The indebtedness of municipalities is limited to ten percent of the assessed value of taxable property within the municipality.⁹⁸ The governing authorities of a municipality will annually levy a special tax upon all the taxable property within the municipality to provide for the payment of the principal interest on such bonds.⁹⁹

The municipal governing body, before issuing bonds, must adopt a resolution declaring its intention and provide for newspaper publication or posting in a public place where no newspaper is available of such resolution. If ten percent or 1,500 qualified electors protest, an election will be called with similar notice given. If no protest is made the municipality may issue bonds without an election within two years of the resolution. The authority may, at its discretion, call an election.¹⁰⁰ Under no circumstances will any municipality exceed the bond limit as set by statute.¹⁰¹

The governing authorities of any municipality may borrow money in anticipation of ad valorem taxes. The money shall be used only for paying the expenses of the municipality and may not exceed half the anticipated taxes. Notice and election are not required. The money must be repaid by the following March 15th at an interest rate no greater than six percent. Authorization will be by resolution and evidenced by a negotiable note or notes. Borrowing may

be in excess of statutory limitations.¹⁰² These regulations apply to all municipalities of the state.¹⁰³

The governing authorities of any municipality may cause certain local improvements to be made, wholly or in part, at the cost of benefitting property owners by collecting special assessments. The authorities also are given power to finance improvements.¹⁰⁴ The local improvements authorized include improving streets and walkways and water and sewer systems.¹⁰⁵

2. Taxation and Finance.

All lands and other taxable property subject to assessment held by any person within the municipality, or in added territory, on the first day of January, will be assessed and ad valorem levied and collected for the ensuing year.¹⁰⁶ The form of the land assessment roll will be prescribed by the governing authorities of each municipality and must adhere to the basic form prescribed by the state tax commission. Added territory is placed on a land roll in the form used in assessment of county lands. The land roll should include the owner's name, property description and assessed value. The form may be adapted to use of accounting machines equipment.¹⁰⁷

Except for land assessed by the state railroad assessment, municipal assessment may be accomplished by copying part of the county land roll or by separate municipal assessment every one or two years. Assessment must be completed by the first day of September and filed with the clerk, unless the governing authorities grant additional time. If separate assessment is made,¹⁰⁸ the tax lists should be generally the same as prescribed for county assessors.

Public utilities also must be assessed. The municipality assessment

of railroad property required by law to be assessed by the state railroad assessors will be made by copying, from the assessment roll of such property filed with the clerk of the board of supervisors, the assessment of all the property situated inside the municipality and the added territory constituting a separate school district. This will constitute the municipality's legal assessment and be the tax collector's warrant for collecting ad valorem taxes. A municipality's governing authorities may present information respecting property owned by public utilities to the state assessor.¹⁰⁹

After obtaining the assessment of private car companies from the clerk of the board of supervisors, the municipality clerk or tax collector must determine the amount by multiplying the valuation of each company apportioned to each mile of railroad by the number of miles of railroad over which the cars of any such company have traveled lying in such municipality or added territory plus the value of any other property assessed.¹¹⁰

The assessor will assess the land in the municipality and the separate school district, entering all assessments on the roll and commencing the assessment with the lowest number of squares or blocks and lots or other subdivisions and proceeding numerically. Any lands not divided will be assessed according to the section, township and range. Unless altered by municipal authorities the assessor must complete and file the rolls with the clerk by the first Monday in September along with his affidavit.¹¹¹

Failure to do any act with respect to the roll does not affect its validity, if it is corrected, revised and approved by the municipal authorities.¹¹² If the municipal authorities fail to hold any meeting for the equalization of assessment

rolls or for hearing objections to assessments, or if the board fails to give the proper notice to the taxpayers, notice will be given immediately, and the authorities will proceed as provided by law, except as to time.¹¹³

The municipal authorities must hold a meeting in September or October to receive assessment rolls of property from assessor and proceed to change, correct, revise and equalize the assessments in the same manner and with the same powers as is provided for the equalization of assessment by county boards of supervisors. Ten days legal notice by publication or otherwise will be given thereafter for objections.¹¹⁴ The municipalities' authorities must hold a meeting at the time and place mentioned in the notice to hear objections to the assessment rolls and determine all objections.¹¹⁵ After completion of the roll the municipal clerk will make a copy for the tax collector and retain the original as a public record. The clerk will make an accurate copy of the amount of property assessed to each taxpayer and the assessments of all property in the municipality and added territory. The copy, given to the tax collector with the clerk's verification, will serve as a warrant for tax collection.¹¹⁶

The tax collector must give everyone paying taxes a signed receipt, dated, numbered and filled in to show by whom, and on what, taxes were paid.¹¹⁷ Any taxpayer or person with a legal interest in the property taxed may appeal an assessment in circuit court within twenty days after final approval by the authorities.¹¹⁸ Assessments may be changed by the municipal authorities after the roll has been approved but not after the expiration of the fiscal year in which the taxes on the assessment are due and payable. Municipal assessments may

be changed in the same manner as county assessments; they need not be approved by the state tax commission.¹¹⁹

Reductions must be applied for by property owners; increases, by the assessor. The clerk must file such petitions as public record, keeping them for three years after the expiration of the fiscal year.¹²⁰

The assessor will, in the same manner and at the same time as municipal assessments are made, make an assessment of all taxable property in any added territory. This becomes a part of the assessment roll of the municipal separate school district.¹²¹

At the first regular meeting in September the municipality authorities will fix the tax rate in mills or a decimal fraction of a mill by resolution determining the amount to be collected based on the assessed value in the municipality and taxing districts. If taxes are not levied before September 15th, the sheriff or motor vehicle comptroller may issue road and bridge privilege tax license plates without collecting or requiring proof of payment of municipal ad valorem taxes until such levy is certified to him.¹²²

Property which has escaped taxation within the past seven years may be taxed. The authorities may assess tax on each year the property escaped tax if a day is set to hear objections and the owner is given ten days written notice by mail, or by posting if the address of owner is unknown. If railroad property or property of a public service corporation escapes taxation, the state railroad assessors must give notice to the owner and assess the property.¹²³ When property that has previously escaped taxation is taxed, the owner has thirty

days to pay. Upon the owner's failure to pay, the municipal authorities must set a time for sale following the laws governing tax sales.¹²⁴ After a void tax sale, municipal governing authorities may assess escaped taxation and proceed with a legal sale. Revisions and corrections are entered on the assessment roll for the year in which such order or revision is made. Notice of a day for objections will be given to the property owner.¹²⁵

The owner or any person interested in any land sold in a tax sale has two years to redeem the property.¹²⁶ Redemption is made by paying taxes, damages and costs. Upon payment the municipality clerk will execute a release of all claim or title of municipality or purchaser. The release is recorded without acknowledgement and operates as a quitclaim by the municipality or purchaser.¹²⁷

The governing authorities of any municipality may have municipal lands appraised, surveyed, the area determined, and any buildings, structures or improvements valued for assessment. Survey and appraisal may be by the assessor or other competent person or persons selected by the authorities and paid for by the general fund.¹²⁸ The clerk will prepare a permanent public record and make available to the assessor or any state official with property assessment duties. Municipal authorities are authorized to keep land value records and to revise them to keep the records current.¹²⁹

Municipal taxes will be collected in the same manner as state and county taxes. The tax collector is governed by the general revenue laws where applicable. He must report to the governing authorities and pay over the money collected to the municipal treasurer or depository. The tax collector receives such commissions or compensations as allowed by ordinance.¹³⁰

Real or personal property may be sold upon failure to pay municipal taxes, both ad valorem and special improvements. The sales are made in the same manner as sales for unpaid state and county taxes. If not sold on the day appointed by law, the land will be sold thereafter by order of the governing authorities. ¹³¹

A list of lands sold is filed with municipal clerk, and redemption is the same as provided for state and county sales. One copy of the sold lands must be filed within thirty days with the chancery clerk, who shall file and index the list in the land records. Failure to file will not affect the validity of the sale. ¹³²

If for any reason a land sale for municipal taxes is not made at the time appointed by law, the municipal governing authorities will set a time. Notice must be given, and the land sold as provided for by law. The list of land sold must be filed with the municipal clerk within the same relative period of time as after regular sales. The clerk will immediately record the list and the sale has the same effect as regular sales. ¹³³

A list of the conveyances of land sold for municipal taxes, either to the municipality or to individuals, must be recorded in a well-bound and indexed record book kept in the office of the mayor or the city clerk of the municipality. All redemptions of the lands must be noted on the record book. ¹³⁴

Lands are to be struck off to the municipality when they are offered for sale for unpaid municipal taxes, special improvements taxes, or municipal separate school district taxes if no one bids the amount of taxes, or municipal separate school district taxes if no one bids the amount of taxes, damages, and costs due. The governing authorities are authorized to pay the state and county taxes on such lands. Payment plus damages and interest will be collected by

municipality upon redemption.¹³⁵ Where lands that have been struck off to a municipality have also been struck off to an individual or the state, the municipality may redeem the land by paying the amount owed plus six percent interest. After redemption by the municipality, the owner or person interested in the land may redeem the land from the municipal sale.¹³⁶ Where lands are struck off to a municipality for unpaid taxes and the title has matured in the state by virtue of another sale, the governing authorities of the municipality may purchase the land from the state at a price to be agreed upon by the land commissioner, governor, or other lawful authority. Upon payment, the state will patent the land to the municipality.¹³⁷ When the state, county or taxing district taxes are paid by a municipality, or where lands are redeemed or purchased by a municipality, such lands is not from state, county, or other taxing district taxes.¹³⁸

The lists of lands sold for taxes by the municipality will be made as required by the state and county collector and filed within twenty days after the tax sale with the municipal clerk. Title is subservient to any title acquired under a sale for state and county taxes.¹³⁹ A municipality may purchase land at state sales provided it has a tax lien for special improvements or any other tax lien upon the property. When property upon which the municipality has a lien is sold for state and county taxes, the municipality may redeem as any other lien holder.¹⁴⁰

When redemption time for a municipal tax sale has expired or when a municipality has purchased at a state tax sale, the municipality may take possession of lands and sell as expeditiously as good business may require. Lands may

be leased until a sale can be made. The sale or lease may be done by resolution of governing authorities. The legislature gives the municipal authorities power to fix specific prices, terms and conditions.

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Any municipality may issue notes, bonds or certificates of indebtedness for the amount of tax due when the municipality buys property for delinquent taxes for a period not more than one year after time for redemption. In addition to pledging the full faith, credit and resources of the municipality, the municipality may pledge the taxes and damages from delinquent tax sales.

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Upon such issuance, all funds collected on the delinquent taxes and damages, or the sale of the property, in the event the title ripens in the municipality, will be set aside as a special fund or trust fund for the retirement of the notes. The interest rate may be no more than six percent.

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Erroneously paid taxes, either privilege or ad valorem, must be refunded by the governing authorities of a municipality. The procedure includes submitting an application to the governing authorities, auditing by municipal clerk if allowed, certifying to mayor by clerk amounts due, and the issuing by the mayor a warrant on the treasury or depository in favor of claimant.

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Any person, firm or corporation aggrieved by the action of the governing authorities of any municipality has the right of appeal to the circuit court of the county.

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GENERAL PROPERTY LAWS

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)]

1. § 21-19-1.
2. § 21-19-15.
3. Gulfport, Miss. Code § 14-19 (1963).
4. Pascagoula, Miss. Code § 20-11 (1967).
5. Id. § 20-24.
6. § 95-3-1.
7. Id.
8. § 65-3-3.
9. § 95-3-5.
10. § 95-3-7.
11. § 95-3-9.
12. § 95-3-11.
13. § 95-3-19.
14. § 95-3-23.
15. § 49-17-17.
16. § 49-17-21.
17. Id.
18. Id.; For a thorough analysis of the Mississippi Air and Water Pollution Control Commission, see the volume of this study dealing with Environmental Control.
19. § 11-45-7.

20. § 55-5-5.
21. § 65-23-103.
22. § 53-5-13.
23. § 49-19-7.
24. § 49-17-21.
25. § 33-15-11.
26. § 45-17-7.
27. § 33-15-13.
28. § 33-15-21.
29. § 45-17-13.
30. § 21-37-45.
31. § 21-19-59.
32. Id.
33. Id.
34. Id.
35. § 49-19-5.
36. § 29-7-3.
37. § 29-1-107.
38. Id.
39. § 29-1-7.
40. § 29-1-101.
41. § 19-3-45.
42. § 21-17-5.
43. 21-19-25.

44. Pascagoula, Miss. Code § 7-56 (1967).
45. Passcagoula, Miss. Code § 7-132 (1969).
46. Pascagoula, Miss. Code § 7-1 (1967).
47. Id. § 7-60.
48. Biloxi, Miss. Code § 6-1 (1959).
49. Pascagoula, Miss. Code § 7-15 (1967).
50. Id. § 7-16.
51. Id. § 7-17.
52. Id. § 7-3.
53. Id. § 26-3.
54. Id. § 26-28.
55. Id. § 26-6.
56. Id. § 26-27.
57. Id. §§ 26-28.
58. Id. § 20-2.
59. Gulfport, Miss. Code § 14-24 (1963).
60. Pascagoula, Miss. Code § 19-17 (1967).
61. Id. § 7-28.
62. § 49-23-19.
63. § 21-19-11.
64. § 77-9-713.
65. § 43-35-103.
66. § 43-35-105.

67. Id.
68. § 43-35-107.
69. Pascagoula, Miss. Code § 7-79 (1967).
70. Id.
71. Id.
72. § 43-35-109.
73. § 43-35-111.
74. § 43-35-113.
75. § 43-35-115.
76. Pascagoula, Miss. Code § 2-114 (1967).
77. Id. § 200.1.
78. Id. § 100.2.
79. Id. § 100.3.
80. Id.
81. Gulfport, Miss. Code § 23-1/2-1 (1963)
82. Id. § 23-1/2-3.
83. Id. § 23-1/2-4.
84. Id. § 23-1/2-5.
85. § 17-1-3, 5. These statutes do not prevent cooperation with the board
of supervisors in affected counties.
86. § 17-1-23.
87. Id.
88. § 17-1-9.
89. § 17-1-15. Fifteen days public notice is necessary and a public hearing

must be held before such will become effective.

90. § 17-1-17.

91. Id.

92. § 17-1-13.

93. Pascagoula, Miss. Code § 2-113.

94. § 17-1-19, 27.

95. Id.

96. § 17-1-21.

97. § 21-33-301. The purposes referred to in the statute are designed to raise money for municipal buildings, stadiums and fields; erecting, purchasing or repairing utilities; libraries; storm drainage or sewer systems; protecting municipalities, their streets and sidewalks from overflow, caving banks, etc.; and other public facilities in the corporate limits and within three (3) miles. Zoning regulations may also alter or change the channels of streams or water courses.

98. § 21-33-303. In computing indebtedness, there may be deducted all bonds or other evidence of indebtedness for schools, water sewerage systems, gas, light and power purposes, and for the construction of special improvements primarily attributable to the property benefited exceed fifteen (15) percent.

99. § 21-33-313.

100. § 21-33-307.

101. Id.

102. § 21-33-325.

103. § 21-33-329.
104. § 21-41-1.
105. § 21-41-35.
106. § 21-33-1.
107. § 21-33-5.
108. § 21-33-9, § 21-33-23. Municipalities under a private charter shall set the time for making and filing rolls.
109. § 21-33-11.
110. § 21-33-13. The assessment authorized in this statute shall be the tax collector's warrant in collection procedure.
111. § 21-33-15, § 21-33-23.
112. § 21-33-25.
113. § 21-33-37.
114. § 21-33-29.
115. § 21-33-33.
116. § 21-33-41.
117. § 21-33-51.
118. § 21-33-39.
119. § 21-33-43.
120. Id.
121. § 21-33-21.
122. § 21-33-45.
123. § 21-33-55.
124. § 21-33-57.
125. § 21-33-59.

126. § 21-33-61. Infants and persons of unsound mind have two (2) years from the age of majority or the restoration of sanity to redeem, provided that they pay for any improvements made two (2) years after the sale.
127. § 21-33-61.
128. § 21-33-81.
129. Id.
130. § 21-33-53.
131. § 21-33-63.
132. Id.
133. § 21-33-65.
134. § 21-33-67.
135. § 21-33-69.
136. Id.
137. Id.
138. Id.
139. § 21-33-63.
140. § 21-33-73.
141. § 21-33-75.
142. § 21-33-77.
143. Id. The authority in this statute also applies to the board of trustees in municipal separate school districts, by and with the consent of the governing authorities of the municipality.

14. § 21-33-79.

15. § 21-33-83. If any part of the Municipalities Taxation and Finance Act is held to be unconstitutional, other parts of the act shall remain in force.

II. AIRPORTS

A. STATE

Any agency of the State of Mississippi may act jointly with any county, city, village, town, or supervisors district in the acquisition, establishment, construction, enlargement, improvement, and equipment of any airport or air navigation facility.¹ If a county, city, village, town, or supervisors district has established an airport authority² to administer their powers with regard to the establishment and operation of airport facilities, an agency may also act jointly with the authority.³

Prior to any joint action by an agency of the state and any county, city, village, town, supervisors district, or airport authority, an agreement must be entered into by the participating parties. All agreements must specify the duration, the proportional interest each party shall have in the property and facilities, and the proportion of the cost each party shall bear.⁴

When a state agency is acting jointly with any county, city, village, town, or supervisors district of Mississippi or an adjoining state in the establishment and operation of airport facilities, the head of the agency and the governing body of the other party to the joint agreement will create a joint board. This joint board shall consist of members appointed by the head of the state agency and the governing body of the other participating party. The joint board has the power to act as agent of the participating parties, to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police any airport or other air navigation facility. The powers of the joint board

are subject to certain limitations including the following:

The joint board may not initiate eminent domain proceedings, such proceeding must be initiated by the party they represent;

The joint board shall not dispose of any property under its jurisdiction except on approval by the parties they represent;

And the joint board may not exceed their annual budget, as determined by the parties to the joint agreement.⁵

The joint board shall be funded through a joint fund created by the state agency and the other party to the joint agreement. The amount each party is to contribute to the joint fund will be governed by the terms of the agreement.⁶

B. MUNICIPAL.

[In the subsequent discussion of municipal airports the term "municipality" shall refer to any county, city, village, town, or other political subdivision of this state.]

Every municipality is authorized to construct and maintain an airport, either within or without the territorial limits of the municipality. The municipality may construct and maintain buildings and other facilities at the airport for the servicing of aircraft and the comfort of air passengers.⁷

The municipality may use land that it already owns as a site for an airport or it may obtain additional land by purchase, gift, devise, or lease.⁸ When land for airport purposes is to be purchased, notice of the purchase must first be published for three consecutive weeks in a newspaper of general circulation in the county where the airport is to be established.

Property, whether within or without the territorial limits, needed in the establishment of airport facilities may be obtained by a municipality through eminent domain proceedings.⁹ In acquiring property by eminent domain the municipality should proceed in accordance with chapter 3 of Title 12, Mississippi Code of 1942. At any time after the commencement of eminent domain proceedings the municipality may take possession of the land subject to such proceedings. The municipality is not precluded from abandoning eminent domain proceedings at any time prior to the final order and decree of the court having jurisdiction of such proceedings. However, in the event that the municipality abandons these proceedings any time after they have taken possession of the property, the municipality will be liable to the owner of the land for any damage done to the property during their possession of it.¹⁰

In acquiring land for airport facilities, the municipality may acquire existing airports and air navigation facilities by purchase, gift, devise, lease, or eminent domain, provided they are not owned or controlled by another municipality or public agency. The municipality may acquire facilities operated by another municipality or public agency if they first receive the consent of the other.¹¹

All of the above powers granted to municipalities may also be exercised by an airport authority in instances where the municipality has seen fit to establish such an authority. An airport authority consists of a commission of five members appointed by the governing body of the municipality and authorized by the municipality to exercise all municipal functions with regard to the establishment and operation of airport facilities.¹²

After the creation of an airport authority by a municipality, the municipality may dedicate, sell, convey, or lease any of its interest in any property to the authority and direct the authority to establish airport facilities.¹³ The airport authority may execute all contracts necessary to accomplish its designated functions.¹⁴

In addition to acting alone in the establishment and operation of airport facilities, municipalities and airport authorities are also authorized to act jointly with each other or with an agency of the state or federal government or with an agency or municipalities of an adjoining state. Prior to undertaking such joint operations, the parties must agree on the duration of the venture, the proportionate share of the property to be owned by each and the proportion of the costs to be borne by each. Where joint operations are begun, a joint board will be created by the governing bodies of the participating parties. This board will have the power to plan, equip, acquire, construct, improve, maintain, operate, and protect any airport or other air navigation facilities. This joint board does not have the power to establish its own budget; to exceed the budget given it by the participating parties; to institute eminent domain proceedings in its own name; or to dispose of any airport property without the consent of the governing bodies of the parties they represent.¹⁵

Any municipality¹⁶ or airport authority¹⁷ may dispose of airport facilities in any method deemed appropriate by the governing body.

In the absence of any joint operations, the governing bodies of municipalities will carry out the functions necessary to establish and maintain airport facilities. The municipality may, at its discretion, establish an airport authority with necessary powers to construct the airport facilities.¹⁸ The governing body of any joint operations will be a joint board whose members will be appointed by the participating parties.¹⁹

Any municipality which has created an airport authority may finance its operations through donations and loans. Taxes collected by the municipality for airport purposes may be transferred to the airport authority.²⁰

When two or more municipalities, authorities, state agencies, federal agencies or agencies or municipalities of an adjoining state have entered into agreement for the mutual establishment and operation of airport facilities, such operations will be financed through a joint fund. This fund consists of monies deposited by the participating parties. Any federal, state or other grants, contributions or loans, and the revenues obtained from the joint ownership, control, and operation of any airport will also be deposited into this joint fund. Disbursement from this fund is made by the joint board appointed by the participating parties.²¹

The governing authorities of municipalities in which a university or other state supported four year college is located may finance the establishment of airport facilities with monies contributed by both the municipality and the state

government. These airport facilities thus established are to be used by both the university or college and the general public.²²

The development, protection, and restoration of airports and air navigation facilities is entrusted to the governing authorities of the municipalities or the airport authority. The governing authorities of municipalities have the authority to adopt and enforce zoning regulations over an area extending 1500 feet from all boundaries of the airport. Within this area the municipal authorities have the power to regulate the height of buildings or other structures or obstructions, and have the power to acquire by agreement, purchase or condemnation easements for necessary obstruction markers or lights upon any buildings or obstructions.

In order to protect the approaches to any airport, it is within the police power of political subdivisions to expend money to prevent the establishment of any airport hazard.²³ An airport hazard consists of any structure, object of natural growth, or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport.²⁴ For the purpose of preventing the creation of airport hazards the municipality may adopt and enforce airport zoning regulations. These regulations specify permitted uses of the land and the maximum height for buildings and trees.²⁵

Before any airport zoning regulation may be adopted a public hearing must be held. Fifteen day's notice must be given before the public hearing is held. Regulations thus enacted are administered by a commission appointed by the governing authorities of the municipality, or by a pre-existing city planning

commission or comprehensive zoning board.²⁶

All airport zoning regulations must be reasonable and can not require the removal, lowering, or other change in any structure or tree existing at the time the regulations are adopted. These regulations may require that anyone wanting to construct a new structure or establish a new use first obtain a permit from the airport zoning commission. A permit is also required before any pre-existing non-conforming use can be substantially changed, altered or repaired. Permits will not be issued to allow the establishment of an airport hazard or allow any existing structure or tree to become a greater hazard.²⁷

When anyone seeking to construct a new structure or increase the height of any structure, or permit the growth of any tree or in any manner use his property in violation of the airport zoning regulations, he must apply to the Board of Adjustment of the municipality for an exception to the regulation. An exception can be granted if literal enforcement of the regulations would result in undue hardship and the relief granted would not be contrary to the public interest. If the Board of Adjustment grants the variance, it can require that the municipality, at its own expense, be permitted to install, operate and maintain on the tree or structure such markers and light as may be necessary to indicate to flyers the presence of the hazard.²⁸

When anyone's application for a permit is refused by the administrative agency²⁹ for the airport zoning regulations he may appeal to the Board of Adjustment within a reasonable time. Notice of this appeal must be filed with the administrative agency from which the appeal is taken. Upon notice, the agency will transmit to the Board all papers constituting a record of the action from

which the appeal was taken. An appeal will stay all proceedings in further-
ance of the action unless the agency administering the airport zoning regulations
certifies to the Board that, in its opinion, delay would cause imminent preil to
life or property. The Board of Adjustment must set a reasonable time for hear-
ing appeals and give notice to the parties and the public. Any person may appear
at this hearing in person, by agent or by attorney. On appeal, the Board may
change the ruling of the administrative agency in any way.³⁰ The Board of Ad-
justment must have no less than three members. In addition to hearing appeals
from the administrative agency, the Board also approves applications for special
exceptions and variances from the zoning regulations. An existing zoning board
of appeal may be appointed as a Board of Adjustment.³¹

Rulings of the Board of Adjustment can be appealed within 30 days to the
circuit court of the county in which the airport is located. The Board will trans-
mit all records requested by the circuit court. All findings of fact made by the
Board are conclusive if they are supported by substantial evidence. In the course
of this appeal, the circuit court considers only objections raised before the Board
unless the appellant can justify subsequent objections.³²

It it is desired to remove, lower, or otherwise terminate a non-conforming
use; or the approach protection necessary cannot, because of constitutional
limitations, be provided by airport zoning regulations; or if it appears advisable
that the approach protection be provided by acquisition of property rights rather
than by airport zoning regulations, the municipality in which the use is located
or which owns the airport may acquire by purchase, grant, or condemnation,
such air rights, aviation easement or other estate or interest in the property or

non-conforming structure or use as is necessary to provide approach protection.

Airport zoning regulations may be incorporated into the existing comprehensive zoning ordinances. If there is conflict between the airport zoning regulations and the comprehensive zoning ordinance, the more stringent limitation or requirement will prevail.³³

A municipality for which an airport authority has been established to construct and operate an airport may aid the authority by providing roads to the airport and by furnishing the facility with water and drainage facilities.³⁴

The acquisition of land for airports and the construction and maintenance of airports are declared to be public and governmental functions, exercised for a public purpose and matters of public necessity.³⁵ Therefore, no action in tort can be brought or maintained against the state or any municipality because of any act connected with the construction, maintenance, enlargement, operation or management of any airport or other air navigation facility.³⁶

If a municipality has surplus airport lands, such land may be improved and made available for industrial uses. After improvement the land may be sold or leased for industrial uses, and the revenues from such sale or lease used to pay the cost of the improvements.³⁷

AIRPORTS FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann (1972)]

1. § 61-5-35.
2. Id.
3. § 61-3-67.
4. § 61-5-35, § 61-3-67.
5. Id.
6. Id.
7. § 61-5-5.
8. Id.
9. §§ 21-37-47, 61-5-5.
10. § 61-5-7.
11. § 61-5-5.
12. § 61-3-5.
13. § 61-3-79.
14. § 61-3-15.
15. § 61-3-67.
16. § 61-5-9.
17. § 61-3-19.
18. § 61-3-5.
19. § 61-3-71.
20. § 61-3-79.
21. § 61-3-73.

22. §§ 61-5-73, 61-5-75.
23. § 61-7-5.
24. § 61-5-3.
25. § 61-7-7.
26. § 61-7-11.
27. § 61-7-17.
28. Id.
29. § 61-7-19. No member of the administrative agency may be a member
of the Board of Adjustment.
30. § 61-7-23.
31. § 61-7-21.
32. § 61-7-25.
33. § 61-7-29.
34. §§ 61-7-9, 61-5-45.
35. § 61-3-79.
36. §§ 61-3-83, 61-5-47.
37. § 61-5-47.
38. § 57-7-1.

III. ROADS, HIGHWAYS, BRIDGES AND FERRIES

A. FEDERAL PARKWAYS

1. Governing Bodies.

The State of Mississippi has given specific consent for the federal government to acquire title to state lands to establish beneficial federal parkways within the state. This consent is granted, however, on the express condition that the state retain concurrent jurisdiction with respect to civil and criminal matters in such areas.¹ The federal government retains, either alone or jointly with a county, control and supervision over the actual construction and maintenance of the national parkway or roadway.²

2. Land Acquisition, Disposition, and Construction.

The state legislature has specifically authorized appropriate state, county, and local boards and commissions to cooperate with federal agencies in the planning and development of federal parkways.³ The State Highways Commission may acquire easements and lands for necessary rights-of-way by gift, purchase, or eminent domain and convey these rights and titles to the federal government or its agency as required by congressional act.⁵ In addition, the highway commission may, with approval of the governor, convey any lands or roads which it currently owns or has authority over for the purpose of constructing the national parkway.⁶ The governor may convey lands owned by the state to the United States.⁷ Furthermore, the board of supervisors of a county adjacent to or through which a federal parkway passes is authorized to convey rights-of-way or easements owned by the county to the federal government. The board is expressly given the power of eminent domain to condemn

public lands adjoining such projects as necessary to meet federal requirements in establishing such parkways.⁸ This authorization also includes the conveyance of rights-of-way and easements in, through, and over sixteenth section land.⁹

The United States government or any of its agencies acting severally or in connection with the counties or state highway commission is authorized to condemn land necessary to complete the federal parkway project. Such condemnation procedures are to be as authorized by Mississippi statute¹⁰ and the proceedings are to take precedence over all other causes not involving the public interest to the end that such parkways are not unreasonably delayed.¹¹ Compensation awarded to landowners will be paid by the county in which such lands are situated unless funds are otherwise provided by the state.¹²

3. Other Restrictions.

The state has limited the amount of land which may be dedicated to the establishment of a federal parkway to 100 acres per mile of right-of-way and 50 acres per mile of scenic easements taken on an average throughout the length of roadway within the state.¹³ Further, it is expressly provided that authorities constructing such roadways use diligence to protect and prevent damage to adjacent property.¹⁴

B. STATE

1. Governing Bodies.

The State Highway Commission has the primary responsibility for and complete control and supervision of all matters concerning roads in the state highway system.¹⁵ Broad statutory authorities are granted to this corporate

body. It supervises all matters relating to the construction and maintenance of state highways, and has exclusive control, for the benefit of the state, of all roads in the state highway system. The commission makes and publishes rules, regulations, and ordinances with respect to traffic control, vehicle use restrictions, signs, advertisements and other proper subjects and provides for their enforcement.¹⁸ It constructs necessary bridges¹⁹ and cooperates with state authorities in procuring road building material.²⁰ The commission also acquires land to establish district offices and maintenance offices for the State Highway Department.²¹ Additionally, the State Highway Commission has complete authority to make all contracts, surveys, plans and specifications for construction, maintenance and related activities; and to permit highway department personnel to enter private property for such purposes.²²

The state legislature has declared that those roads within the state that are part of the federal aid primary highway system and those highways specifically identified as numbered state highways comprise the state highway system. There is a statutory limitation that the total length of this system will not exceed 8600 miles.²³ To bypass this limitation, however, a number of state highways have been so designated and specifically authorized as existing in addition to the 8600 mile limitation.²⁴

2. Land Acquisition, Disposition, and Construction.

The state highway commission has the general authority to acquire land or property as may be necessary for a state highway system.²⁵ The land necessary for rights-of-way may be obtained by gift, purchase, or condemnation. The commission may likewise acquire lands containing road building materials

or additional lands necessary for the safety and convenience of traffic flow. The commission may use its power of eminent domain as provided by statute²⁶ and such proceedings will be given precedence over all other causes not involving the public interest to the end that construction of highways will not be unreasonably delayed. The commission acquires all right, title and interest in the above lands with the exception of oil, gas, and other rights expressly reserved to the landowner, his successors or assigns. The commission has the responsibility to decide what rights and interests are necessary in each case and may authorize its agents, by written order, to reserve any other interests for the landowner.²⁷

Controlled-access facilities and service roads are specifically regulated by statute. In addition to the highway commission, the highway authorities of the various counties and municipalities are empowered to acquire property necessary for such projects by gift, purchase or condemnation.²⁸ These authorities may acquire an entire block or tract of land, even if the entire unit is not subsequently needed, if it is deemed in the best interest of the public.²⁹ Any proposed construction of a controlled-access road within the corporate limits of a city or town is subject to municipal consent. Furthermore, no existing public street or highway may be converted to a controlled-access facility unless the abutting landowners give their consent or the access rights of such landowners are purchased or condemned. This consent is not required when such a facility is constructed or located initially when no street or road exists.³⁰ The legislature has provided that court proceedings necessary

to acquire property or property rights with respect to the above projects take precedence over all other causes not involving the public interest.³¹

Similar authorizations for acquiring land necessary for the construction and maintenance of toll bridges and approaches are given to the commission, county board of supervisors and municipal authorities.³² In addition, the highway commission is empowered to construct and maintain causeways, bridges and tunnels over any bayou or tributary of the Gulf of Mexico or Mississippi Sound which is within the territorial limits of the state. Furthermore, the state has granted to the commission automatic right-of-way and easement rights through, over and under any state owned property when necessary for construction of such a project.³³

Construction and maintenance of new roads or highways may be initiated by other state governmental agencies with the actual work being performed by the highway commission. Generally, the commission furnishes assistance in constructing or maintaining any roadway when requested to do so by any state institution.³⁴ A county board of supervisors may request that additional roads be added to the state highway system by filing a survey and plan of the proposed road with the commission.³⁵ Also, the State Agricultural and Industrial Board may, by filing an appropriate certificate of public convenience and necessity, have roads built to provide access to approved industrial sites.³⁶ There is a specific limitation, however, that no more than a total of 150 miles of such roadways nor more than 10 miles of road to any single site be designated by the Agricultural and Industrial Board.³⁷

The legislature has also provided for the proper disposal of lands acquired

by the highway commission for public use. If it subsequently becomes unnecessary to use such land, the commission sells the property for a fair market price at a private sale. Upon payment of proper consideration, a quitclaim deed for the property is issued to the buyer. However, if the property had been originally acquired by gift or for a nominal consideration, the commission may reconvey the parcel to the original grantor for a nominal one dollar consideration.³⁸ In addition, existing highways may be abandoned or relocated when their location conflicts with certain federal projects. Specifically, the highway commission is authorized to convey such property and roads to the federal government when necessary for the construction of federal flood control, navigational, drainage or National Aeronautics and Space Agency projects. In such cases, the commission will authorize the director of the highway department to execute a quitclaim deed to the purchaser upon the receipt of the agreed upon consideration which includes the creation and maintenance of detours made necessary by the project.³⁹

3. Development, Protection, and Restoration.

The State of Mississippi has expressed a strong interest in preserving the natural beauty of the land near its highways and roads. This is demonstrated by legislation which gives the highway commission authority to regulate and acquire such lands. Specifically, the highway commission is authorized to acquire and develop land adjacent to highways, to restore, preserve, and enhance the scenic beauty. This authorization specifically includes the development of publicly owned rest and recreation centers for the traveling public.⁴

The commission is also given the power to regulate outdoor advertising⁴¹ and junkyards⁴² located near public highways. The commission has the primary responsibility of enforcing a prohibition on outdoor advertising located within 660 feet of the nearest edge of a public right-of-way. Exceptions to this general prohibition are official signs, signs advertising the sale or lease of the property on which such signs are located or the principal activities conducted on the property, or signs located in areas which are commercially or industrially zoned.⁴³ The commission is given the power to acquire by purchase, gift, or condemnation the property rights necessary to facilitate removal of such prohibited advertising.⁴⁴ Such advertising is declared to be a public nuisance and therefore removable by the highway commission after 30 days notice to the owner.⁴⁵ However, a chancery court must approve the actual removal petition before such action can be taken.⁴⁶

There are also specific regulations giving the highway commission authority to regulate the erection and operation of junkyards⁴⁷ in areas adjacent to interstate and primary highway systems.⁴⁸ No junkyard may be established within 1000 feet of such highways unless it is not visible from the road or is located in properly zoned or industrial areas.⁴⁹ Those junkyards which lawfully existed at the time of the passage of this act will be screened by the highway department to prevent them from being visible from the highway.⁵⁰ Where this is not feasible, the commission is empowered to acquire, by condemnation when necessary, any interest or right in the land necessary to dispose of the junkyard and to pay just compensation to the owner thereof.⁵¹ Any attempt to establish a non-conforming junkyard is a misdemeanor punishable by fine.⁵²

4. Revenue.

In addition to the normal financing provided by the state, the highway commission can make any contracts or agreements at its absolute discretion as necessary to secure financial assistance from the federal government or any federal agency.⁵³ The commission is further authorized to deal directly with the federal government in obtaining and spending funds for toll bridges and causeways⁵⁴ and in expending funds obtained from the Federal Bureau of Public Roads for constructing and maintaining the Great River Road.⁵⁵

5. Other Restrictions.

The legislature has declared that the state highway commission is immune from suit for negligent, tortious, or unauthorized acts of its agents. Although the director can obtain liability insurance covering any damage to persons or property caused by the negligence of an agent operating a motor vehicle belonging to the commission, this provision **is not to be construed** as a waiver of immunity.⁵⁶ A further limitation concerning suits for damages brought by a grantor of an easement or assignment to the commission requires that the grantor bring suit within three years from the date of the conveyance. If the property in question is not actually used for highway purposes during this three year period, this limitation is extended to six years from the date of the transaction.⁵⁷

As further evidence of legislative concern for the protection of the environment surrounding the highways, it is a state policy that all authorities constructing highways must use diligence to protect growing crops and pastures and to prevent damage to property adjacent to the construction area.⁵⁸ Similarly, outdoor advertising near highways has been strictly regulated⁵⁹ and must

be authorized by the highway commission before erection.⁶⁰

C. COUNTY

1. Governing Body.

The county board of supervisors has full jurisdiction over roads, bridges, and ferries located within the limits of their respective counties.⁶¹ This jurisdiction does not, however, include those highways designated as "state highways". These are under the exclusive control of the State Highway Commission.⁶²

2. Land Acquisition, Disposition, and Construction.

In acquiring land necessary for laying out new public roads or widening existing roads, the board of supervisors has the authority to condemn necessary lands in the name of the county by exercising its power of eminent domain.⁶³ In addition to this general power to acquire lands, the legislature has enacted a number of statutes which give the board of supervisors the power to acquire specific property necessary for road systems. The supervisors or any recognized road district may purchase or lease lands containing road building and maintenance materials such as sand, gravel, or clay.⁶⁴ The board may also condemn trees or timber near a public road which endangers safe travel. If the owner of such timber fails to remove these trees, the county is authorized, upon five days notice to the owner, to cut and dispose of the timber. The owner will be compensated for the timber so removed, and he may appeal the assessment of value tendered by the county to the circuit court.⁶⁵ The county board is authorized to acquire, by purchase or condemnation, any privately

owned bridges that form a link or part of a public road system.⁶⁶ The value of compensation for the owner of the bridge is reviewable in circuit court.⁶⁷ To support and maintain various public road systems, the county may lease, purchase, or condemn lands on which to establish work stations. However, a two acre limit per work station applies to such acquisitions.⁶⁸

There are a number of specific provisions pertaining to county acquisition and control of toll-bridges located within the county. Generally the county board of supervisors is authorized to acquire necessary lands and to construct and maintain toll bridges of any reasonable width or length.⁶⁹ The board is, however, required to make all bridges toll free as soon as practicable.⁷⁰ In order to achieve this result, the county is authorized to contract with the owners of private toll-bridges to purchase and operate them as toll free bridges. This authorization, however, specifically excludes any interstate bridge, the Pascagoula Bridge, or any bridge on a highway maintained by the state highway department.⁷¹ County ferries have also received legislative attention. A county may construct, operate and maintain a county ferry and necessary facilities related to such operations. However, there are specific restrictions that the costs of development not exceed two hundred thousand dollars and the annual cost of maintenance or operation not exceed fifty thousand dollars.⁷² In determining who should be licensed and employed to operate and maintain any toll ferry, bridge, or causeway, the owner of the land under the project receives preference over all others.⁷³

Although state highways are within the exclusive jurisdiction of the State Highway Commission, the county board of supervisors may agree to construct

and maintain such highways. In doing so, the county may fully exercise the right of eminent domain to acquire necessary lands. Any such construction carried on by county authorities within the limits of a municipality are subject to municipal consent.⁷⁴ The board may also accept, in the name of the county, the responsibility of maintenance of any roads or streets constructed in a subdivision established within the county. This acceptance, however, does not constitute a general acceptance by the county of the entire subdivision when completed.⁷⁵

Although the maintenance and improvement of county roads is dependent on the acts of the board of supervisors, there is a procedure by which private landowners can initiate such action. If at least three-fifths of the owners of land which would be benefited by improvement of an existing road petition the board, such improvements may be made. The landowners contribute one-third of the cost of such work by a special tax levy.⁷⁶

3. Revenue.

The county board of supervisors has the general power to levy taxes necessary to meet the demands of a county road system.⁷⁷ This power to tax property is also specifically authorized to pay the principal and interest on county wide road and bridge bonds.⁷⁸ In addition to financing county projects, the board is authorized, at its discretion, to contribute any county road and bridge funds to supplement state funds for the acquisition, construction, and maintenance of roads or bridges.⁷⁹

D. MUNICIPALITIES

1. Governing Bodies and Land Acquisition.

In addition to the general powers granted to municipal governing authorities, it is provided that such authorities have full jurisdiction over the construction, maintenance and repair of municipal streets, roads and alleys.⁸⁰ Predictably, these governing authorities have been given the power to exercise eminent domain rights in establishing and improving municipal streets, avenues and alleys.⁸¹ Designated municipalities located near port facilities are authorized to construct bridges, causeways or other structures necessary to provide access to and from such port or harbor facilities. In addition, those municipalities located on the Gulf Coast are authorized to construct bridges to any island within three leagues of the main state shoreline.⁸²

2. Revenues.

Generally, the municipality raises funds for street and bridge construction and maintenance by local bond issues.⁸³ There is a specific statutory provision, however, authorizing municipalities with a population of less than 100 to levy an ad valorem tax not to exceed two mills for street construction and maintenance. Imposition of such a tax is, however, dependent on approval by a majority of the qualified voters of the municipality.⁸⁴

3. Other Restrictions.

A variety of municipal regulations which affect various aspects of street and road control and supervision are contained in city codes and ordinances. An example of one such area is exhibited in selected ordinances passed in the city of Pascagoula, Mississippi. Specifically, it is unlawful, in that city, for any person to obstruct an alley, street, or sidewalk.⁸⁵ A similar provision applies

to any railroad company which obstructs a public way for more than 15 minutes.⁸⁶

Likewise, owners of any fences or buildings obstructing any public way are required to move them after 10 or 60 days notice, respectively.⁸⁷

E. OTHER AGENCIES

1. Bridge and Park Commissions.

In order to stimulate the development of navigation, harbor, and boat facilities, the legislature has authorized certain designated coastal counties and municipalities to establish local Bridge and Park Commissions. Generally, such commissions may work independently or jointly with other state and local agencies to construct and maintain harbors and seaports within the state.⁸⁸ The commissions are specifically authorized to acquire land and to construct, maintain, and operate bridges, ferries, causeways and tunnels necessary to connect harbor and port facilities with the mainland.⁸⁹ Additionally, the commission has the power to fix and collect fees, charges and tolls for the use of any of the facilities constructed and operated by it.⁹⁰

The Bridge and Park Commission has the power to issue bonds in its own name to secure funds for the various projects under its corporate control.⁹¹ To raise the funds necessary to retire the principal and interest on such bonds and to provide for an adequate reserve and contingency fund, the commission has the responsibility of setting tolls and fees for the use of its projects in such a manner as to produce sufficient revenues to meet these objectives.⁹² Holders of bonds issued by the commission have been specifically protected by statute in the event of a default on this obligation. The bondholder may enforce the duty of the com-

mission to collect adequate fees. In the event of default by the commission, the bondholder may apply to the circuit court for appointment of a receiver to manage all facilities in order that payments on the bonds be made.⁹³

2. Interstate Bridge Districts.

Private property owners who desire the benefits of having access to interstate highways may initiate the construction of such interstate bridges and associated approaches by petitioning for the creation of an interstate bridge district in their area. A majority of the landowners within the proposed district must file a petition with the chancery court of the county embracing the largest portion of lands of the district.⁹⁴ The chancery court, upon hearing the petition, will declare that such a district be formed if the court is of the opinion that it will be beneficial to the area.⁹⁵

After creation of the district, a board of commissioners is appointed and empowered to levy and collect taxes based on their assessment of benefit to each landowner in the district. This provides funds for the construction and maintenance of the bridge and associated approaches.⁹⁶ Once the district is formed, its board of commissioners is specifically vested with power to acquire property, by purchase or eminent domain, necessary to realize the purpose for which the district was formed.⁹⁷

3. Pearl River Basin Development District.

The Pearl River Basin Development District was created to promote the development and utilization of this valuable resource. With respect to roads and highways, the board of directors has the general authority to acquire and relocate

county roads and state highways within the project area. The cost of such acquisition or relocation is borne by the water development district.⁹⁸ The board of directors of the development district has the additional power to obtain rights-of-way and easements outside of the district limits to relocate roads and highways which have been condemned.⁹⁹ The board is also authorized to negotiate and contract directly with the federal government in matters concerning lands, easements or rights-of-way necessary for the relocation of any federal highways or parkways.¹⁰⁰

4. Pat Harrison Waterway District.

The Pat Harrison Waterway District is vested with power to acquire and condemn roads and highways within the project district as may be necessary to further the purpose of the project. It is further authorized to acquire lands and easements outside the district to provide for relocation of these roads and highways.¹⁰¹ The cost of such acquisition and construction is borne by the district.¹⁰²

5. Highway and Street Revenue Bond Authority.

A special provision has been made for those counties in which more than five miles of a publicly financed reservoir shoreline exists. Such counties may create a Highway and Street Revenue Bond Authority to carry out the planning and coordination of road, park, and recreational development.¹⁰³ This corporate authority is vested with full jurisdiction over roads connecting such special projects and is vested with the power of eminent domain to acquire necessary lands.¹⁰⁴

ROADS, HIGHWAYS, BRIDGES AND FERRIES

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)].

1. § 55-5-17.
2. Id.
3. § 55-5-19.
4. § 55-5-27.
5. § 55-5-29.
6. § 55-5-7.
7. § 55-5-9.
8. § 55-5-5.
9. § 55-5-9, see also § 55-5-11 for a detailed description of the procedure established for the execution of these conveyances by the governor or board of supervisors of a county.
10. See Eminent Domain Section, infra.
11. § 55-5-5.
12. Id.
13. § 55-5-15.
14. § 55-5-13.
15. § 65-1-47.
16. § 65-1-19(a).
17. § 65-1-19(b).
18. § 65-1-19(d), (f).
19. § 65-1-19(j).

20. § 65-1-19(o).
21. § 65-1-19(p). However, only two (2) district offices shall be set up in each supreme court district.
22. § 65-1-47.
23. § 65-3-3.
24. §§ 65-3-5 through 65-3-21.
25. § 65-1-19.
26. See Eminent Domain Section, infra. The amount of compensation paid to a landowner for condemned property shall be paid from the state highway fund. § 65-1-47.
27. § 65-1-47.
28. § 65-5-9.
29. Id.
30. § 65-5-5.
31. § 65-5-11.
32. § 65-23-13.
33. § 65-23-101.
34. § 65-3-3. However, the request must be reasonable and proper as determined by the commission.
35. § 65-3-3.
36. § 65-3-7. These roads must be judged economically feasible, necessary for access, and built near sites where industry presently exists or will exist in the near future.

37. Id.
38. § 65-1-123.
39. § 65-1-29.
40. § 65-1-51.
41. § 49-23-1, et seq.
42. § 49-25-3, et seq.
43. Id. See also § 49-23-9 for regulations concerning the size and deployment of advertising signs which are authorized under these specific exceptions.
44. § 49-23-17 provides that damages awarded to the owner in eminent domain proceedings are limited to the value of his advertising rights and the value of the property owners right to erect and maintain such advertising.
45. § 49-23-19.
46. § 49-23-21.
47. See § 49-25-5 for a definition of junkyards included in this act.
48. § 49-25-3.
49. § 49-25-7.
50. § 49-25-9.
51. § 49-25-13.
52. § 49-25-17.
53. § 65-1-19.
54. § 65-23-103. See text accompanying note 33, supra, for description of this type project.
55. § 65-1-19(u).

56. § 65-1-19(r).
57. § 65-1-49.
58. § 65-1-47.
59. See Development, Protection, and Restoration section, supra.
60. § 49-23-11 provides that a permit must be obtained before erecting certain types of advertising signs. See also, § 49-23-5 for a classification of such excepted advertising signs.
61. § 19-3-41.
62. Miss. Const. art. 6, § 170 (1890). This section also describes the membership and selection of a county board of supervisors.
63. § 65-7-89. See Eminent Domain chapter, infra.
64. § 65-7-99. Note, that this statute also authorizes the county to sell any materials so acquired in excess of its road building needs and to return these funds to the county. See also § 65-7-101.
65. § 65-7-9.
66. § 65-21-11.
67. § 65-21-13.
68. § 65-7-91.
69. § 65-23-13. See also § 65-23-309 which specifically authorized the county to construct and maintain toll bridges across the Pearl River and its associated flood plain.
70. § 65-23-325.
71. § 65-21-15,

72. § 65-29-5.
73. § 65-27-3.
74. § 65-7-81.
75. § 17-1-25.
76. § 65-19-83.
77. See § 19-3-41.
78. § 19-9-11.
79. § 65-11-53.
80. See § 21-37-3, 7.
81. § 21-37-47. See Eminent Domain section, infra.
82. § 59-7-405.
83. § 21-33-301.
84. § 21-33-89.
85. Pascagoula, Miss. Code § 26-4 (1967). See also, Pascagoula, Miss. Code § 20-27 (1967).
86. Pascagoula, Miss. Code § 25-1 (1967).
87. Pascagoula, Miss. Code § 25-6 (1967).
88. § 55-7-1. See also § 55-7-59.
89. § 55-7-17.
90. § 55-7-23.
91. § 55-7-33.
92. § 55-7-49.
93. § 55-7-51.

94. § 65-23-201.
95. § 65-23-203. If a petition is not filed, the court may still consider the question of creation of such an interstate bridge district upon the assent of a majority of waters of such a district.
96. § 65-23-215 thru 219.
97. § 65-23-229.
98. § 51-11-13.
99. § 51-11-13(e).
100. § 51-11-41.
101. § 51-15-119(f).
102. § 51-15-119(e).
103. § 65-13-9. See also § 65-13-3 and § 65-13-11 for the specific procedures necessary to form the authority.
104. See § 65-13-31.

IV. PUBLIC FISHERIES

The seafood industry of the Mississippi Gulf Coast plays an important part in the economic development of the state. The state, therefore, has acted to regulate that industry in order to insure the best use of those resources. The Mississippi Seafood Commission, the agency originally set up to regulate the seafood industry, has been replaced by the Mississippi Marine Conservation Commission.¹

The Marine Conservation Commission was established to control, manage, supervise and direct matters concerning sea life. The commission is composed of 10 members appointed by the governor, 3 each from Hancock, Harrison, and Jackson counties plus a marine biologist.² The commission has jurisdiction over shrimp, oyster and crab catching and processing. The commission sets standards, regulates seasons, determines penalties for violations of regulations, and acts in other areas as required to carry out its purposes.³ Authorized employees of the commission, their duties and their compensation are set out by law.⁴

All sea food in waters not privately owned is the property of the state, to be held in trust for the people of Mississippi until ownership vests in private control. The Marine Conservation Commission has exclusive control of sea food while it is the property of the state.⁵ All shells of dead sea life found within the territorial jurisdiction of the state are the property of the state and are under the jurisdiction of the commission. Title may only be divested in

a manner prescribed by law.⁶ Full authority and control of shells, beds, banks and any accumulation of shells rests with the commission. The commission may sell or otherwise dispose of such to provide operating revenues.⁷

Before granting a contract for the sale or removal of shells, a thorough study must be conducted to insure that no damage will occur to other marine life during the operation. The Marine Conservation Commission will utilize the services of its marine biologist and other available experts in reaching a determination. Approval of a removal contract requires the vote of the biologist plus 3/5 of the remaining members of the commission. Any recommendation will contain specific information concerning the removal operation including the boundaries of the operation, the time span, the quantity of shells to be removed and other appropriate data.⁸ The exact procedure to be followed in taking bids for shell removal contracts is given by statute.⁹ Conditions for the contracts for removal of shells are also clearly set out by statutes.¹⁰

The Marine Conservation Commission is also authorized to lease bottoms within its jurisdiction. Such leases are subject to certain terms and conditions. The lessee must be a resident individual or corporation. The amount of land to be leased can vary from five to 100 acres. All applications for such leases must be made in writing to the commission and must comply with current application procedure.¹¹

The justice of the peace or county court has original jurisdiction over any prosecution or suit brought under statutes, rules or regulations relating to the Marine Conservation Commission. The same courts have jurisdiction

for any seizure or sale of property by the commission. The normal rights of appeal exist in all of these cases.¹²

Any person or corporation dissatisfied with an order of the Marine Conservation Commission may petition in writing for a hearing by the full commission. If the matter cannot be resolved a right of appeal to the appropriate circuit court exists.¹³

The Marine Conservation Commission is the designated agency for the cultivation of public reefs as oyster beds. The commission is authorized to employ the necessary personnel and equipment to carry out this action.¹⁴ Certain areas are restricted from oyster dredging by private individuals or corporations. These areas include the Bay of Biloxi, portions of the waters of Bay St. Louis, and certain other areas designated by statute. The commission is responsible for marking these areas.¹⁵

Any municipality on the Gulf of Mexico or the Mississippi Sound is authorized to aid the Marine Conservation Commission in the enforcement of oyster laws. Such municipalities may employ the necessary personnel and equipment. Fines levied may be retained by the municipality. Prosecution by a municipality, however, does not preclude prosecution by the commission.¹⁶

The Marine Conservation Commission has set certain taxes and licensing fees which are to be paid to the commission. An annual license fee is assessed on all fishing vessels. An inspection tax and fee of five cents is charged for each barrel of oysters taken. A privilege fee for canning and shipping oysters is required. Fish canneries must pay a privilege tax.

There are also miscellaneous fees on buying or handling seafood, processing fish by-products, shrimp fishing and processing and other marine related activities.¹⁷

Fines for violations of provisions of any act relating to the Marine Conservation Commission vary from a \$50 minimum on the first offense to a thirty day imprisonment and revocation of license for one year for the third offense.¹⁸

The Mississippi Game and Fish Commission is empowered to purchase, acquire, condemn or lease land or water suitable for use as fish hatcheries. Prior approval by the legislature is required, however.¹⁹

PUBLIC FISHERIES

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. CodeAnn. (1972)].

1. § 49-15-11.
2. Id. Procedural operation of the Marine Conservation Commission is outlined here.
3. § 49-15-15.
4. § 49-15-21.
5. § 49-15-5.
6. § 49-15-7.
7. § 49-15-47.
8. § 49-15-49.
9. § 49-15-51.
10. § 49-15-53 through 57.
11. § 49-15-27.
12. § 49-15-65.
13. § 49-15-67.
14. § 49-15-37.
15. § 49-15-39.
16. § 49-15-45.
17. § 49-15-29.
18. § 49-15-63.
19. § 49-1-29.

V. HARBORS AND PORTS

A. Agricultural and Industrial Board - Inland Ports.

It is the public policy of the State of Mississippi to aid in industrial and economic development through the development of inland ports and attendant industrial sites.¹ Responsibility for this development is given in large part to the Mississippi Agricultural and Industrial Board² (hereinafter referred to as the "A & I Board"), which has the authority to acquire, construct, develop, maintain and operate all inland ports, harbors, waterways and related facilities including rail terminals, roadways and industrial sites.³ In addition, the A & I Board is authorized to accept donations of monies for the development of such ports, harbors, and facilities.⁴

The Mississippi Agricultural and Industrial Board may contract with any governmental agency, local, state or federal, for the acquisition and development of any state-owned inland port. However, prior to the negotiation of such a contract, not less than three counties must levy a tax on real and personal property within their respective counties to pay for bonds authorized for establishing inland ports. If three counties fail to levy the required tax, the A & I Board may enter into a contract with any master water management district, whereby the district agrees to underwrite any deficits incurred from the operation of the port and obligations incurred by the A & I Board for the port authority.⁵

For acquisition of rights-of-way, land, and property related to inland ports and harbors, the A & I Board has the right and power to acquire the same by purchase, negotiation, or condemnation. If the board uses eminent

domain, it must proceed as the law provides. The right of eminent domain may apply to all property except interests in property owned by levee boards, drainage districts or other flood control agencies, provided that actual necessity is alleged and proven. The right of eminent domain is limited to the acquisition of railroad rights-of-way, road rights-of-way, and land for industrial use only. The A & I Board may also accept donations of any lands or facilities necessary to the operation of inland ports or harbors, or may exchange one property for another if necessary for such development.⁶

The Mississippi A & I Board, acting jointly with the State Inland Port Authority has the power to set aside or lease lands, roads, and other port related facilities for port, harbor, commercial or industrial use, or to sell the same. Such a lease will require the lessee to make expenditures in determined amounts, to erect improvements within determined time periods, and to conduct operations in aggregate payroll amounts for specified time periods. The lease may also contain reasonable provisions giving the lessee the right to remove certain improvements made on the premises after termination of the lease.⁷

The powers of the Mississippi A & I Board extend further than merely creating inland ports and are significant in the development of coastal ports as well. The overall powers of the board include those to acquire, construct, and operate ports, harbors, waterways and related activities, including shipbuilding, loading and unloading facilities and similar facilities incidental to the construction or repair of ships. These powers also include dredging and

widening of ports and channels, damming of inland waterways, development of industrial sites and reclamation of submerged lands.⁸ The overall powers of the A & I Board to acquire property by purchase, negotiation or condemnation are the same as for inland ports.⁹ A city, county or other authorized port or harbor agency may apply to the board and request that the State of Mississippi take over ownership of a part or the whole of said ports. Upon determination by the A & I Board that such state ownership is economically feasible and is in the best interest of the public, the board will enter into a written contract for the transfer. If an entire port or harbor is conveyed to the state, however, the agreement must be authorized by a majority of the qualified voters of the city or county having jurisdiction of said ports and harbors.¹⁰ Should the state acquire the whole port or harbor, the A & I Board will issue bonds to redeem all outstanding bonds of the previous owners or assume such outstanding bonds. The contract of acquisition will state the amount of the bonds to be issued by the state for the improvement, operation or development of the port or harbor.¹¹ The A & I Board may then lease or sell any of the state-owned harbor or port facilities in the same manner as for inland ports.¹²

B. Pat Harrison Waterway Commission.

The Pat Harrison Waterway Commission is composed of representatives of the State of Mississippi and the counties of Clark, Covington, Forrest, George, Green, Jackson, Jasper, Jones, Lamar, Lauderdale, Newton, Perry, Smith, Stone, and Wayne.¹³ The commission is responsible for making a survey of the Pascagoula, Leaf, and Chickasawhay Rivers and Tallahala Creek, and their tributaries, in cooperation with the federal government and other state agencies, to promote the establishment of barge canals linking Meridian

Hattiesburg, and Laurel and other cities with the Gulf of Mexico. Each county represented on the commission, pursuant to a plan to be approved by the commission, is authorized to improve any such waterways within said counties for navigation or flood control purposes.¹⁴ The commission is financed by funds made available by each of the associated counties, the board of supervisors being authorized to levy an ad valorem tax on all the taxable property in their respective counties.¹⁵

C. County Activities Relating to Harbors and Ports.

The board of supervisors of any coastal county in Mississippi with an assessed valuation in excess of eight million dollars or less than five million dollars is authorized to use and expend for public harbor improvements harbor development, breakwaters, wharves, docks, and all related buildings and lands right-of-way, any funds received from the sale of bonds,¹⁶ as provided by the Mississippi Code.¹⁷ Additional revenue may be acquired for such facilities in certain designated coastal counties.¹⁸ The board of supervisors are authorized to levy an ad valorem tax on all taxable property. The proceeds of the levy must be deposited in a special "port fund" and expended for harbor improvements.¹⁹ The funds received from the sale of bonds may be used to purchase lands and rights-of-way necessary for harbor improvements and development. The board of supervisors may also exercise their right to eminent domain in the acquisition of such lands and rights-of-way.²⁰

The board of supervisors of any county which has a plan for the development of any port, harbor or waterway may, with the approval of the A & I

Board, issue general obligation bonds for that county. The board of supervisors must declare its intention to issue such bonds by adopting a resolution stating the amount of the bonds to be issued. The bonds are to be repaid from the profits and revenues of said ports and harbors and from the levy of an ad valorem tax on all taxable property within the participating county. All such sums of money obtained by the A & I Board will be paid into the state treasury and will constitute a fund known as the A & I Dredging and Site Preparation Fund. This fund may be used when the A & I Board joins with a county in the development of a port, harbor or waterway.²¹

Upon application, the county board of supervisors may approve a "boat landing" to be constructed as designated by statute. Those applying for the landing may erect warehouses, sheds or other such buildings for the reception, storage or shipment of cotton or other freight. The lot housing these buildings is required to be securely fenced, and the buildings are to be used for no other purposes upon penalty of fine.²² Upon completion of the project, the board of supervisors may lease the landing and fix a schedule of rates and charges for receiving and forwarding freight and require a bond from the lessee to insure that the lease be performed as stipulated in its terms.²³

The county authorities are also authorized to construct harbors, landings and related facilities necessary to support operation of a county ferry system. The county may expend only \$200,000 annually for such construction and land acquisition.²⁴

The boards of supervisors of certain designated coastal counties are authorized to create a County Port Authority and a Development Commission with jurisdiction over the ports, terminals, harbors, channels, boats, vessels, and wharves not falling under the jurisdiction of any Municipal Port Commission. The board of supervisors, acting with the County Authority and Commission, has the power to acquire, purchase, install, lease, construct, manufacture, own, maintain, repair, equip, use, control and operate all facilities, vessels, and equipment necessary to the operation of harbor facilities, water, air and rail terminals and other such structures. The board of supervisors are also empowered to develop land for industrial uses, acquire land for said uses, dredge and deepen existing harbors, restore beaches damaged by hurricanes, protect littoral highways, fill and reclaim submerged lands, establish industrial parks and necessary related facilities, and provide necessary rail, highway and bridge links.²⁵

Certain designated port commissions may exercise all powers granted to the County Port Authorities or County Development Commissions and may, additionally, acquire, own, operate and maintain gas, electric, water, sewage, or other public utility systems. Revenue bonds may be issued on resolution of the county board of supervisors and will not be limited to any amount. All leases executed by such commission or authority for ports, harbors, commercial or industrial improvements, may be free and exempt from all state, county, and municipal ad valorem taxes if stipulated in the lease.²⁶

D. Municipal Activities Relating to Harbors and Ports.

The governing authorities of municipalities have the power to construct

all needful improvements in their harbors to deflect the current of a river, to repair and regulate public wharves and docks, to collect levee rates and wharfage on articles brought to the port of such municipalities, to lease portions of the wharf or harbor,²⁷ and to issue bonds to raise money for constructing, repairing and improving wharves, docks, harbors and appurtenant facilities, and for purchasing land therefor.²⁸

Municipalities are controlled in different ways depending on their size, the depth of the harbor, or the related industrial activity surrounding the municipality. Those in which a port of entry is located in whole or in part within the municipal limits have the power to own, maintain, and construct necessary improvements and structures including all roadways necessary to aid commerce and useful to the port or harbor.²⁹ In addition, said municipalities may own, purchase, and reclaim land situated within reasonable proximity of such ports, docks and harbors, and may lease that property to commercial or industrial users. The municipality also has the authority to acquire any needed lands by eminent domain proceedings. It may also reclaim submerged lands.³⁰

Municipalities having all or part of a harbor or port located within it and having eight or more seafood industries and with a channel or harbor at least eight feet deep are authorized to construct and operate ports. However, such cities may not expend more than two million dollars in such works, improvements or developments.³¹

The authorities of any city having a population of at least ten thousand are authorized to acquire by purchase, gift, reclamation, or lease any land

or water frontages for use as a small craft harbor. The harbor, however, must be constructed within the city's territorial limits. Any municipality bordering the Gulf of Mexico or the Mississippi Sound may establish such a small craft harbor regardless of its population.³²

Any municipality which establishes an Industrial Park may, directly or by contract, construct wharf, dock and water terminal facilities in connection with such a park.³³

The governing authorities of certain designated municipalities are given the authority to plan, construct, build, maintain and operate "inland ports", and, in connection with this, receive, contract for, and expend funds from any source.³⁴

Any city in the State of Mississippi having a seaport or harbor that is designated as a port of entry by the United States Government may have a harbor commission known as the Port Commission. This commission has jurisdiction over the said port, terminals, passes leading to the same, and vessels and common carriers using the facility.³⁵ Each Port or Harbor Commission is required to provide all rules and regulations and perform all duties necessary to govern harbors and docks in their jurisdictions. The commission prescribes tariffs, fees and penalties, and is responsible for the hiring and regulating of all harbor pilots and other necessary employees.³⁶ The commission may also cooperate with the board of supervisors of the various counties and perform all duties assigned it by the board such as managing controlling port facilities. In performing these duties, the commission may

enter into contracts and purchase land and property that are incidental to operations of port activity.³⁷ With approval of the board of supervisors, a port commission has the power to sell or lease any land or easement owned by the county in conjunction with the operation of a port or harbor. Such a sale or lease is restricted to "industrial activities integrated to water transportation." However, sale or lease of said property may be made to the United States Government for any purpose including navigation and flood control.³⁸

A port commission may sell, lease, or convey lands under its own jurisdiction if such lands are not needed for port development. A vote of two-thirds of the members of the commission is sufficient for such a sale. If the land to be held is in the name of any city, the city must also join in any transfer of the land.³⁹ The port commission is also vested with full jurisdiction and control of lands lying within or adjacent to a river, lake or bay which is below the high water mark and to which claims of private persons have been acquired by the commission. The jurisdiction also extends to lands adjacent to an actual harbor or port. The commission is authorized to reclaim such lands and to utilize, lease or dispense the same in order to develop and operate ports and harbors.⁴⁰

Any conveyance, lease or contract concerning land controlled by the port commission will be made under terms approved by the city. Covenants of grantees conducting industrial operations to develop industry will be a sufficient consideration for transfer. Such contract, lease or sale must contain provisions for the reversion of title for default on covenants set by the grantor. Unless otherwise agreed, this reversion will not include improvements

made by the grantee.⁴¹ The port commission and the mayor or board of aldermen of the port of entry, acting jointly only, may negotiate contracts for construction and maintenance of harbors and ports. The port commission may employ technical help for operation and development of said port with the approval of the mayor or the board of aldermen.⁴²

The port commission may assist any municipality possessing a certificate of public necessity and public convenience in establishing industry. The commission may convey or lease land or join with such a municipality in conveying, leasing or contracting land for such purposes. Any disposition of land will be subject to termination or reversion of title in the event of abandonment or noncompliance by the industry concerned.⁴³ When selling or leasing land under its control, the commission is required to retain all oil, gas, and other mineral rights except sand, gravel and clay.⁴⁴

Many municipalities create their own codes of authority which place control of certain ports and harbors under their own jurisdiction.⁴⁵ They also provide penalties for nuisance⁴⁶ and pollution⁴⁷ in the harbor or port and list general guidelines for safe port and harbor use.⁴⁸

E. Bridge and Park Commission.

To stimulate the development of navigation, harbor facilities, and related facilities, the governing authorities of certain designated coastal counties and municipalities are given the authority to establish a Bridge and Park Commission. Through the commission or other agencies, these authorities may engage in works of internal improvement promoting, developing, constructing, maintaining and operating harbors or seaports within the state.⁴⁹

The Bridge and Park Commission has the power to sue and be sued, contract and be contracted with, adopt and alter a corporate seal, and exercise the power of eminent domain to acquire private property necessary for the accomplishment of its purposes.⁵⁰ The commission has the additional power to acquire by eminent domain, gift, or purchase any island or islands situated within the Gulf of Mexico or Mississippi Sound within designated limits from the participating municipalities or counties, and to construct thereon wharves, piers, harbors, marinas and jetties, and to dredge, deepen and widen any channels. The commission may further employ such personnel as necessary to fulfill these said purposes. It may also borrow money, receive contributions, and enter into contracts with the United States or federal departments in furtherance of said purposes.⁵¹

The Bridge and Park Commission may acquire such islands within the Gulf of Mexico or Mississippi Sound as necessary for use in developing and financing public improvements. Before acquisition, the commission must determine that the property is necessary to finance the improvements. When the commission has acquired an island adjacent to any submerged lands belonging to the state, the commission may purchase a sufficient amount of such submerged lands to be reclaimed and added to that island. The State Land Commissioners, with the approval of the attorney general and governor, may sell the commission such land and issue a state patent. The commission has the power to fill and reclaim submerged lands.⁵²

To provide funds for its corporate purposes, the commission has the

power to borrow money and to issue bonds in evidence thereof. These bonds are payable from the income and reserves derived from the operation of any of the facilities owned by the commission, or from the levy of an ad valorem tax as designated in the statute.⁵³ The Bridge and Park Commission may authorize bonds by resolution which will also determine interest rate, denomination, place payable, and maturity date.⁵⁴ Whenever such bonds are issued by the Bridge and Park Commission, the rates, fees, charges and tolls to be established for the use or services of any of the facilities owned or operated by the commission must be such as to produce an aggregate amount sufficient to pay the cost of operation and maintenance of such facility as well as sufficient to pay the principal and interest on said bonds, and to provide an adequate reserve and contingent fund.⁵⁵ Any bondholder of a bond issued by the Bridge and Park Commission may judicially enforce and compel all duties required by the commission or its officers. Bonds need not be in default if the commission, its officers or members fail to perform duties required by the resolution authorizing the bonds. In the event of default, the court may appoint a receiver to carry out the commission's responsibilities.⁵⁶

In connection with the authority granted to the Bridge and Park Commission, any municipality involved has the right to incorporate the islands, in whole or in part, into the municipality in the same manner provided by the state for incorporation of adjacent lands into municipalities in this state.⁵⁷

HARBORS AND PORTS

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)]

1. § 59-17-3.
2. See Id. § 59-5-1, et seq.
3. § 59-17-13.
4. § 59-17-33.
5. § 59-17-19.
6. § 59-17-23.
7. § 59-17-29.
8. § 59-5-11, § 59-17-1 et seq.
9. §§ 59-5-37, 59-17-33.
10. § 59-5-17.
11. § 59-5-31.
12. § 59-5-35; see § 59-17-29.
13. § 51-15-1.
14. § 51-15-3.
15. § 51-15-5.
16. § 59-13-1.
17. § 59-13-5.
18. § 59-13-15, requiring that the county must border on the Mississippi Sound of Gulf of Mexico, have an assessed valuation in excess of forty-five (45) million dollars, and have within its borders a city in which there is maintained a harbor or channel with a depth of not less than four and one-

half feet (4-1/2'), and in which city there is operated seasonally one or more canning plants for shrimp, oysters and other seafood.

19. § 59-13-15.
20. § 59-13-11.
21. § 59-9-65.
22. § 59-19-11.
23. § 59-19-15.
24. § 65-29-5.
25. § 59-9-7.
26. § 59-5-31.
27. § 21-37-15.
28. § 21-33-301.
29. § 59-7-305.
30. § 59-3-1.
31. § 59-7-405.
32. § 59-15-1.
33. § 57-5-17.
34. § 43-35-201.
35. § 59-1-1.
36. § 59-1-9.
37. § 59-7-205.

38. § 59-7-211.
39. § 59-1-19.
40. § 59-1-17.
41. § 59-1-21.
42. § 59-1-11.
43. § 59-1-23.
44. § 59-1-25.
45. Gulfport, Miss., State Port Authority Traffic 2B, § 2, item 115 (1970).
46. Id., § 2, item 240.
47. Id., § 2, items 230, 235.
48. Id., § 2, item 140.
49. § 55-7-1.
50. § 55-7-9.
51. § 55-7-21.
52. Id.
53. § 55-233-35, 37.
54. § 55-7-39, 41.
55. § 55-7-49.
56. § 55-7-51.
57. § 55-7-53.

VI. SUBMERGED LANDS, MARSH LANDS

1. Land Acquisition, Disposition, Construction.

The State of Mississippi and certain political subdivision thereof are authorized to acquire or dispose of submerged land for specified purposes. Counties, in connection with federal flood control improvements, may accept the conveyance of any lands, easements and rights-of-way over and on such works.¹ Counties are authorized to purchase lands under water for construction and maintenance of toll bridges and approaches on the Pearl River.²

The State Land Commissioner, with the governor's approval, may rent or lease submerged lands owned or controlled by the state and lying in or adjacent to the Mississippi Sound or Gulf of Mexico or streams emptying therein for a period not exceeding five years. Such leases may provide for cancellation by the state at its option.³

The State Land Commissioner, with the approval of the Attorney General, is empowered to convey such submerged and tidal lands to the county and issue a patent therefor. However, oil, gas and other mineral rights are reserved to the state.⁴

The Bridge and Park Commission has the power to acquire for park, recreational, harbor and other similar purposes, by the power of eminent domain or otherwise, any island or islands situated within the Gulf of Mexico or the Mississippi Sound and within designated limits from the counties and municipalities participating in the acquisition. Any such commission which has so acquired an island adjacent to any submerged lands belonging to the state of Mississippi may

purchase a sufficient amount of the submerged lands to be reclaimed and added to such islands.⁵

Drainage districts are empowered to accept conveyances of land from the United States and to use, rent, lease and convey the same for flood control works and improvements.⁶ Districts have the right to acquire and own in fee simple, within the confines of such district, all necessary rights-of-way for floodways, by-passes, ditches, canals, levees, and other necessary work or improvements, by purchase or condemnation. Districts may sell or lease these lands subject to drainage purposes and easements of the district.⁷

The board of commissioners of the flood control district is authorized to acquire lands, flowage rights, rights-of-way, easements, or premises, within or without the district, for flood control works and improvements. The board may purchase necessary state and federal lands with no restriction on the total amount of state lands to be acquired. It may purchase lands forfeited to the state through taxation.⁸

The Pearl River Valley Water Supply District may acquire property for necessary projects. It may use eminent domain power in specific instances.⁹

Certain agencies and authorities have construction powers regarding submerged lands. Drainage districts are given power to construct or have constructed certain ditches on lands of others or of the district to alter, deepen or improve any natural drains and watercourses. Levees may be constructed to protect or reclaim lands from overflow.¹⁰

Riparian owners of the Gulf or Mississippi Sound have the right to erect bathhouses and other structures along the shore.¹¹ An airport authority has the

power to establish, acquire and maintain airports in, over and upon any public water of the state and any submerged land under such public waters.

2. Governing Bodies.

In addition to the boards of supervisors of the counties, certain agencies and commissions have power over submerged lands. The Agricultural and Industrial Board is vested with jurisdiction and control of any and all lands lying within, adjacent to, or near any state-owned or operated ports, harbors, rivers, channels, waterways, or natural lakes, if such lands are below the mean high tide mark and are not within the jurisdiction of any other public body.¹²

Another agency is the Pearl River Industrial Commission made up of commissioners from Hinds, Rankin, Leake, Madison, Neshoba and other counties where Pearl River runs. The boards of supervisors of these counties submit three names to the governor who selects one from each county for the commission and also designates a chairman and vice-chairman.¹³

To stimulate the development of navigation, harbor facilities, and other related facilities, the governing authorities of certain designated coastal counties and municipalities are given the authority to establish a Bridge and Park Commission.¹⁴ In certain instances such commissions have authority over submerged lands.

Swamp Land Commissioners have control and management of the affairs of swamp land district, and have the power and authority to make improvements to and maintain existing drainage channel or channels of such district.¹⁵

Consolidated drainage districts have the authority, power and jurisdiction of the former separate districts.¹⁶

3. Revenue.

Certain commissions and agencies dealing with submerged lands are concerned with revenue. For the purposes of providing funds for its corporate purposes, the Bridge and Park Commission has the power to borrow money and to issue bonds in evidence thereof payable from the income and reserves derived from the operation of any of the facilities owned by the commission, or from the levy of an ad valorem tax as designated in the statute.¹⁷ The holder of any bond issued by the Bridge and Park Commission may enforce and compel all duties required of the commission, including the collection of adequate rates on facilities. Should the commission be in default of payment on the interest on any principal of any such bonds, the court may appoint a receiver to administer and manage all facilities efficiently so that the payment may be made.¹⁸

Extension of existing drainage district boundaries subjects newly embraced lands to the same assessments and powers as the former lands. Moreover, the lands of the originally organized district are liable for assessments of benefits thereafter levied if any benefits are received by them.¹⁹ Consolidated drainage districts have the power to assess the combined territory, or any part, with additional benefits and to levy taxes thereon for the purpose of raising money for the performance of the district's functions. The consolidated district is not bound by any assessment previously made in any separate drainage district and may assess the combined lands with benefits without regard to any former assessments of benefits in any separate district.²⁰

Commissioners of flood control districts also have the right of taxation. They are empowered to borrow money and to issue notes therefor.²¹ Swamp

Land Commissioners have the power to contract and to cooperate with any appropriate agency of the United States Government in carrying out their duties.²² The Pearl River Industrial Commission's financing will be made available from member counties in the amount that the board of supervisors deems advisable.²³

4. Development, Protection, Restoration and Emergency plans.

a. Reclamation.

For the development of a port, harbor or waterway, the board of supervisors of a county, acting through the county port authority and with the supervision and approval of the Agricultural and Industrial Board, has the power to reclaim submerged lands and tidal lands belonging to the state.²⁴ The Agricultural and Industrial Board also has the power to reclaim submerged lands.²⁵ The corporate authorities of a municipality in which there is situated, in whole or in part, a harbor that is a port of entry, has the power to reclaim submerged lands that may be necessary or useful in the development, improvement, or construction of the harbor or port.²⁶

The Bridge and Park Commission may dredge, fill in and reclaim submerged lands adjacent to any island obtained by it. It may develop and utilize such land for its purposes including financing public improvements provided that no normal or natural channel will be obstructed so as to interfere with the normal navigation therein.²⁷ The Bridge and Park Commission may also dredge, deepen and widen any adjacent or existing channels, when they may be done consistent with and in aid of normal navigation and harbor development in the area.²⁸

Drainage districts have the power to construct or erect levees over the land of others or over the lands acquired by it to protect or reclaim any lands from overflow from any source.²⁹

b. Flood Control.

Counties through which any river or stream runs and on which the United States has authorized flood control improvements are empowered to give satisfactory assurances through the county board of supervisors to the appropriate federal agency that they will do the following:

- (a) provide, without cost, all lands, easements and rights of way necessary for the construction of the project;
- (b) hold and save the United States free from damages due to the construction of the works; and
- (c) maintain and operate all the works after completion in accordance with terms of the Flood Control Act.³⁰

Flood control districts may be organized in cooperation with the United States for construction of flood control improvements, for the protection of property, for controlling floods and reclaiming overflows in the state, for operation and maintenance of dams, reservoirs, and other flood control works, and for improvements built by the federal government.³¹

The land commissioner can grant or donate easements in and to public lands to any federal or state drainage or flood control district for the construction and maintenance of flood control canals and ditches, or drainage canals and ditches, or other flood control or drainage instrumentalities.³²

Flood Control Commissions have the power to redirect any natural

watercourse unless prohibited by Section 81, Mississippi Constitution of 1890. However, bypasses, ditches, canals, levees, floodways, diversions or other artificial means must empty the water directly into the same watercourse within thirty-five miles from the mouth thereof.³³

5. Other Restrictions.

Any person, firm or corporation duly authorized to explore and produce oil and gas or other minerals or authorized to transport the same has the right to construct, operate and maintain facilities incident to those operations in any of the navigable waters of the state provided a permit³⁴ has been obtained from the State Oil and Gas Board.³⁵ The right to construct, operate and maintain a facility in, on, under or across land which is submerged or wherever the tide may ebb and flow shall be subject to the paramount right of the United States to control commerce and navigation; the public right to make free use of the waters; and § 81 of the Mississippi Constitution (1890).³⁶

Pipe line owners are responsible in damages for any injury caused by construction or use of pipelines across public lands.³⁷ Storage of natural gas underground in the offshore waters of the state is prohibited.³⁸

The Pearl River Valley Water Supply District is authorized to accomplish the proper utilization of the Pearl River's resources.³⁹ The district's board of directors may aid in forest development and conservation; acquire property for necessary projects; use eminent domain power in specified instances; require the relocation of roads, telephone lines, gas lines, or railroads in a project area; and enter into contracts. A variety of other powers are granted to accomplish proper use and growth of the Pearl River Valley.⁴⁰

Counties are authorized to purchase any interest in land under water for construction and maintenance of toll bridges and approaches on the Pearl River as flood plain. The state expressly consents to the use of all land lying within state and under water as necessary for the construction.⁴¹

Riparian owners on the Gulf of Mexico or Mississippi Sound have sole right of planting and gathering oysters. These, with certain exceptions, extend seven hundred fifty yards from shore. Municipalities may adopt reasonable rules to protect enjoyment of riparian property.⁴²

SUBMERGED LANDS

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)].

1. § 51-35-15.
2. § 65-23-309.
3. § 29-1-107. Lessee may construct such necessary aids in navigation, but obstructions to navigation are prohibited.
4. § 59-9-67. Again, the only limitation is that there be no interference with normal navigation.
5. § 55-7-21.
6. § 51-35-5. Such lands are subject to normal taxation.
7. § 51-29-123.
8. § 51-35-159.
9. § 51-9-121.
10. § 51-31-5.
11. § 49-15-9.
12. § 59-5-11.
13. § 59-9-1.
14. § 55-7-1.
15. § 51-33-203.
16. § 51-29-157.

17. § 55-7-35, thru 39.
18. § 55-7-51.
19. § 51-29-137.
20. § 51-29-157.
21. § 51-35-121.
22. § 51-33-201.
23. § 51-9-7.
24. § 59-9-67.
25. § 59-5-11.
26. § 59-3-1.
27. § 55-7-21.
28. Id.
29. § 51-31-5.
30. § 51-35-15.
31. § 51-35-105.
32. § 29-1-99.
33. § 51-35-171.
34. § 53-3-73. This permit fee for constructing a facility costs five
 hundred dollars (\$500.00).
35. § 53-3-71.
36. § 53-3-75.
37. § 29-1-101.
38. § 53-3-165.

39. § 51-9-103.
40. § 51-9-121.
41. § 65-23-309.
42. § 49-15-9.

VII. PUBLIC TRUSTS AND SIXTEENTH SECTION LANDS

A. SIXTEENTH SECTION LANDS

The county boards of supervisors are empowered to sell or lease sixteenth section and lieu lands for industrial development.¹ Before any such land may be sold or leased, the board controlling the land must determine that the sale or lease will be at the fair market value as derived by the comparative sales method.²

The board must also determine that prompt and substantial industrial development will follow; that the acreage is not in excess of that required for immediate use and future expansion; and that the sale or lease is in the best interest of the schools of that county. All of the findings plus the sale price or rental must be entered upon the minutes of the board of supervisors.³

In addition to these required findings, the board must obtain an option to purchase acreage equivalent to that sold. A maximum one hundred acres in any one sixteenth section school lands of the county may be sold for use as an industrial park.⁴

Certified copies of the resolution setting out the findings and terms of the contracts for the purchase of other lands where a sale is proposed, plus an application to the Agricultural and Industrial Board for the certificate authorizing the transaction must be forwarded to the county board of education or board of trustees of the school district for conducting an independent investigation of the matter. If that investigating body concurs in the findings, it will enter on its minutes a resolution or order approving such. If that body does not concur, the

transaction is disapproved. Such action is final.⁵

Certified copies of the resolutions of the board of supervisors, county board of education or board of trustees and the application to the Agricultural and Industrial Board must be forwarded to the county superintendent of education, who will approve or disapprove, and then forward the appropriate copies to the Agricultural and Industrial Board. The board will review the findings and investigate the proposed industry to determine the financial responsibility of that industry.⁶

Upon approval, the Agricultural and Industrial Board will issue a certificate to the board of supervisors authorizing the proposed sale or lease. If the Agricultural and Industrial Board disapproves, no certificate is issued and such action is final.⁷

In addition, the Agricultural and Industrial Board may condition its approval upon the approval of the qualified electors of the county. Such vote will be held in the manner provided by law. Three weeks notice must be given by the clerk of the board of supervisors in newspaper publication, once each week for three consecutive weeks preceding the election. If no newspaper is published in that county, publication will be in a newspaper of general circulation and a posting of notices for three weeks preceding the election will be made at three public places in the county. A two-thirds majority of the votes cast is needed for approval of the proposed sale or lease.⁸

Prior to the passage of a resolution by the board of supervisors expressing its intent to sell such land, it will publish notice of its intent in a newspaper for three consecutive weeks, or, if no newspaper is published in the county, for three

consecutive weeks in a newspaper of general circulation therein, plus a posting of notices in three public places in the county for three weeks prior to the resolution.⁹ If within such three weeks period, twenty percent of the qualified electors sign and file a petition with the board of supervisors requesting an election, then such election must be held.¹⁰

Each member of the board of supervisors is required to file with the chancery clerk in his county an annual inventory of personal property owned by the county. Similarly, any member not succeeding himself in office must file such an inventory not less than ten days prior to the expiration of his term.¹¹ It is unlawful for a member defeated in a primary to sell or dispose of any property between the election and the date his successor takes office.¹²

When a board of supervisors sells or leases sixteenth section land or lieu land for industrial development, all minerals are reserved in such lands.¹³ No municipality or county may lease sixteenth section land for gas, oil or mineral development.¹⁴

Sixteenth section school lands and lieu lands are exceptions to the authorization of the State Mineral Lease Commission to lease state-owned lands. The Commission may not lease such lands for mineral purposes.¹⁵

The Pearl River Valley Water Supply District may overflow sixteenth section land and not be guilty of legal waste. The District will pay reasonable rentals for the use of such land. Any sixteenth section lands that have been flooded will be reforested before the project is abandoned.¹⁶

The Pearl River Basin Development District is authorized to overflow sixteenth section land when necessary and reasonable. The district will pay

reasonable rent and damages as determined by the chancery court of the county where such land is located. The district must reforest any land flooded before the project is abandoned.¹⁷ The Pat Harrison Waterway district is also empowered to overflow and inundate sixteenth section lands.¹⁸

Certain governmental units are empowered to grant rights-of-way or easements over sixteenth section land for various purposes. The State of Mississippi or the board of supervisors of a county are authorized to grant rights-of-way or easements to the United States in, through, or over sixteenth section lands for the establishment of federal scenic roadways, parkways or parks.¹⁹

The Rural Electrification Authority has the power to construct and maintain electric lines over unimproved sixteenth section land or land granted in lieu of sixteenth section land. The right and power to construct and maintain the lines is without payment to the State for the easement.²⁰

Sixteenth section lands are among those lands excepted from the State Land Commissioner's power to convey easements for the construction and maintenance of pipe lines on state land in connection with a building and operating a refinery.²¹ Pipe line owners are responsible for damages from injury resulting from the construction or use of pipe lines across public lands.²²

B. OTHER PUBLIC TRUST LANDS

Drainage districts may be formed and granted full power and authority to construct such artificial main drains and ditches and lateral drains and ditches over the lands of others or over or on lands which may be acquired by the district. Districts may also alter, deepen or improve any natural drains and water courses.²³

Such drainage districts may also construct or erect levees over the land of others or land acquired by the district as may be necessary to protect or reclaim lands from overflow from any source.²⁴

Drainage districts are empowered to accept conveyances of land from the United States and to use, rent, lease and convey the same for the benefit of the district in the maintenance of flood control works and improvements. Such lands are subject to taxation.²⁵

Districts have the right to acquire and own in fee simple, within the confines of such districts, all necessary rights-of-way for floodways, by-passes, ditches, canals, levees, and other necessary works or improvements, by purchase or condemnation, as provided by law within the district. It may sell, lease or otherwise dispose of same, subject to drainage purposes and easements of the district. It may rent or lease for cash or crops, such parts of its right-of-way as are suitable for growing and producing crops. The income therefrom will be used for the maintenance of the improvements of the district.²⁶

Districts may acquire rights-of-way through existing drainage districts with the consent of the existing district and upon such terms as the existing district may impose.²⁷

Extensions of existing drainage district boundaries subject newly embraced lands to the same assessments and powers as the former lands. Moreover, the lands of the originally organized district are liable for assessments of benefits to be thereafter levied, if any benefits are received by them. In like manner, they will receive credit for any work done, improvements made, or construction accomplished by the district as previously organized which will benefit the land

and territory added.²⁸

Consolidated drainage districts must assume the authority, power and jurisdiction of the former separate districts. The consolidated district has the additional power, authority and jurisdiction to assess the combined territory, or any part, with additional benefits and to levy taxes thereon for the purpose of raising money for the performance of the district's functions. The consolidated district is not bound by any assessment previously made in any of the separate districts, and may assess the combined lands with benefits without regard to any former assessments of benefits in any separate districts.²⁹

To accomplish the purposes of the flood control district, the board of commissioners is authorized to acquire lands, flowage rights, rights-of-way, easements, or premises located within or without the district by purchase, grant, donation, condemnation, or otherwise as necessary and proper for flood control works and improvements. The board may also purchase lands forfeited to the state through taxation.³⁰

The board has the right to acquire, by agreement with the owner or owners, all property and rights-of-way, land, easements, flowage rights, and other property required by it. The board may settle all claims for damages on account of lands, rights-of-way, flowage rights, damage to roads and highways for the construction, operation, maintenance or repair of said flood control works, or any part thereof. In the case of such settlement, the owners have the right, without any order of the court to convey the right-of-way, flowage rights, easements or other property so acquired, and the conveyance will vest the board with title

to the rights-of-way, easements, flowage rights, or other property thus acquired.³¹

The land commissioner can grant or donate easements in and to public lands to any federal or state drainage or flood control district for the construction and maintenance of flood control canals, drainage canals and ditches, or other flood control or drainage projects.³²

Counties through which any river or stream runs and on which the United States has authorized flood control improvements are empowered to give satisfactory assurances through the county board of supervisors to the appropriate federal agency that it will provide without cost all lands, easements and rights-of-way necessary for the construction of the project; hold and save the United States free from damage resulting from the construction of the works; and maintain and operate all of the works after completion in accordance with the terms of the Flood Control Act.³³

Any such board of supervisors is also authorized to accept the conveyance of lands, easements and rights-of-way that may be benefiting by the maintenance of such works; to accept assurances from landowners whose property is benefited by such flood control improvements; and to levy, assess and collect such taxes on said area as will be necessary.³⁴ The board is also to save and hold the United States free from all damages due to the construction of the works. The board may exercise the right of eminent domain to secure rights-of-way and easements in like manner as the boards of supervisors in condemnation of public road rights-of-way. The board will maintain such works in said county after completion.³⁵

PUBLIC TRUSTS AND SIXTEENTH SECTION LANDS
FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)].

1. § 29-3-29.
2. Id.
3. Id.
4. Id.
5. Id.
6. Id.
7. Id.
8. Id.
9. Id. One of the public places will be the courthouse.
10. § 29-3-29.
11. § 19-3-45. Failure to comply with this order is a misdemeanor.
12. § 19-3-45.
13. § 29-3-29.
14. § 17-9-3.
15. § 29-7-3.
16. § 51-9-161.
17. § 51-11-47.
18. § 51-15-119.
19. § 55-5-9.
20. § 77-5-47.
21. § 29-1-101.
22. Id.

23. § 51-31-5.
24. Id.
25. § 51-35-5.
26. § 51-29-123.
27. § 51-29-125.
28. § 51-29-137.
29. § 51-29-157.
30. § 51-35-159.
31. Id.
32. § 29-1-99.
33. § 51-35-15.
34. Id.
35. Id.

VIII. PUBLIC INDUSTRIAL PARKS

The industrial development of the state is an area of great importance. One of the devices developed to aid in industrialization is the industrial park. These parks are designed to allow municipalities to attract industry and to promote and further industrial growth. The Mississippi Agricultural and Industrial Board is the state agency directly concerned with industrial park development.

The establishment of industrial parks requires the issuance of a certificate of convenience and necessity by the A & I Board. The board will determine whether a certificate should be issued to a municipality that requests authorization to establish and develop an industrial park.¹ Upon application from a municipality for a certificate to establish such a park, the board will conduct all necessary investigations and hearings.² Each municipality has the right to apply for a certificate in order to enter into an industrial park development.³ The certificate issued by the board will fix the limits of bond issuance and expenditures, designate what property is to be acquired and the terms of such acquisition, determine what expenditures are authorized for the project, and outline the method of operation of the park.⁴ Municipalities may act severally or jointly in securing certificates and in operating the parks.⁵ In the application to the board, the municipality will advise the board if eminent domain powers will be required to acquire the necessary property for an industrial park. Up to 25% of the required land may be thus acquired.⁶

The board must approve and specify such power in the certificate issued.⁷

After receiving a certificate of public convenience and necessity, a municipality has the power to acquire land, contract for construction of the park, and purchase necessary equipment.⁸ The municipality has twelve months from the issuance of the certificate to begin the project. Any subsequent disposition of public property originally acquired for an industrial park requires approval of the A & I Board.⁹

The major state agency controlling industrial park development is the Agricultural and Industrial Board. Upon receipt of an application from a municipality for the issuance of a certificate for establishing an industrial park, the board will conduct an investigation to determine the availability of natural resources, the availability of an adequate labor force, the adequacy of property values and the suitability of the municipality's financial condition to prevent total bonded indebtedness for the project from exceeding 10% of the total assessed value of all the property in the municipality, the availability of suitable land for the park. If the board finds the factors favorable, a certificate will be issued.¹⁰

The A & I Board may also designate that necessary roads be constructed connecting the proposed site of an industrial park with the major highways. However, such construction shall not begin until contracts between the municipality and the prospective occupants of the park are made.¹¹

The failure of the governing board of a municipality to comply with the standards and requirements established by the A & I Board for the industrial

park can result in personal liability. All members of the governing board voting for such non-compliance with the A & I Board's certificate requirements will be personally liable upon their official bonds for any loss sustained by the municipality as a result.¹²

It is the legislative intent that each industrial park project be self-liquidating.¹³ To help insure this result, the A & I Board will determine the extent to which a municipality may issue bonds and make expenditures for an industrial park development.¹⁴ The board will also determine what expenditures are permitted.¹⁵ The certificate of public convenience and necessity issued by the board must approve all bond issues for industrial parks.¹⁶

With the approval of the A & I Board, municipalities are authorized to issue revenue bonds to defray acquisition and construction costs for industrial park projects.¹⁷ All income from the operation of such enterprises will be paid into a bond sinking fund to retire said bonds.¹⁸ When a municipality disposes of some part of a park project, all revenues received will be paid into the bond sinking fund and used for payment of principal and interest on bonds issued to acquire and develop the industrial park.¹⁹

Funds for the construction of connecting roads designated by the A & I Board will be obtained from the highway fund of the highway district within which said roads are to be constructed. The board will file the necessary certificate with the State Highway Commission.²⁰

The minimum requirements for an industrial park are set by the A & I

Board. These include a complete engineering study to include maps of the proposed site, a detailed outline of development, and an itemized estimate of all costs involved in acquisition and development. All such studies, details and estimates must be made by a reputable engineering firm licensed to do business in the state.²¹ The certificate issued by the board will fix the amount to be expended on developing the industrial park.²²

The A & I Board is authorized to develop industrial sites in connection with harbors, ports, and waterways.²³ Port commissions may assist in industrialization by conveying or leasing land under their control for park developments. Any such transaction is subject to termination or reversion of title if subsequently abandoned for industrial purposes.²⁴

Any governmental subdivision with surplus airport land or other public land which is not being utilized may set such land aside for industrial purposes. In developing such land for industrial use, the municipality may provide all necessary utilities, roadways and rail connections as required as well as other necessary improvements. Such improvements are to be financed from subsequent lease or sale of the land.²⁵

All "industry promoting" enterprises owned by a municipality are public property and therefore exempt from taxation.²⁶

PUBLIC INDUSTRIAL PARKS

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)].

1. § 57-5-09.
2. § 57-5-13.
3. § 57-5-11.
4. § 57-5-15.
5. § 57-5-17.
6. § 57-5-21.
7. § 57-5-23.
8. § 57-1-23.
9. § 57-1-27.
10. § 57-5-13.
11. § 65-1-41.
12. § 57-1-21.
13. § 57-3-3.
14. § 57-1-21.
15. § 57-5-15.
16. § 57-1-27.
17. § 57-3-9.
18. § 57-1-45.
19. § 57-5-13.
20. § 65-1-41.

21. § 57-5-5.

22. § 57-5-15.

23. § 59-5-11.

24. § 59-1-23.

25. § 57-7-1.

26. § 57-1-47.

IX. PARKS

A. The Mississippi Park Commission.

The Mississippi Park Commission, which has full jurisdiction and control over all state parks,¹ may accept gifts or bequests of money to be used for advancing the recreation and conservation interest in state parks.² The commission may also purchase property, real or personal, to be used for state park purposes.³ At its discretion, the Mississippi Park Commission may lease any park or part thereof to any state agency for a period not to exceed ten years. The leases may only be for recreational or educational purposes, and the lease may not operate for a profit. The commission is also authorized to grant easements and rights-of-way which it deems in the best interests of the state park.⁴

The Mississippi Park Commission consists of nine commissioners appointed by the governor.⁵ It has full control and jurisdiction over all state parks.⁶ The commission has the responsibility of enforcing all reasonable rules and regulations governing the occupancy and use of lands and waters in state parks.⁷

The commission selects an executive director, who is the administrative officer of the commission. The executive director performs the duties required of him by law and all other duties as may be assigned to him by the commission. The executive director has no vote in the divisions of the Mississippi Park Commission, but offers to the commission professional or technical advice and assistance.⁸

The park commission may appoint a local advisory committee for any state park to furnish the executive director and park personnel information

concerning the operation and development of the park. This committee serves without pay.⁹

A special advisory committee exists for the International Gardens of Mississippi. This committee consists of two members of the Department of Horticulture, Mississippi State University; three members of the State Senate appointed by the lieutenant governor; three members of the House of Representatives appointed by the Speaker; and four members appointed by the governor, one of whom must be a resident of each of the Supreme Court Districts and one of whom must be a resident of Copiah County. At least one member of this advisory body must be a woman.¹⁰

The Mississippi Park Commission may accept any gift or bequest of money and use this money to fund their operation.¹¹ The park commission may supply parks and recreational accommodations and facilities and charge fees for their use. The revenues generated by these charges will be retained by each park up to the amount needed to pay expenses for its operations. However, in no case will the park retain less than 75% of these revenues.¹²

The park commission may contract with the State Highway Commission, any municipality or any board of supervisors to locate, construct, and maintain roads and other improvements in state parks and for payment of a part of the cost of these improvements. However, no county or municipality more than twenty-five miles distant from a state park may contract for, do, or pay for any such work for a state park other than the International Gardens of Mississippi. Any county or municipality authorized to assist the park commission financially in making improvements is authorized to levy an ad valorem tax not to exceed two mills to defray the expense of making these improvements. This tax may not

be levied until an election is held to determine whether or not the county or municipality will assist in the improvements.¹³

The park commission may obtain revenues from the sale of timber cut at a state park. This timber must be sold to the highest bidder. Notice that bids are being taken must be published in a newspaper for three weeks and be posted in the courthouse of the county where the park is located. These revenues will be placed in a special fund for the improvement of the park from which the timber sold was cut.¹⁴

The executive director for the Mississippi Park Commission makes continuing studies of all park activities in order to determine the most efficient and economical manner to operate the state parks. Upon approval of his plans by the commission, the executive director implements them.¹⁵ The executive director also reviews purchase practices of the parks and makes recommendations for new purchasing techniques.¹⁶ The executive director makes inspections of park operations to see that the park is being properly administered.¹⁷ All purchases of park equipment are made by the executive director.¹⁸

The executive director of the park commission causes cooperation between the several state parks, departments and institutions so that work may be done by one park for another and equipment in one park may be made available to another park.¹⁹

In developing state parks, the Mississippi State Park Commission may contract with the State Highway Commission, any municipality or any county for aid in constructing and maintaining roads and other improvements provided

no county or municipality over twenty-five miles from the park may be contracted with.²⁰

The park commission hires employees and peace officers to enforce park rules and regulations. These officers may carry weapons and make arrests.²¹ The penalty for violation of the rules and regulations promulgated by the Mississippi Park Commission is a fine of not less than \$5.00 nor more than \$100.00 or imprisonment for not less than ten days nor more than thirty days or both.

B. State Forestry Commission.

The governor may accept gifts of land to the state, not to exceed 10% of the area of any county, to be held and administered by the State Forestry Commission as state parks and forests. These gifts of land must be absolute except for the reservation of mineral rights. When these donations exceed six hundred acres, the attorney general must insure that all deeds are properly executed and that all titles are free of encumbrances. The name of the park created by a donation will be the name of the donor or any other name he suggests.²²

C. General Land Acquisition, Disposition, Construction.

A three man commission composed of the Governor of Mississippi, the State Forester, and the State Director of Conservation of the State Game and Fish Commission makes surveys of all state owned land to determine the adaptability of such areas for use as state parks.²³ When this commission has completed its studies, its findings are submitted to the board of supervisors of the county

in which the lands deemed adaptable to park purposes are located. If the board agrees with the commission's findings, the governor may set aside and dedicate the lands for park purposes. No lands forfeited to the state for non-payment of taxes will be dedicated and set aside for park purposes until the expiration of eighteen months after the date of maturity of such tax titles in the state. ²⁴

The board of supervisors of any county may, by purchase or eminent domain, acquire land and convey the land to the state for state parks. In order to get funds to make these purchases the boards of supervisors may borrow money or levy a tax not exceeding one and one-half mills on all of the property of the county. In acquiring this land, no bona fide occupied homestead may be subjected to eminent domain proceeding. Should the board decide not to levy a special tax, funds from the general county fund are used to make the purchases. ²⁵

The governor may close any state park when he believes it is in the best interest of the county or counties in which the park is located. After closure, it is a misdemeanor to trespass on the park premises. The penalty for trespass is a fine of not over Five Hundred Dollars and not more than thirty days in the county jail.

D. County and Municipal Activities.

Any class four county which has two judicial districts, any county adjoining such a county, and any municipality located in such county may purchase, lease or acquire by gift land and waters within this state to develop and maintain as parks and recreational complexes. ²⁶ When two or more of the above political

subdivisions work together they are called a "Recreational District".²⁷ Any Recreational District is authorized to acquire, develop, provide and improve public parks and lakes for recreational use.²⁸

Where two or more political subdivisions act jointly in a park project and form a recreational district, these political subdivisions may issue and sell bonds to fund the project.²⁹ These counties and municipalities making up a Recreational District may also obtain funds for park purposes through the levy of an ad valorem tax not exceeding one mill of any one year on all taxable property within the political subdivision.³⁰

Park projects undertaken by a Recreational District are administered by a board of commissions. This board, whose members are appointed by the political subdivisions participating in the Recreational District, has the authority to lease facilities and tracts of realty in the district for commercial enterprises in educational, athletic, cultural or recreational pursuits. These leases may not be for a period exceeding sixty years. The board may employ personnel to operate and manage the parks of the district.³¹

The governing authorities of any municipality have the right of eminent domain in securing land for parks. These lands may be acquired through eminent domain whether or not they lie within the corporate limits of the municipality.³² The governing authorities of municipalities have full jurisdiction in the matter of parks.³³ They may, however, create a park commission consisting of three to five members. The members of the park commission manage and control all parks, playgrounds and swimming pools maintained and established in the municipality. The commissioners must be qualified electors of the municipality

and may not hold any other municipal office. Compensation for these commissioners is determined by the governing authorities of the municipality.³⁴

Municipalities may issue bonds to raise money for purchasing land for parks and public grounds. Such revenues may also be expended for improving, equipping and adorning the municipal parks. These funds may also be used for purchasing park equipment, for constructing swimming pools, and for other park facilities.³⁵ The governing authorities of municipalities may levy and collect taxes up to two mills annually for the purpose of constructing, supporting and maintaining parks and playgrounds and for other recreational purposes.³⁶

The governing authorities of any municipality may provide lighting for all parks within their jurisdiction.³⁷ The governing authorities' park maintenance powers also include the repairing of parks, sprinkling the parks, adorning the parks, and doing any needed paving.³⁸

E. Harrison County Parkway.

The Harrison County Parkway Commission may create a public parkway in Harrison County extending from Point Cadet on the east to Third Street in Henderson's Point addition on the west and lying between the presently existing and used public highway extending through and across the county known as Front Street, or U. S. Highway No. 90, and the road protection or seawall right-of-way. The commission may acquire land for this parkway by purchase, gift or lease. These leases or easements may be for perpetuity or for a term of years.³⁹ Title to the property obtained for use as the parkway must be taken in the name of Harrison County. Land so taken may never be used for any private purpose.⁴⁰

The Harrison County Parkway Commission consists of six commissioners. Five of these commissioners are appointed by the governor upon recommendation

by the governing authorities of Biloxi, Gulfport, Pass Christian, Long Beach and Harrison County. Any qualified elector of Harrison County is eligible for membership on the commission. The governor is ex-officio chairman of the commission.⁴¹

The board of supervisors of Harrison County and the municipalities of Biloxi, Gulfport, Long Beach, and Pass Christian may appropriate and expend funds for establishing and maintaining the Harrison County Parkway. These funds may be taken out of any general fund or they may be provided through the levy of an ad valorem tax on all property within the jurisdictions of the above political entities. This tax may not exceed one mill. The commission and board of supervisors of Harrison County may also apply for and accept funds from the United States government and expend these funds in establishing and maintaining the Harrison County Parkway.⁴²

The commission has the duty of landscaping the parkway and may employ a competent landscape engineer to aid them.⁴³ The commission must see that no nuisance is established or maintained on the parkway.⁴⁴ The commission, the county, and the municipality cooperating in establishing the Harrison County Parkway may adopt such regulations and ordinances as deemed proper and necessary to regulate the use of the parkway.⁴⁵

F. Bridge and Park Commission.

Designated coastal counties and municipalities may establish a Bridge and Park Commission.⁴⁶ This commission may acquire, by eminent domain or otherwise, islands in the Gulf of Mexico or Mississippi Sound for park or recreational purposes. In the case of a municipal Bridge and Park Commission, the island must be within three leagues of the corporate limits of the municipality;

in the case of a county agency, the island must be within the county boundaries.⁴⁷

When land acquired by the Bridge and Park Commission has become unnecessary for park or recreational purposes, the commission has the power to lease or sell this land to private persons or corporations. Property obtained by eminent domain may not be leased except for public purposes. When such lands cease to be used for public purposes, the title reverts to the former owners, their successors or assigns.⁴⁸

Each Bridge and Park Commission has five commissioners. These commissioners must be residents and qualified electors of the political entity appointing them. They are appointed for five year terms.⁴⁹ Powers of the Bridge and Park Commission include the power to sue and be sued, to contract, to have a seal and to exercise the power of eminent domain to acquire private property necessary for its purposes. Compensation for commissioners is twenty-five dollars per day while meetings are being held plus traveling expenses.⁵⁰ No commissioner may be pecuniarily interested in any contract for work to be done for or by the commission or in the purchase or sale of any properties by or for the commission. Such contract for purchase or sale in which any commissioner is interested is null and void as to such commissioner, his successor or assigns.⁵¹

To provide revenues for its operations, the commission may borrow money and issue bonds to be paid from the operation of any of the facilities acquired, owned, and operated by the commission. This indebtedness does not become that of the county or municipality.⁵²

If the Bridge and Park Commission decides to issue bonds, and the concerned municipality or county concurs, the governing authorities of the municipality or county may provide for an annual levy during the life of the bonds upon taxable property within the political unit to provide for payment of principal and interest on the bonds and to provide a sinking fund. The levy of this tax requires the approval of sixty percent of the voters in a mandatory special election.⁵³ Any bond issued by the Bridge and Park Commission may not have a maturity date of more than forty years from the date of issuance and may not pay a higher interest than six percent per annum.⁵⁴

The Bridge and Park Commission may make preliminary investigations, studies, surveys and plans prior to the construction of any facilities. In making these studies and in the construction of any facilities, the commission may enter into contracts and cooperate with the United States Government or any of its agencies.⁵⁵ The commission may make improvements they deem proper on the land acquired.⁵⁶

Under the Bridge and Park Commission Act, any municipality involved has the right to incorporate the island or islands, in whole or in part, into the municipality in the same manner and upon compliance with the same conditions as now provided by statute for incorporation of adjacent lands into municipalities in this state.⁵⁷

G. Conveyances to the Federal Government for Federal Parks.

The governor may convey to the United States any land owned by the State of Mississippi acquired through tax sale, grant, or gift for use as a federal

park.⁵⁸ The Mississippi Park System may convey certain lands in Jackson and Harrison Counties to the federal government for a consideration of one dollar. These lands are to be used as a national seashore. If within two years of the date of the above conveyance, the United States government has not commenced development of these lands, the lands revert to the State.⁵⁹

The board of supervisors of any county through which the United States government or any of its agencies desires to construct a parkway may donate rights-of-way for this purpose. The board may acquire these land rights by gift, purchase or condemnation. Easements given by a board of supervisors to the federal government must not exceed fifty acres of land per mile of roadway.⁶⁰

The State Highway Commission⁶¹ may acquire land by gift, purchase, or eminent domain and convey these lands to the federal government for use as a parkway.

PARKS

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)].

1. § 55-3-33.
2. Id.
3. Id.
4. § 55-3-47.
5. § 55-3-41.
6. § 55-3-33.
7. Id.
8. § 55-3-35.
9. § 55-3-45.
10. Id.
11. § 55-3-33.
12. Id.
13. Id.
14. § 55-3-53.
15. § 55-3-37.
16. Id.
17. Id.
18. Id.
19. Id.
20. § 55-3-33.
21. Id.

22. § 55-3-1.
23. § 55-3-5.
24. § 55-3-7.
25. § 55-3-13.
26. § 55-9-23.
27. § 55-9-25.
28. § 55-9-29.
29. § 55-9-35.
30. § 55-9-37.
31. § 55-9-31.
32. § 21-37-47.
33. § 21-37-3.
34. § 21-37-33.
35. § 21-33-301.
36. § 21-37-43.
37. §§ 21-37-11, 21-37-3.
38. § 21-37-3.
39. § 55-11-7.
40. § 55-11-13.
41. § 55-11-1.
42. § 55-11-17.
43. § 55-11-9.
44. § 55-11-13.

45. § 55-11-15.
46. § 55-7-1.
47. § 55-17-15.
48. Id.
49. § 55-7-5.
50. §§ 55-7-9, 55-7-11.
51. § 55-7-7.
52. §§ 55-7-33, 55-7-49.
53. Id.
54. §§ 55-7-39, 55-7-41.
55. §§ 55-7-21, 55-7-13.
56. Id.
57. § 55-7-53.
58. § 55-5-11.
59. H. B. 1111, chapter 482, Miss. Gen Laws (1971).
60. § 55-5-5.
61. § 55-5-29.

X. PUBLIC BUILDINGS AND PUBLIC LANDS

A. Land Acquisition, Disposition, Construction.

Land may be acquired by the public through various methods including eminent domain, purchase, or lease agreements. The method used depends upon what political subdivision is acquiring the land and upon the purpose for which the land is to be used.

The State Game and Fish Commission, by purchase, condemnation, lease, or donation, may acquire and hold for the state lands which were flooded by construction of a dam or similar structure¹ or lands on waters suitable for fish hatcheries or game and bird farms.²

The Bridge and Park Commission may acquire certain designated offshore islands to be used for park, recreational, harbor or other similar purposes.³

Power districts may condemn land or grant easements or rights-of-way, under or above ground, as the board of directors deems appropriate and necessary.⁴

The county board of supervisors of every county may secure by lease, purchase, gift, or eminent domain suitable land and/or buildings for the use of the circuit, chancery and county courts.

The federal government has been granted consent by the state to acquire land in Mississippi upon which migratory bird refuges may be established. The state, however, has retained concurrent jurisdiction over this land.⁵

Any county, city, town, supervisory district, judicial district or election district of a county may acquire and hold real estate for use as hospitals, nurses

homes, health centers, health departments, diagnostic or treatment centers, rehabilitation facilities, or nursing homes.⁶ Counties or municipalities may rent, lease, purchase, or acquire land to be used in connection with housing various congressionally chartered veteran's organizations and auxiliaries.⁷ Municipalities may acquire land to be used for parking facilities,⁸ waterworks facilities,⁹ convention center facilities,¹⁰ parks, schools, fire departments, market houses, and cemeteries.¹¹ Also, land may be acquired for recreational purposes on any tidewaters or navigable streams within or on the border of the municipal limits. These recreational purposes include piers, pavilions, bath houses, and similar structures.¹² Any cemetery which is wholly within the corporate limits of a municipality may be acquired by gift, purchase, eminent domain, or otherwise, if the cemetery becomes detrimental to the public health and welfare.¹³

Municipalities and other political subdivisions may also dispose of public land or facilities. Municipalities which are located within a consolidated school district may dedicate and convey municipally-owned buildings and property to the school district if the governing authorities feel that the location of the school building within the corporate limits or in close proximity thereto will be of special benefit to the inhabitants of the municipality.¹⁴ Municipalities may convey land to the United States Government for adequate consideration if the land is to be used as a site of a veteran's hospital, soldier's home, or any other purpose connected with the care and attention of United States war veterans.¹⁵ Normally, the procedure for acquiring land from a municipality will be set out in a municipal ordinance. Interested purchasers are required to

make written application to the ruling body of the city. The ruling body must then determine a sale price, and the mayor and city clerk must execute the proper instruments.¹⁶ It may not be possible, however, to receive a warranty deed from the municipality.¹⁷

All municipalities may sell, lease, or dispose of any electric, water, gas, or other municipally-owned public utility system or property if such is in the public interest.¹⁸ Title is transferred by warranty deed, bill of sale, contract or lease.¹⁹

The State Land Commission may lease land which is not suitable for cultivation. At least 1,000 contiguous acres must be leased for use as a game and fish preserve.²⁰ The Game and Fish Commission may also lease portions of game and fish management areas or refuges.²¹

Any county, city, town, supervisor's district, judicial district or election district of a county, may establish, erect, build, equip, operate and maintain hospitals, health centers, health departments, diagnostic or treatment centers, rehabilitation facilities or nursing homes within its own political subdivision.²²

The boards of supervisors may erect and maintain a courthouse and jail within their respective counties.²³ The boards of supervisors may install radio base stations with mobile units for use in law enforcement.²⁴ Counties may cooperate in the construction and use of such radio equipment.²⁵

Municipal authorities may construct libraries,²⁶ inland ports,²⁷ parking facilities,²⁸ schools, fire houses, police stations, courthouses, government

buildings,²⁹ and municipal prisons.³⁰

B. Revenues.

Holders of public buildings and land have several means of obtaining funds for payment of the property or improvements connected with the property. The Game and Fish Commission may lease unused portions of game and fish management areas or refuges owned by the state with the rentals paid to the commission for its use.³¹ The Bridge and Park Commission may borrow money, receive contributions and enter into contracts with the United States or federal departments for acquiring land or constructing improvements related to public recreational facilities.³²

Any municipality may borrow money to establish a convention center, but is prohibited from pledging the full faith and credit of the municipality. However, the revenue derived from the convention center must be pledged for the repayment of money so borrowed.³³ In establishing a convention center any municipality may accept, receive, disburse, and expend federal, state and other monies made available by grant, loan or both.³⁴

Municipalities may issue bonds to purchase or construct a waterworks plant;³⁵ to establish a convention center;³⁶ to raise money for constructing, repairing and improving public slaughter-houses, markets, pest houses, work-houses, hospitals, houses of correction, reformatories, and jails;³⁷ to purchase fire-fighting equipment;³⁸ to provide for public libraries;³⁹ to provide for the erection of public buildings, community centers, gymnasiums, and athletic fields;⁴⁰ for the use of public utilities;⁴¹ and to establish sanitary, storm, drainage, c

sewerage systems.⁴²

In establishing a convention center the bonds may issue without first receiving approval by an election. Those bonds may not exceed 8% interest per annum.⁴³

The county board of supervisors may issue county bonds to provide a convict farm. The county board of supervisors may also arrange for the sale of bonds, not to exceed two million dollars, to secure funds for the construction or alteration of the courthouse.⁴⁴ Power districts may issue bonds, but the bonds must mature within forty years of the issue date. The maximum interest rate is 6% per annum.⁴⁵

For the purpose of providing funds for its corporate purposes, the Bridge and Park Commission may issue bonds. The bonds are payable from the income and reserves derived from the operation of any facilities owned by the commission or from the levy of an ad valorem tax.⁴⁶ Whenever such bonds are issued, the rates, fees, charges and tolls for the use or services of any of the facilities owned or operated by the commission must produce an aggregate amount sufficient to pay the cost of operation and maintenance of the facility, the principal and interest on the bonds, and to provide for adequate reserve and contingent fund.⁴⁷

Any county, city or town may levy taxes for the acquisition of real estate, the construction of improvements, and the maintenance of improvements for hospitals, health centers, diagnostic or treatment centers, rehabilitation facilities

or nursing homes.⁴⁸ Certain municipalities may levy an ad valorem tax, not exceeding two mills, for the maintenance of cemeteries.⁴⁹ Municipalities may raise the levy on real and personal property by special assessment within a fire district to pay for the laying of water mains.⁵⁰

The Game and Fish Commission must pay ad valorem tax on the lands that the county would have otherwise received from private owners.⁵¹

The county board of supervisors may levy taxes to procure land and to construct a courthouse and jail.⁵² The board of supervisors of any county bordering on the Gulf coast and having an assessed valuation of less than five million dollars may levy up to two mills on the dollar annually on all taxable property of the county to defray the expenses of the courts of the county.⁵³

The Rural Electrification Authority and its property are liable for taxes and will be taxed and assessed in the same manner as a privately owned utility.⁵⁴

C. Development, Protection, Restoration and Emergency Plans.

Certain counties and municipalities may develop and maintain parks and recreational complexes.⁵⁵ Municipalities are empowered to provide for the lighting of streets, parks and public grounds.⁵⁶ Counties or municipalities of counties containing any national guard or U. S. military base may construct and extend any waterworks, sewerage or garbage disposal systems, within or without their territorial limits.⁵⁷ The Rural Electrification Authority may construct electric lines on and over all of those lands which have matured in the State of Mississippi through tax sale as well as any unimproved sixteenth sections and lands granted in lieu of sixteenth sections.⁵⁸ To stimulate the develop-

ment of navigation, harbor facilities, boat and related facilities, the governing authorities of certain designated coastal counties and municipalities may engage in works maintaining and operating harbors or seaports within the state.⁵⁹

All lands belonging to the state in fee and held by the Game and Fish Commission are declared to be forest reserves and wildlife refuges as long as the land is owned by the state.⁶⁰

Municipal authorities may inspect the machinery, appliances and premises of all persons, copartnerships or corporations which own or operate a utility system under the Public Utilities Act within the corporate boundaries to ascertain whether the equipment and premises are being kept in a sanitary condition.⁶¹ Refusal to submit to such an inspection may result in a \$1,000 fine.⁶²

The county board of supervisors may purchase, own and operate necessary fire fighting equipment.⁶³ The board may employ a competent person to look after county owned land other than sixteenth section land.⁶⁴ The board, upon petition, may create a county mosquito control commission⁶⁵ having the right to purchase equipment, poison or other control devices to control mosquitoes on any lands within the county planted in rice.⁶⁶

Every county supervisor must file an annual inventory of personal property owned by the county.⁶⁷

D. Other Restrictions.

A municipality may not operate hotels, motels, restaurants, clubs, or other similar activity,⁶⁸ but the municipality may establish, develop, construct, enlarge, improve, maintain, equip, and operate coliseums, amphitheatres, areanas, stadiums,

auditoriums, pavilions, galleries and other similar facilities.⁶⁹

Municipal authorities may remove any public utility commissioner for cause, but may not abolish the commission except by special election.⁷⁰ The municipality must, if it has issued revenue bonds under the Public Utilities Act, maintain proper records and accounts in which all transactions relating to properties, business and other activities of the utility system appear.⁷¹ The Public Utilities Commission must keep an accurate record of power, current, water, or other service furnished to the various departments of the municipality.⁷²

All persons or firms who sell personal property to or do repair work for the county must obtain a license from the Auditor of Public Accounts when the volume of the sales or cost of the repairs exceeds \$5,000. If such exceeds \$25,000, a \$10,000 surety bond must be posted.⁷³

Trespassing on a refuge or management area controlled by the Game and Fish Commission is a misdemeanor punishable by a fine of \$10 to \$100 and imprisonment in the county jail for up to 30 days.⁷⁴

Municipal code restrictions apply to public property. Some restrictions make it unlawful for any person to drive a nail or tack into any pole or standard used by a public utility in the city. However, legal notices may be placed on such poles.⁷⁵ It is also unlawful for any person to make loud and unnecessary noise near any hospital, sanitarium, school (during school hours), or any public place of entertainment in any part of the city; however, signs must be posted to designate such quiet zones.⁷⁶

PUBLIC LANDS AND BUILDINGS
FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)].

1. § 49-1-33.
2. § 49-5-11.
3. § 55-7-13.
4. § 77-5-157.
5. § 49-5-29.
6. §§ 41-13-15, 51-13-17.
7. § 35-3-5.
8. §§ 43-35-201, 21-37-23.
9. § 21-27-7.
10. § 17-3-9.
11. § 21-37-47.
12. § 21-27-7.
13. § 21-37-21.
14. § 21-19-49.
15. § 35-3-1.
16. Gulfport, Miss., Code § 2-2 (1963).
17. Id.
18. § 21-27-33.
19. Id.
20. § 49-5-1.

21. § 49-5-13.
22. §§ 41-13-15, 41-13-17.
23. § 19-3-41.
24. § 19-5-5.
25. Id.
26. § 21-37-19.
27. § 43-35-201.
28. Id.
29. § 21-37-1.
30. § 47-1-39.
31. § 49-5-13.
32. § 55-7-13.
33. § 17-3-13.
34. § 17-3-7.
35. § 21-25-31.
36. § 17-3-15.
37. § 21-33-201.
38. Id.
39. Id.
40. Id.
41. §§ 21-27-23, 21-27-25, 21-33-301.
42. § 21-33-201.
43. § 17-3-15.

44. § 19-9-117.
45. § 77-5-161.
46. § 55-7-33-37.
47. § 55-7-49.
48. § 41-13-15, 17.
49. § 21-33-89.
50. § 21-25-27.
51. § 49-1-29, 49-5-11.
52. § 19-9-119, 19-3-41.
53. § 19-9-95.
54. § 77-5-45.
55. § 55-9-23.
56. § 21-37-11.
57. § 17-5-3.
58. § 77-5-47.
59. § 55-7-1.
60. § 49-5-1.
61. § 21-27-37.
62. Id.
63. § 19-9-109, 19-5-97.
64. § 19-7-15.
65. § 41-27-103.
66. § 41-27-121.
67. § 19-3-45.

68. § 17-3-11.

69. Id.

70. § 21-27-15.

71. § 21-27-31.

71. § 21-27-21.

73. § 19-13-71.

74. § 49-5-39.

75. Pascagoula, Miss., Code § 20-30 (1967).

76. Pascagoula, Miss., Code § 28-143 (1967).

XI. PUBLIC CEMETERIES

Municipalities may issue bonds to raise money for the purchase of land for cemeteries and to also improve, equip and adorn existing cemeteries.¹ Normally the mayor, clerk and engineer are required to prepare, dedicate, adopt and file for record a plat of the proposed cemetery.² The city clerk will retain a plat of the cemetery and, upon the mayor's approval of an individual's application to purchase a cemetery lot, will convey the lot by deed.³ The deeds must be signed by the mayor and will contain a restriction that unless the purchaser obeys all cemetery regulations, the title to the lot reverts to the city.⁴

The sale of the lots and the price paid is subject to city regulations. The prices may vary from lot to lot.⁵ The revenue received from the sale of cemetery lots will be paid to the city tax collector. The city clerk will maintain a record of the sales.⁶

PUBLIC CEMETERIES

FOOTNOTES

1. Miss. Code Ann. § 21-33-301 (1972).
2. Gulfport, Miss. Code § 9-70 (1963).
3. Id. § 9-3.
4. Id. § 9-4.
5. Id. § 9-71.
6. Id. § 9-5.

XII. MINERAL RESOURCES

The State Mineral Lease Commission is authorized to lease state-owned lands to any reputable person or company desiring to recover the minerals.¹ Sixteenth section land, lieu land, and tax lands (the title of which is subject to lawful redemption) are exceptions.² Such lease contracts must not be for more than 7/8 of the minerals. The state will retain a 1/8 royalty.³

Contracts may be made to allow the drilling of wells on state lands. The wells may be connected to state-owned property for production if such state land is within a proven oil or gas field; the land is subject to waste or dissipation; the land has not been leased; the production of the minerals is needed and will be useful to the state; or the state needs to drill a well to protect the mineral resources. The State Mineral Lease Commission may also drill under its own direction. The Commission can acquire drilling equipment, sell surplus oil or gas not needed by the state, or exchange wells in order to serve any distant state-owned institution.⁴

The State Mineral Lease Commission is authorized to contract for the construction and operation of a state-owned pipe line to transport state-owned natural resources if the Commission determines such action is necessary for the best interest of the state.⁵ The pipe line may be laid under and along any public property and, when necessary, the Commission may exercise the right of eminent domain to acquire sufficient easements in, on, or over private property.⁶

The right of eminent domain also applies to all surface and subsurface rights necessary and useful for storing gas underground. However, the approval of the State Oil and Gas Board must be obtained.⁷ The right of condemnation is

without prejudice to the land-owner's right to all other uses of the land.⁸

The Commissioners of the State Hospital Improvement and Land Sale Commission vested by deed in the State Mineral Lease Commission the title to all lands and improvements held by them as Commissioners.

Although persons or corporations may be authorized to construct, operate and maintain facilities in any of the navigable state waters incident to their exploration, production and transportation of oil, gas or other minerals,⁹ the right to do so is subject to three limitations:

1. The paramount right of the United States to control commerce and navigation;
2. The public's right to make free use of the waters; and
3. Section 81 of the Mississippi constitution (1890).¹⁰

The storage of natural gas underground in the offshore waters of the state is prohibited.¹¹ All oil, gas, or products thereof which are designated as being illegal are contraband and shall be seized and sold by the state.¹² The waste of oil or gas is also unlawful.¹³

MINERAL RESOURCES

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)].

1. § 29-7-3.
2. Id.
3. Id.
4. § 29-7-5.
5. § 29-7-7.
6. Id.
7. § 53-3-159.
8. § 53-3-161.
9. § 53-3-71.
10. § 53-3-75.
11. § 53-3-165.
12. § 53-3-19.
13. § 53-3-3.

INDUSTRY

A. REGULATION

1. State.

The State of Mississippi has an intense desire to promote and encourage industrial growth within the state.¹ For the most part, it takes a "helping hand" attitude with respect to establishment of industry and a "laissez faire" attitude with respect to control and regulation. Industrial users of land find little state control upon those uses. For example, an industry may pollute the air that exists within its own property boundaries and be free from regulation by the Air and Water Pollution Control Commission.² Since the commission may not prescribe safety levels of air contamination for industrial employees, the state has taken its hands off the disparity in the balance of power that rests with the employer.³ Few industries are as completely regulated as is the oil and gas industry. The State Oil and Gas Board controls every aspect of that industry from drilling wells to taxation of oil and gas.⁴

2. Local.

Local regulations generally take the form of protecting surrounding property.⁵ For example, municipalities may prohibit construction of any device or facility used in manufacturing that might be a fire hazard, and all buildings may be inspected for fire hazards.⁶

B. REVENUES.

The most obvious encouragement of industrial growth is not "hands off" regulation but economic assistance in the form of tax breaks for new industries.

Municipalities may exempt tangible property of new industries other than railroads from municipal taxation for up to ten years.⁷ The Mississippi Agricultural and Industrial Board or any port authority may include in its lease of lands and facilities to another entity exemption from all state, county and municipal ad valorem taxes.⁸

INDUSTRY
FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)].

1. See the Industrial Parks chapter of this category and the Industrial and Agricultural Activities category.
2. § 49-17-17.
3. Id.
4. For a comprehensive coverage of rules and regulations governing the oil and gas industry see the Non-Animal Resources category.
5. See, e.g., Gulfport Code § 17-8 (unlawful to excavate land inside Gulfport if the lowering of the property level would cause a drainage problem.)
6. § 21-19-21. If the municipality finds a fire hazard, it may require the owner to make repairs at his own cost.
7. § 21-19-43. Two municipalities which have granted such exemptions are Pascagoula, exemption for five (5) years, Pascagoula Code § 18-5 (1967); and Gulfport, exemption for five (5) years, Gulfport Code § 24-5 (1963).
8. § 59-5-35.

XIV. TIMBER (AGRICULTURE)

The agrarian nature of Mississippi's economy demands soil conservation and flood control.¹ Drainage districts provide the vehicle for this.² Even though the primary benefits of flood control and soil conservation are fairly long-range in nature, drainage districts do provide some immediate benefits such as irrigation³ and new crop lands.⁴ However, aside from such soil considerations, few legislative enactments effect timber growers.

Fire control is a primary concern. Counties may levy a forest acreage tax for such fire control either by action of the board of supervisors or election of the voters.⁵ But such a tax may not be removed for a period of five years.⁶ Other major dangers to timber are disease and insect pests. The Mississippi State Forestry Commission is charged with the control of these threats and has a broad range of powers in these areas.⁷ It may inspect property and timber,⁸ cause treatment or removal of infested timber, and enter upon any timber lands in connection therewith.⁹ This is part of the police power of the state and no compensation is provided in cases of removal of any infested timber.¹⁰

The State Legislature suggests that the state's biggest danger to timber may be man himself via inefficient management and harvesting of timber.¹¹ Realizing the ecological importance of proper management, the legislature has provided for regulation of the harvesting of forest products.¹² Also included is a statute providing for free distribution of tree seedlings to farm owners and schools desiring them.¹³ The rationale behind both provisions is economic in nature, protection of the tax base, growth of farm and community incomes, and strengthen the future of the state economy.¹⁴

TIMBER (AGRICULTURE)

FOOTNOTES

1. Miss. Code Ann. § 69-27-3 (1972) (legislative policy for soil conservation).
2. For a study of property laws related to drainage districts see the "Water Resources" chapter of this category.
3. Miss. Code Ann. § 51-33-33 (1972) (use of drainage canals for irrigation of farm lands).
4. Miss. Code Ann. § 51-29-123 (1972) (district may lease its land for agricultural purposes); Id. § 51-31-5 (reclamation of lands).
5. Miss. Code Ann. § 49-19-115 (1972). The tax may vary from one to two cents per acre of all timbered and uncultivable land.
6. Id.
7. Miss. Code Ann. § 49-19-7 (1972).
8. "Timber" refers to those trees used in lumber manufacturing.
9. Miss. Code Ann. § 49-19-7 (1972).
10. Id. All insect pests and diseases listed by the Commission are public nuisances.
11. Miss. Code Ann. § 49-19-53 (1972).
12. Id.
13. Miss. Code Ann. § 49-19-19 (1972).
14. Id.; § 49-19-53.

XV: PRIVATE COMMERCIAL PROPERTY

The use of property for private commercial activity is regulated by state, county and local statutes and ordinances. A complete examination of this area is not possible within limits of this discussion. Therefore, only several major areas of regulation will be discussed.

Outdoor advertising is an aspect of commercial activity that is subject to regulation. The primary agency concerned with such advertising is the State Highway Commission. Erection and maintenance of outdoor advertising devices in areas adjacent to interstate and primary highway systems is controlled for the protection of the public investment in such roadways. Control is also necessary to promote and preserve recreational value, the public safety and the state's natural beauty. Failure to comply with state regulations governing outdoor advertising can result in removal of advertising devices under authority of the state's police power.¹ No outdoor advertising is permitted within 660 feet of the nearest right of way except for official signs, signs advertising the sale or lease of property on which they are located, signs advertising the principal activities conducted on the property upon which they are located, signs identifying the location of pipelines, utility lines and similar devices, or signs located in commercially or industrially zoned areas.²

The State Highway Commission is the agency regulating outdoor advertising.³ Standards for outdoor advertising must be followed. These standards include a maximum size of 1200 square feet, compliance with customary practices within

the state in illuminating signs, and compliance with appropriate regulations governing spacing of signs.⁴ All businesses engaging in outdoor advertising, except persons erecting signs for personal businesses or activities, are required to be bonded with the State Highway Commission to a maximum of \$1000.⁵

The State Highway Commission is empowered to acquire by purchase, gift or condemnation all legally erected advertising devices and property which are to be removed. Just compensation will be paid for the removal. Damages awarded by eminent domain proceedings are limited by statute.⁶ Outdoor advertising contrary to the statutes will be declared a public nuisance. The commission will give 30 days' notice by mail to the owner directing compliance with governing statutes or removal. After the expiration of the notice period, the commission may remove the sign if the necessary corrective action has not been accomplished by the owner.⁷ In addition to this or other remedies, the commission may seek injunctive or other appropriate relief from the chancery court in the county where the unlawful advertising exists.⁸

The Junkyard Control Act is designed to promote public safety and welfare, protect the public investment in highways, enhance the scenic beauty of the state, and regulate the establishment, operation and maintenance of junkyards in areas adjacent to interstate and primary highway systems.⁹ Junkyards not conforming to the act will be regarded as public nuisances.¹⁰

No person can establish or operate a junkyard within 1,000 feet of the nearest right of way of any interstate or primary highway except those junkyards

not visible from the roadway or located in an appropriately zoned area.¹¹

Junkyards existing prior to the act and within 1000 feet of the highway are to be screened by the State Highway Commission if feasible.¹² The commission also has the authority to promulgate rules and regulations governing the required screening.¹³ The commission may acquire by purchase, gift or condemnation any junkyard that cannot be feasibly screened. Removal of such will then be accomplished with just compensation being paid.¹⁴

Attempting to establish a junkyard not conforming to the Junkyard Control Act is a misdemeanor punishable by a maximum fine of \$500 for each offense. The State Highway Commission may also seek injunctive relief from the appropriate county court to require removal of offending junkyards.¹⁵

The Public Service Commission also has regulatory responsibilities in certain areas of commerce. The commission has jurisdiction over intrastate business.¹⁶ The commission also regulates activities connected with public utilities.¹⁷

Telegraph companies may erect lines along and across any public highway, street, waterway, turnpike or railroad as well as through public lands. However, any such erection must be constructed in a manner not dangerous to the public and not interfering with the use of such property.¹⁸ Railroads have the power to construct bridges over any body of water. The railroad may also establish other necessary facilities required by it to cross a body of water.¹⁹ However, municipalities have the power to pass rules and regulations governing railroad operations within the corporate limits.²⁰

The owners of ferries, bridges, causeways, or plank roads will have preference over all others as licensed keepers of same.²¹

Counties and municipalities are empowered to appropriate up to \$2500 annually to aid fairs or fair associations operated within the county. Such funds will be for prizes and awards to be given by the fair.²² County boards of supervisors are authorized to levy an annual ad valorem tax of 1/4 mill to provide such funds.²³

Municipalities are granted a variety of regulatory powers in the area of commercial activities. Municipalities are authorized to adopt reasonable ordinances to regulate circuses, shows, theaters, bowling alleys, concerts, exhibitions, skating rinks, shooting galleries, amusement parks and similar activities. Such ordinances may regulate or prohibit pool rooms, gambling activities, and sale or use of fireworks within the corporate limits.²⁴

The construction by any business of an apparatus that may constitute a fire hazard may be prohibited or prevented by a municipality. Municipalities may inspect any building for fire hazards and require corrections or repairs at the expense of the owner.²⁵

Municipalities are empowered to regulate parks and public grounds, depots, storage and warehouse locations, and the operations of railroads and other public carriers.²⁶ Owners of property adjacent to walkways can be compelled to erect railing, barriers or other protective devices to protect pedestrians from hazardous conditions created by the property owner.²⁷

The right to erect telegraph, electric light or telephone poles, posts or

wires along streets, alleys or rights of way of a municipality may be granted by said municipality. The maximum term of such a grant is twenty-five years.²⁸

Municipalities are also authorized to grant the use of streets, alleys or other public grounds for installing and maintaining gas, water or sewer pipes or other similar devices. The maximum term for such a grant is also twenty-five years.²⁹

Municipalities are authorized to establish, maintain and regulate curb markets. If the curb markets are owned by the municipality, it may fix rental prices for stalls. However, no municipality may prohibit a producer of meat or other foodstuff from selling his product to consumers in any quantity agreed upon by seller and buyer.³⁰

Municipalities may require that a map and plat of any proposed subdivision be submitted, along with deraignment of title to such land, for approval by the municipality prior to recording.³¹

PRIVATE COMMERCIAL PROPERTY
FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)].

1. § 49-23-1.
2. § 49-23-5.
3. § 49-23-7.
4. § 49-23-9.
5. § 49-23-13.
6. § 49-23-17.
7. § 49-23-19.
8. § 49-23-21.
9. § 49-25-3.
10. Id.
11. § 49-25-7.
12. § 49-25-9.
13. § 49-25-11.
14. § 49-25-13.
15. § 49-25-17.
16. § 77-3-5.
17. §§ 77-3-11, 13 and 77-3-29.
18. § 77-9-711.
19. § 77-9-179.
20. § 21-37-9.

21. § 65-27-3.
22. § 17-3-7.
23. § 19-9-101.
24. § 21-19-35.
25. § 21-19-21.
26. § 21-19-31.
27. § 21-19-27.
28. § 21-19-31.
29. § 21-27-5.
30. § 21-37-17.
31. § 17-1-23.

XVI. PRIVATE DEER PARKS AND SHOOTING PRESERVES

Privately operated deer camps and shooting preserves are generally regulated by the Mississippi Game and Fish Commission.¹ Anyone desiring to operate a private deer camp must make written application to the Game and Fish Commission. Operation of the camp must comply with commission regulations. Failure to obtain a permit from the commission is a misdemeanor punishable by a fine of up to \$100. Fraudulently obtaining a permit is punishable by a fine of from \$100 to \$500.²

Operation of a shooting preserve also requires a permit from the Game and Fish Commission. A preserve must be 100 to 640 acres in one tract. Duck preserves, however, may have a minimum of 50 acres. The exterior boundaries of a preserve must be clearly marked at intervals of 150 feet or less.³

PRIVATE DEER PARKS AND SHOOTING PRESERVES
FOOTNOTES

1. For general statutes in this area see Miss. Code Ann. § 49-11-1, et seq. (1972).
2. Miss. Code Ann. § 49-7-39 (1972).
3. Miss. Code Ann. § 49-11-3 (1972).

XVII. PRIVATE SUBMERGED AND TIDAL LANDS

Privately owned submerged and tidal lands are subject to regulation principally by two major organizations authorized under current state laws. These two organizations are set up by statutes and generally operate in their designated areas. These organizations are the drainage districts and the flood control districts.

Drainage districts, although public activities, are involved with private property rights in several respects. These districts have the right to acquire and own in fee simple all necessary rights of way to carry out the purposes of the districts. Such rights of way may be acquired by purchase or condemnation and may later be sold or leased as deemed appropriate by the district.¹ A district may also acquire rights of way through an existing drainage district with the consent of that district. The district through which the right of way is acquired may impose specific terms for such acquisition. Landowners will be compensated under the prevailing district procedure.²

Drainage districts may cooperate with the federal government and local landowners in furthering economic development of the state through soil and water conservation programs.³ When a district seeks a right of way through private property, the agreement of the land owner will be sought.⁴ Any property owner may accept the assessment of damages in his favor as determined by the commissioners of the district, or acquiesce in the failure of the commissioners to assess any damages. In order to have his damages assessed by a jury, the landowner must file written notice within 30 days of

the district's assessment.⁵

Where necessary, commissioners of a drainage district may condemn a right of way and construct ditches beyond the limits of the district. Any person not assessed for such right of way is denied the right to dig any lateral drain connecting therewith unless such person secures the consent of the district's commissioners. In the event that the property owner and the commissioners cannot agree on a price for the privilege of connecting with the district's ditches, the board of supervisors of the county where such connection is to be made will fix the amount. Either the property owner or the district may appeal to the circuit court of that county if dissatisfied with the result.⁶

Flood control districts may also have an effect on privately owned submerged or tidal lands. To accomplish any of its purposes, the board of commissioners of a flood control district may acquire privately owned land by purchase, grant or condemnation. The commissioners may also acquire necessary property through agreement with the owner.⁷

Additionally, the use of submerged or tidal lands in relation to oil, gas and other minerals is also regulated by state law. Any person, firm, or corporation authorized to explore for and produce oil, natural gas or other minerals and authorized to transport the same has the right to construct, operate and maintain necessary facilities in any navigable waterway of the state with the permission of the State Oil and Gas Board.⁸ The permit from the board costs \$500.⁹ Underground storage of natural gas in offshore waters of the state is prohibited.¹⁰

The right to construct, operate and maintain facilities related to oil, gas or mineral operations in, on, or under submerged or tidal land is subject to the paramount federal right to control commerce and navigation, the public right to free use of state waters, and § 81 of the Mississippi Constitution (1890).¹¹

PRIVATE SUBMERGED AND TIDAL LANDS

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)].

1. § 51-29-123.
2. § 51-29-125.
3. § 51-33-17.
4. § 51-31-55.
5. § 51-29-35.
6. § 51-29-77.
7. § 51-35-159.
8. § 53-3-71.
9. § 53-3-73.
10. § 53-3-165.
11. § 53-3-75.

XVIII. CEMETERIES

The nature of cemeteries requires that land used for such purposes be regulated by statute or ordinance. No new cemetery may be located within five hundred yards of any public or private hospital or similar medical facility for sick or injured persons unless written approval is given by the appropriate county or city officials.¹ Failure to obtain the required approval will result in the cemetery being declared a public nuisance and appropriate action for removal will follow.²

Local municipal ordinances also control the creation of new cemeteries. Such ordinances may require that approval cannot be made unless a sketch plan, general subdivision plan and a final plat are submitted.³ Any other applicable statutes, ordinances or regulations requiring higher standards than those set by subdivision regulations will have priority.⁴

CEMETERIES FOOTNOTES

1. Miss. Code Ann. § 41-43-1 (1972).
2. Id.
3. Gulfport, Miss. Code §§ 23-1/2-3 through § 23-1/2-6 (1963).
4. Gulfport, Miss. Code § 23-1/2-1 (1963).

XIX. PRIVATE MINERAL RESOURCES

Developers of oil and gas in this state look to one main regulatory agency, the State Oil and Gas Board. The Board has complete authority over oil and gas and related activities,¹ and regulates the industry as no other industry is regulated in this state.² The authority extends from regulating wells³ to holding hearings;⁴ and penalties are provided to enforce all of the Board's regulations.⁵

The location of a well is of no consequence as long as another's rights are not affected. Navigable waters⁶ and submerged lands⁷ are proper locations for wells and related facilities. However, the right to maintain such facilities on submerged or tidal lands is subject to federal control of commerce and navigation, the right of the public to make free use of the waters, and the Mississippi Constitution.⁸ The State Mineral Lease Commission is vested with the authority to lease all state-owned lands,⁹ including the state's territorial waters in the Mississippi Sound and Gulf of Mexico, to any reputable entity for development of minerals. Such a lease, however, must retain at least one-eighth royalty for the state.¹⁰

A permit to drill a well must be obtained from the Board prior to any actual drilling.¹¹ The permit is good for six months unless the well is begun within that six month period. In that event, it is valid for the life of the well.¹² Once the well is drilled, all oil and gas produced is subject to a special tax¹³ levied against all persons owning an interest in the well according to his proportionate share.¹⁴

After the well is producing, the owners may connect with a pipeline for transportation. Before that can be done, a certificate of compliance with all laws and regulations must be obtained from the Board.¹⁵ The owners may instead store the oil and gas in a reservoir. Again, before such may be used, the Board must approve the proposed underground storage¹⁶ and will continue to regulate its use.¹⁷ The Legislature authorized the use of eminent domain when necessary for obtaining the storage area.¹⁸ Only the storage area is to be affected; the landowner may make any other use of his land as he sees fit. The right of eminent domain is without prejudice to these rights of the landowner.¹⁹ The only area prohibited from being used for underground storage of natural gas is the offshore waters of the state.²⁰

Waste of oil or gas is unlawful,²¹ and producers must take affirmative steps to prevent it. "Waste" essentially refers to the inefficient management of the production of oil or gas; but it also refers to disproportionate production by one owner from a pool having more than one owner.²² When such is the case, the Oil and Gas Board may require the several owners to integrate their interests into a drilling unit.²³ Procedurally, an interested person must make application for a Board hearing on the need for a unit operation.²⁴ From that hearing the Board may order a fair division of interests and require the unit operation,²⁵ after which only authorized unit wells may be operated with respect to the particular pool. If in such an order the Board has fixed the total amount of oil or gas that may be produced from a particular pool at an amount less than full capability, the production must be allocated among the producers in one

equitable manner.²⁶

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Unit boundary lines generally remain fixed. However, where a unit boundary line is the center of a navigable river which is itself the boundary line between Mississippi and another state, that unit boundary line remains flexible depending upon the river.²⁷

PRIVATE MINERAL RESOURCES

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. 1972)].

1. § 53-1-17.
2. For a comprehensive coverage of the Oil and Gas Board see the Non-Animal Resources category.
3. § 53-3-5.
4. § 53-3-115.
5. § 53-1-47 (penalties may be assessed up to five hundred dollars (\$500) in fines or six (6) months in jail, or both); § 53-3-17 (handling illegal oil and gas prohibited); § 53-3-19 (illegal oil and gas may be seized and sold).
6. § 53-3-71.
7. § 53-3-75.
8. Id. See Miss. Constitution § 81 (1890) prohibiting permanent obstruction of navigable waters.
9. § 29-7-3. The exceptions are Sixteenth Section and lieu lands, and tax lands, the title of which is subject to lawful redemption.
10. Id.
11. § 53-3-11.
12. § 53-3-13 (permit fee is one hundred dollars (\$100.00)).
13. § 53-1-73. (This pays for the administration of the Board).
14. § 53-1-75.

15. § 53-3-15. Pipelines may also be maintained over navigable waters if a permit is obtained from the Mississippi Oil and Gas Board. The permit is five hundred dollars (\$500.00). § 53-3-71 and § 53-3-73.
16. § 53-3-155.
17. § 53-3-157 (purpose of regulation is to prevent pollution or the escape of natural gas).
18. § 53-3-159. (Board approval must be obtained at the outset).
19. § 53-3-161.
20. § 53-3-165.
21. § 53-1-9.
22. § 53-1-3.
23. § 53-3-7.
24. § 53-3-101.
25. § 53-3-103 through 113.
26. § 53-3-9.
27. § 53-3-23.

XX. EMINENT DOMAIN

STATE

The power of eminent domain has been granted by the Mississippi Legislature to every political subdivision which must acquire land to accomplish a public purpose. It extends from the head of the State, the governor, who may take and utilize property when a state of emergency exists in order to safeguard the public¹ to the more common use of eminent domain, i. e., construction and maintenance of highways. The State Highway Commission may use eminent domain when necessary for the state highway system,² national parkways,³ enhancement of the scenic beauty alongside a highway,⁴ removal of non-conforming advertising and junkyards that are in close proximity to a highway and whenever the Commission is unable to agree with the landowner on land acquisition.⁶

Various state officials and agencies may employ the power of eminent domain. These include the Mineral Lease Commission,⁷ the Game and Fish Commission,⁸ the Agricultural and Industrial Board,⁹ the Forestry Commission¹⁰ and the Rural Electrification Authority.¹¹ However, each is limited in the use of eminent domain to the essential purpose of the Commission.

REGIONAL

Certain regional political subdivisions have been granted the power of eminent domain. Drainage districts are given the power of eminent domain for purposes of flood control and soil conservation.¹² Such power may extend beyond the borders of the district,¹³ but if land is needed within another drainage district, that district must first grant its consent.¹⁴ The right to use eminent domain is especially granted to drainage districts when they are to cooperate

with federal flood control programs.¹⁵

Some flood control and development districts are mentioned specifically by name in the granting of the power of eminent domain. The Pat Harrison Waterway District,¹⁶ the Pearl River Valley Water Supply District¹⁷ and the Pearl River Basin Development District¹⁸ each have similar grants of eminent domain power.¹⁹

Power districts and associations may exercise the right of eminent domain.²⁰ The Bridge and Park Commission of the Gulf Coast has power of eminent domain to acquire islands within the Gulf of Mexico or the Mississippi Sound for park purposes. Approaches to bridges, ferries, and the like, linking such islands with the mainland may also be subjected to the Commission's power of eminent domain.²¹ Likewise, interstate bridge districts may condemn land needed for construction of interstate bridges and approaches thereto.²²

LOCAL

Generally, municipalities²³ have the power of eminent domain whenever land is needed for public purposes.²⁴ "Public purpose" includes not only building streets but also closing streets and alleys.²⁵ In addition to such general grants of power there are specific grants of power for individual purposes.

Municipalities may condemn land needed for waterworks and laying of a pipeline,²⁶ for construction, operation and maintenance of an electric plant,²⁷ and for any public utility under the Public Utility Act.²⁸

Once a certificate of public convenience and necessity is obtained from the Agricultural and Industrial Board, a municipality may condemn land for use as an industrial park.²⁹ However, 25 percent of the land needed for such a

park may be acquired by eminent domain.³⁰ Port and harbor facilities and related lands may be acquired through eminent domain by coastal municipalities.³¹

With respect to airports, municipalities may use eminent domain for development,³² removal of obstructions and hazards to air traffic³³ and for acquisition of existing facilities.³⁴ Such municipalities may also enter upon any lands in connection with eminent domain.³⁵

In cooperation with the United States Government, a municipality may condemn land needed for a veterans hospital or home.³⁶

Eminent domain may be used by a municipality to assume ownership and maintenance of a cemetery when such is not being properly maintained.³⁷

Counties are somewhat different in that there is no general grant of power of eminent domain. Specific grants of power, however, are authorized. The county board of supervisors must approve uses of eminent domain by the Highway and Street Bond Authority.³⁸ Privately owned bridges may be acquired by condemnation when such bridges form a link in the public road system.³⁹ Construction and maintenance of highways are proper purposes of eminent domain,⁴⁰ as well as land for work stations,⁴¹ and that right may be exercised even within a municipality.⁴² Further, counties may condemn any land to be used for federal parkways.⁴³

Counties may use eminent domain for acquired land to be used as a state park or forest.⁴⁴ Counties may be involved in flood control other than through drainage districts by cooperating in federal flood control programs. Such cooperation generally means the county must furnish certain easements and lands

necessary to the program. The counties have power to acquire those lands by eminent domain.⁴⁵

Counties may condemn land needed for electric plants or transmission lines,⁴⁶ and for waterworks, garbage and sewage systems.⁴⁷ Counties may also acquire lands by eminent domain for industrial parks⁴⁸ and harbor improvements.⁴⁹ Counties may use eminent domain for airport purposes in the same manner as municipalities.⁵⁰

Boards of trustees of public schools may use eminent domain for acquiring property to be used for school purposes.⁵¹

JOINT VENTURES

Development of an airport is generally a joint venture between several political subdivisions, usually one or more cities and a county. The power of eminent domain is granted to an airport authority if that authority is a mere extension of a political subdivision.⁵² If it is comprised of several political entities, however, there is no such grant of power to the authority.⁵³ Each political subdivision must use eminent domain to acquire land or rights and then transfer such to the authority.

The United States Government and counties may combine and condemn any land needed for a national parkway. However, the counties must bear the burden of paying any damages awarded by the courts.⁵⁴

Some public purposes may be proper objects of eminent domain by several political subdivisions acting either jointly or severally. The highway authorities of the state, counties, cities, towns or villages may condemn property and

property rights for controlled access facilities.⁵⁵ When an existing road is to be converted into a controlled access facility, either the abutting landowners must give their consent or the access rights of such landowners must be condemned.⁵⁶ Property for toll bridges may also be condemned.⁵⁷ Likewise, any political entity that desires to construct an oil or gas pipeline may exercise eminent domain rights.⁵⁸ However, approval must first be obtained from the State Oil and Gas Board.⁵⁹

PRIVATE ENTITIES

Private companies which have the power of eminent domain are generally those which have a public purpose and are regulated or organized under some provision of law. Hence, telephone, telegraph, street railway and hydro-electric companies and organizations may condemn rights-of-way across railroads;⁶⁰ all companies or associations organized for hydro-electric purposes may use eminent domain;⁶¹ and all entities involved in constructing transmission lines for oil, gas, electricity, water, sewage, etc. may use the right of eminent domain.⁶² In addition, all private entities which have the power of eminent domain may enter upon any lands to make examinations and surveys.⁶³

COURT PROCEDURE

A petition to condemn property must be filed either in the county court or the circuit court of the county where the property is situated. Such courts have original jurisdiction over all eminent domain proceedings.⁶⁴ Notice of the hearing on the matter must be given to all interested parties not less than thirty days prior to the hearing, and the petitioner must file a statement with the court showing the fair market value of the property and what damages should be

assessed. A similar statement must be filed by the named defendants not less than ten days prior to the hearing.⁶⁵ The fair market value will be determined at the time of the hearing.⁶⁶ If there is separate ownership of different property, the defendants may agree to unify the separate actions into one action.⁶⁷

Dismissal of the condemnation petition may result for one of the following reasons: petitioner is not entitled to the right of eminent domain; there is no public necessity for the taking; or the contemplated use of the property is not, in law, a public use.⁶⁸

Ownership of the property is vested in the condemnor upon payment of all damages and costs, and only then may the condemnor make use of the property, unless it is provided differently elsewhere.⁶⁹ But if the defendant appeals, that right to use the property may not be delayed.⁷⁰

DAMAGES

Damages are assessed by the court, and, generally, benefits accruing on account of the proposed use of the land are not to be deducted from those damages.⁷¹ The exception to that general provision is when the State Highway Commission seeks to remove non-conforming advertising in close proximity to highways.⁷² Drainage district commissioners may assess damages in favor of the landowner without going to court; but if the landowner, within thirty days, notifies the commissioners of his desire to have damages assessed by a jury, then general eminent domain procedures will apply.⁷³

TITLE TAKEN

The condemnor in an eminent domain proceeding generally has the choice of taking either a fee simple title or some property right such as an easement upon some property.⁷⁴ It is rare when the condemnor has no option, as is the case when the State Mineral Lease Commission acquires property rights for the laying of state owned pipeline.⁷⁵

LIMITATION ON THE TAKING

Either public or private land may be subjected to the power of eminent domain,⁷⁶ but some categories of land are specifically protected. Bona fide homesteads may not be condemned by the county board of supervisors for later use as a state park or forest.⁷⁷ Property interests held by levee boards, drainage districts or other flood control agencies may not be condemned by the Agricultural and Industrial Board in connection with harbors and ports.⁷⁸

Three waterway districts, the Pearl River Basin Development District,⁷⁹ the Pearl River Valley Water Supply District⁸⁰ and the Pat Harrison Waterway District,⁸¹ are under several limitations. No mineral rights may be taken by them. If the land is to be used for recreation by private entities, repurchase options must be given to the former owner. Roads, highways and utilities must be relocated when condemned.

The amount of land to be taken is limited to only that which is necessary.⁸² A rare situation occurs in connection with controlled access highways. An entire block or tract of land may be taken by highway authorities even if such is not needed in its entirety for the right-of-way proper if the public interest is best

served by such taking.⁸³ However, most statutes limit the area to be obtained. The State Forestry Commission, when cooperating with any governmental subdivision in establishing a major park, forest or game preserve, may condemn only up to 50 percent of the land required.⁸⁴ The other 50 percent must be conveyed by agreement.⁸⁵ Also, when municipalities acquire property for industrial parks, only 25 percent of that land may be acquired through eminent domain.⁸⁶

As a general rule, the condemnor may use eminent domain only within its jurisdictional boundaries or within statutory confines.⁸⁷ However, some political subdivisions may condemn land outside their boundaries for purposes of relocating landowners or objects,⁸⁸ for laying water pipelines,⁸⁹ or any public purpose⁹⁰ by municipalities and for improvement of air navigation around airports.⁹¹

A limitation with respect to lost tax revenues occurs when one political subdivision condemns property within the boundaries of another political subdivision. In such a case, the condemnor must pay the counties where the taken land is located the ad valorem tax that would have been collected had the property been privately owned.⁹² Generally, however, the ultimate use of the property taken will compensate for the loss of tax revenues, as in the case of highway construction.

PRIORITIES

Most grants of the power of eminent domain are equal to each other with respect to priorities between condemnors. One exception is waterway districts which have a right of eminent domain superior to that of railroads,

telephone, telegraph, gas, power and other utilities.⁹³ The rationale that those companies must be moved and relocated when the district floods or takes their property.⁹⁴ There is also a statutory preference given to eminent domain proceedings over other court proceedings not involving the public interest.⁹⁵ Between condemnors no other statutory preference is given. However, there is a trend to allow immediate possession by the condemnor which will prevent undue delay. Such rights are granted to power districts,⁹⁶ municipalities with respect to airport development,⁹⁷ highway rights-of-way for connecting existing streets to highways constructed by the State Highway Commission,⁹⁸ and the State Highway Commission itself for acquisition of highway rights-of-way.⁹⁹

EMINENT DOMAIN

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)].

1. See, e.g., § 33-15-13 (actual attack against the United States and State of Mississippi).
2. § 65-2-19; § 65-23-103.
3. § 55-5-29.
4. § 65-1-51.
5. § 49-23-17 (removal of advertising - damages limited to taking of advertising owner's right and taking of landowner's right to erect advertising, less enhancement of property remaining due to benefits resulting from removal); See the Private Industry chapter of this category; § 49-25-13 (removal and screening of junk yards).
6. § 65-1-47.
7. § 29-7-7.
8. § 49-1-11, 29 (for land suitable for use as fish hatcheries, game farms, etc.); § 49-1-33 (land flooded as a result of dam construction).
9. § 59-5-39 (development of coastal harbors and ports); § 59-17-33 (development of inland harbors and ports).
10. § 55-3-19 (establishment of major park, forest or game preserve).
11. § 77-5-23 (whatever is necessary for electrical purposes).
12. § 51-29-123 (land needed for construction of ditches, levees, lands, etc.); § 51-35-159.

13. § 51-29-77.
14. § 51-29-125.
15. § 51-33-17; § 51-35-11.
16. § 51-15-119.
17. § 51-9-121.
18. § 51-11-13.
19. §§ 51-15-119, 51-11-13.
20. §§ 77-5-151 to 155; 77-5-157; 77-5-231.
21. §§ 55-7-9 to -13.
22. § 65-23-229.
23. The term "municipalities" encompasses both cities and counties.
24. § 21-37-47.
25. § 21-37-7 (compensation to be paid for damages to abutting landowners).
26. § 21-27-7; § 17-5-5.
27. § 77-5-441.
28. § 21-27-23.
29. § 57-1-23.
30. § 57-5-21; The right to use eminent domain for an industrial park must be stated in the certificate of public convenience and necessity. § 57-5-23.
31. §§ 59-3-1, 59-7-405.
32. § 61-5-75.
33. § 61-5-5 (within or without airport boundaries; § 61-7-29 (eminent domain used when zoning insufficient)).

34. § 61-5-5 (existing airport facilities owned by another municipality or public agency may be obtained by eminent domain only after such municipality or public agency consents).
35. § 61-5-7.
36. § 35-3-3.
37. § 21-37-21.
38. § 65-13-31.
39. § 65-21-11.
40. § 65-7-89.
41. § 65-7-91.
42. § 65-7-81.
43. § 55-5-5.
44. § 55-3-13.
45. § 51-35-15.
46. § 77-5-309.
47. § 17-5-5.
48. § 57-1-23.
49. § 59-13-11.
50. § 61-5-73.
51. § 11-27-49.
52. § 61-3-15.
53. § 61-5-33 to 41, 61-3-67 to 75.
54. § 55-5-5.
55. § 65-5-9, 11.

56. § 65-5-5.
57. § 65-23-13.
58. § 53-3-159.
59. Id.
60. § 11-17-35 (telephone, telegraph and street railways); § 11-27-45 (hydro-electric companies).
61. § 11-27-41.
62. § 11-27-47.
63. Id. and § 11-27-39.
64. § 11-27-3. Procedural provisions on eminent domain are found in § 11-27-1 et seq. However, that does not apply to levee boards nor to drainage districts which have similar but separate procedures. For the procedures for levee boards see Mississippi Constitution § 233 (1890); for drainage districts see § 51-24-39.
65. § 11-27-7. Procedures for service of process on infants, persons of unsound mind, decedents and non-residents is the same as in other proceedings.
§ 11-27-9.
66. § 11-27-19.
67. § 11-27-13.
68. § 11-27-15.
69. § 11-27-27.
70. § 11-27-29.
71. § 11-27-21.
72. § 49-23-17.

73. § 51-29-35.
74. See, e.g., § 55-5-29; § 51-29-123.
75. § 29-7-7.
76. See, e.g., § 77-5-23 (Rural Electrification Authority); § 59-5-39 (Agricultural and Industrial Board).
77. § 55-3-13.
78. § 59-5-39 (coastal harbors and ports); § 59-17-33 (inland harbors and ports).
79. § 51-11-13.
80. § 51-9-121.
81. § 51-15-119.
82. See, e.g., § 59-5-39.
83. § 65-5-9.
84. § 55-3-19.
85. Id.
86. § 57-5-21.
87. § 51-9-121.
88. Id.
89. § 21-27-7.
90. § 21-37-47.
91. § 61-7-29. See also, § 61-3-15.
92. §§ 49-5-11, 49-1-29.
93. § 51-9-121 (Pearl River Valley Water Supply District); § 51-15-119 (Pat Harrison Waterway District); § 51-11-13 (Pearl River Basin Development District).

94. Id.

95. §§ 65-1-71; 11-27-5.

96. § 77-5-157.

97. § 61-5-7.

98. Id.

99. Id.

XXI. SOIL AND WATER RESOURCES, RIGHTS AND MANAGEMENT

A. DRAINAGE DISTRICTS

1. Jurisdiction and Purpose. Drainage Districts may be established under the laws of the state to promote the ditching, drainage and reclamation of wet, swampy, and overflowed lands.¹ These laws are to be liberally construed so as to affectuate the aforementioned purposes.²

Districts are to be considered for formation when 1/4 or more of the real property owners within a proposed district file a petition in the chancery court of that county. Unless a majority of landowners owning half or more of the proposed district area object at the scheduled hearing, the court, or chancellor in vacation, appoints three of the land owners to proceed with the organization. These three temporary district commissioners select a competent engineer who makes a survey to determine the region to be benefited by the proposed improvements, provided a general idea of the character and the cost, and recommends the size and location of drainage ditches.³

2. Land Acquisition, Disposition and Construction. Drainage districts are empowered to acquire and own in fee simple, sell, lease and dispose of subject to district drainage purposes and easements, all necessary rights of way for floodways, by-passes, ditches, canals, levees, and other necessary work and improvements.⁴ The land commissioner can grant easements in and to public lands to any federal or state drainage district.⁵ Rights of ways may be procured from private landowners by agreements or releases,⁶ may necessarily extend beyond the borders of the drainage district,⁷ or may pass through other districts if consent is acquired.⁸

Full power and authority is vested in the drainage districts " to construct or cause to be constructed, such artificial main drains and ditches, and lateral drains and ditches, and tile drains over the lands of others or over or on lands which may be acquired by said district, and to alter, deepen or improve, any and all natural drains and water courses ... and ... construct or erect such levees ... as may be necessary to protect or reclaim any lands from overflow from any source."⁹ By statute, the word "ditch" includes "branch or lateral drains, levees, sluiceways, water courses, floodgates, and any other construction work found necessary for the reclamation of wet and overflowed lands."¹⁰ Districts with general, comprehensive plans for converging more directly the surplus and overflow waters of rivers and their tributaries may also construct and maintain by-passes if these by-passes empty the water directly into the same watercourse to which it would naturally flow.¹¹

3. Governing Body. Drainage district commissioners make by-laws, rules and regulations, alter and change same, and perform all functions not inconsistent with the laws of the state and proper to effect the purposes of the district.¹² All acts are done by the commissioners in the name of the district, as a body corporate.¹³ Initially commissioners are sworn in and bonded for not less than \$1000, payable to the county.¹⁴ Beyond these functions district commissioners are able to exercise the state power of eminent domain in order to furnish rights-of-way for federal flood control works¹⁵ and for soil and water conservation and utilization programs in cooperation with the federal government.¹⁶

4. Revenues and Financing. So far as is practicable, drainage districts are to be self-supporting entities from their very inception. Expenses incident

to the initial survey, legal expenses, and costs of publication are paid upon proper showing by the county as work progresses, however this money is repaid the county from proceeds of the first levied assessment. With the court chancellor's consent, the temporary commissioners may borrow money at 6% or less rate of interest and shall run for no more than two years at a maximum interest rate of 6%. If the district fails to organize, the board of supervisors may levy an acreage or an ad valorem tax against the lands within the proposed district area in order to pay the evidences of indebtedness. Otherwise the payments are made out of any general fund or out of the proceeds of the first assessments levied.¹⁷

Sub-districts are to be managed in the same manner as are regular districts, "but the proceeds from the sale of bonds of a sub-drainage district shall be applied and used exclusively for doing the work within, or for the exclusive benefit of said sub-drainage district for the construction of internal drains of sub-drainage district, and in carrying out and perfecting its internal drains."¹⁸

Consolidated drainage districts shall assume all authority, power and jurisdiction of the former separate districts and shall also be able to assess the combined territory, or any part thereof, with additional benefits and to levy taxes thereon for the purpose of raising revenues for the performance of the district's functions. The consolidated district shall not be bound by any assessment previously made in any of said separate drainage districts, and may assess the combined lands with benefits without regard to any former assessments of benefits in any separate districts.¹⁹

Extension of existing drainage district boundaries subjects newly embraced lands to the same assessments and powers as were the former lands. Moreover,

those former lands become liable for assessments of benefits thereafter levied, if any benefits are received credit for work already done, existing improvements, and construction will also be given former landholders, for benefits to the added territories.²⁰

Miscellaneous sources of revenues for drainage districts include the following: compensation for the granting of rights of way to other districts,²¹ income from the rental or leasing of parts of rights of way that are susceptible of growing and producing crops,²² and assessments for access rights to landowners connecting to drains extending beyond the district limits.²³ Conveyances of land can be accepted from the federal government and can be used, rented, leased or conveyed for the benefit of the district in the maintenance of flood control works and improvements.²⁴

5. Other Restrictions. Damages assessed to property owners are considered to be accepted unless the owner files within 30 days written notice with the commissioners of notice is, action must be taken to condemn the lands that must be taken or damaged, and that action shall be in accordance with the proceeding for the condemnation of property for public use, as set forth in Chapter III, supra. If the landowners appeal an award to the circuit court, work may nevertheless proceed on the drainage project.²⁵ Landowners are also entitled to damages from the board of supervisors, who are empowered to build public roads on, or on the side of rights of way of drainage canal or levees.²⁵

Districts may in their descretion permit waters from drainage canals to be used for the irrigation of farm lands under such restrictions as might be imposed.²⁷

B. FLOOD CONTROL

1. Jurisdiction and Purpose. Because problems of flood control are largely

associated with interstate waters, the role of the state in curtailing problems of flooding has primarily been to provide the necessary state powers and cooperation. The cooperating state agencies have been the respective county boards of supervisors, the individual drainage districts and specially established flood control districts.

2. Land Acquisition, Disposition, and Construction. Counties through which any river or stream may flow and on which the United States has authorized flood control improvements are empowered to give satisfactory assurances that they will provide, without cost, all lands, easements and rights of way necessary for the construction of projects; hold and save the federal government free from damages due to the construction of the works; and maintains and operates all of the works after completion in accordance with terms of the Flood Control Act, as prescribed by the Secretary of War.²⁸ By the same legislation, "any such board of supervisors is also hereby authorized and empowered to accept the conveyance of any lands, easements and rights of way over and on behalf of any lands that may be benefited by the maintenance of such works, to accept assurances from landowners whose property is benefited by such flood control improvements, to levy, assess and collect such taxes on said area so benefited as will be necessary."²⁹

As was mentioned supra, drainage district commissioners can exercise their powers of eminent domain in order to furnish rights-of-way for federal flood control works.³⁰ Drainage districts are likewise empowered to accept conveyances of land from the United States and to use, rent, lease and convey the same for the benefit of the districts in the maintenance of flood control works and improvements.

Flood control districts may be organized under the Flood Control Act in

cooperation with the United States government. Actions by any such district in the furtherance of the act's purposes are to be liberally construed.³² Flood control districts are to cooperate with the United States in construction of flood control improvements for the protection of property controlling floods, reclaiming overflow lands, and preventing overflows in this state. They can also maintain and operate federally constructed dams, reservoirs and other flood control works and improvements.³³

Land, flowage rights, rights of way, easements, or premises can be acquired within or without the district by purchase, grant, donation, condemnation or otherwise. Agreements for these conferred and settlements of all claims for damages shall be made by the board with the owners, guardians, executors or administrators.³⁴

3. Governing Body. A Board of Flood Control Commissioners is the governing agency. They have the power through their corporate name " to contract and to be contracted with; to sue and be sued; to plead and to be impleaded; to exercise the right of eminent domain and of taxation, as provided; to borrow money and to issue notes therefor; and to do and perform in the name of the district all acts authorized expressly and by implication."³⁵ They can also police district works, compel the assistance of district citizens during emergencies, and restrict or prevent in their discretion the passage of persons, vehicles and livestock over district works and improvements.³⁶

4. Other Restrictions. Flood control commissions have the power to redirect any natural watercourse other than as prohibited by Section 81, Mississippi Constitution of 1890, however all waters shall be emptied directly into the same watercourse to which it would naturally flow, or into the backwater of another

watercourse within 35 miles from the mouth thereof.³⁷

C. THE PAT HARRISON WATERWAY DISTRICT

1. Jurisdiction and Purpose. Although flood control is one of the objectives of the Pat Harrison Waterway District, the scope of this project is much broader. The district, in conjunction with the U. S. Army Corps of Engineers, U. S. Secretary of Agriculture, and the heads of other federal and state agencies, develops plans for public works of improvement and to make navigable or for the purpose of prevention of flood water damage, or the conservation, development, recreation, utilization and disposal of water, including the impoundment, diversion, flowage and distribution of waters for beneficial use.³⁸ By legislative mandate, the district is to cooperate in the making of a survey or surveys of the of the Pascagoula, Leaf, and Chickasawhay Rivers and Tallaha Creek to promote the establishment of large canals linking the cities of Meridian, Hattiesburg and Laurel and other cities and communities along those waterways with the Gulf of Mexico.³⁹ It is to forest and reforest within the district, to prevent soil erosion and flood damage, to use stored water for irrigation, to prevent water pollution,⁴⁰ and to aid in the prevention of damage to person or property from the waters of the Pascagoula River or any of its tributaries.⁴¹ The Pat Harrison Waterway District is composed of Clarke, Covington, Forrest, George, Greene, Jackson, Jasper, Jones, Lamar, Lauderdale, Newton, Perry, Smith, Stone, and Wayne counties.⁴²

2. Land Acquisition, Disposition and Construction. Property of any type may be acquired through eminent domain for the purposes of flood control and improvement of watercourses,⁴³ any public lands and property can be inundated by the district in the execution of its goals.⁴⁴ The district board of directors is empowered to acquire, maintain, use and operate any and all property of any kind,

real, personal or mixed, or any interest therein, within or without the district boundaries, as long as it be necessary and convenient to the exercise of district functions.⁴⁵

Construction of a dam or dams, a reservoir or reservoirs, work or works, plants necessary to impound overflow water, and plants to process and supply potable water to nearby cities are authorized under this legislation.⁴⁶

3. Governing Body. The Pat Harrison Waterway District is governed by a board consisting of one member from each of the named counties (supra) and of three gubernatorial appointees picked from the state at large. Members serve four-year terms and serve without compensation, except traveling expenses and necessary expenses in the performance of their official duties. The commission meets at Hattiesburg, may have an executive director, and has a chairman and vice-chairman named by the governor.⁴⁷ The executive director has, at the discretion of the board, the power to employ and discharge employees.⁴⁸ Engineers, attorneys, and agents necessary to carry out the designated projects may be employed⁴⁹ and salaries of personnel may be paid out of state appropriated funds.⁵⁰

4. Revenues. Grants to the district for maintenance and operation of any present or future projects may be applied for, accepted and ratified from the United States, any corporation or agency designated by the United States, and voluntary associations.⁵¹ The board of directors can make contracts necessary to insure the marketability of district bonds.⁵² Funds are also made available by each of the associated counties through their respective boards of supervisors who are authorized to levy an ad valorem tax of no more than 2 mill on all taxable property.⁵³

5. Other Restrictions. In purchasing supplies, equipment, heavy equipment, etc., the board of directors is to comply with the Public Purchases Act by public bids on such equipment and supplies.⁵⁴

D. THE PEARL RIVER VALLEY WATER SUPPLY DISTRICT

1. Jurisdiction and Purpose. The Pearl River Valley Water Supply District was created to assure the protection of waterways and surface waters as two of the state's most basic resources.⁵⁵ The district aids in flood control,⁵⁶ in the prevention of soil erosion, in the supply of irrigation waters, in the prevention of water pollution,⁵⁷ in the establishment of public parks and recreational facilities, and in the preservation of fish and wildlife.⁵⁸ To accomplish these purposes, the district directors can impound overflow water of the Pearl River and its tributaries within and without the district bounds and in such amounts as the Board of Water Commissioners of Mississippi may approve.⁵⁹

2. Land Acquisition, Disposition and Construction. The district is empowered to acquire properties which is convenient and necessary for the project by purchase, lease, gift or in any other manner.⁶⁰ The district board of directors can exercise the power of eminent domain so far as it is necessary for its purposes,⁶¹ however this power cannot be exercised for the acquisition of lands for public parks and recreational facilities.⁶² Facilities for water production, filtration, purification and distribution may be leased, rented or bought from any municipality or county.⁶³

Previously acquired property may be disposed of by public bidding with the

prior owner being given a 30 day option to meet the best bid.⁶⁴

3. Governing Body. A Board of Directors makes regulations to preserve the sanitary condition of all waters flowing into district-owned reservoirs. The board prescribed rules to prevent waste and unauthorized use, regulate residence, hunting, fishing, boating, camping, traffic, and recreational and business privileges in and around the reservoir. These rules, after due publication in a paper of state-wide circulation, have full force and effect of the law and may provide for punishment by a fine of no more than \$1000 or imprisonment for up to 15 days, or both.⁶⁵

The district directors may call for all necessary surveys and engineer's investigations.⁶⁶ Employees, including attorneys and those needed in the issuance of bonds, may be secured as is necessary to carry out the district functions.⁶⁷

4. Revenues. The Pearl River Valley Water Supply District may apply for and accept grants from the United States to carry out its purposes.⁶⁸ The Board of Directors may fix and collect charges for any services, facilities etc. provided by it.⁶⁹ The district does not have to pay any tax or assessment on the project and related facilities and the interest on bonds issued shall be free from taxation within this state.⁷⁰

5. Other Restrictions. On construction contracts over \$2500 the Pearl River Valley Water Supply District must publish notice at least three weeks in a newspaper of general circulation in the district. Bids shall be received and the lowest bidder complying with the terms imposed by the board and sufficiently bonded shall be awarded the contract.⁷¹

The Pearl River Valley Water Supply District may overflow sixteenth section lands and not be guilty of legal waste. The District shall pay reasonable rental for the use of such land and any sixteenth section lands that have been flooded shall be

reforested before the project shall ever be abandoned.⁷²

E. THE PEARL RIVER BASIN DEVELOPMENT DISTRICT

1. Jurisdiction and Purpose. The Pearl River Basin Development District includes Attala, Copiah, Hancock, Hinds, Jefferson Davis, Lawrence, Leake, Lincoln, Marion, Neshoba, Pearl River, Pike, Rankin, Scott, Simpson, Walthall and Winston counties.⁷³ Through its board of directors, the district is able to develop in cooperation with the U. S. Army Corps of Engineers, U. S. Secretary of Agriculture, U. S. Secretary of Interior, or with such other federal or state agency as may be involved including agencies of the State of Louisiana, plans for the public works of improvement for the preservation and regulation of waters and soil within the Basin District.⁷⁴ The board can have surveys made relating to construction for the prevention of flooding, development of navigation, and the creation of recreational areas.⁷⁵

2. Land Acquisition, Disposition and Construction. Acquisition of land strictly and presently needed for projects is to be by law providing for the condemnation of property by railroads, telegraph and telephone companies.⁷⁶ The district can, at its own expense, acquire and relocate county roads, state highways or other public property where necessary and where relocation is not waived by board of supervisors. But in acquiring easements the district shall not acquire mineral rights, except sand and gravel necessary for easement purposes, nor interfere with drilling or mining rights and operations.⁷⁷ Public lands, including sixteenth sections within the project area can also be overflowed and inundated.⁷⁸

All facilities necessary for the purposes of the project can be constructed, extended, maintained, or reconstructed and contracts can be made with any political subdivision of any kind for the rental, lease, or purchase of needed facilities.⁷⁹

Powers of the board of directors include the powers to employ all persons

necessary to carry out the purposes of the district,⁸⁰ including attorneys used in connection with the issuance of bonds.⁸¹

3. Revenues. The Pearl River Basin Development District is authorized to apply for and accept grants from the United States or from any corporation or agency created or designated by the United States to construct, maintain, or operate any project undertaken by the district.⁸² The district can also lease, sell, or otherwise dispose of property previously acquired, provided however, that previous landowners be given a 30-day option to meet the highest and best bid, and provided further that no more than 1/4 mile of shoreline be acquired in the exercise of this option.⁸³

4. Other Restrictions. In the purchase of or in the leasing of supplies, equipment, heavy equipment and the like, the board of directors are in all instances to comply with the provisions of the Public Purchase Act by public bids on such supplies and equipment.⁸⁴

F. MUNICIPALITIES

By state law municipalities are empowered to control, guide or deflect the current of a river,⁸⁵ and to finance such projects they can issue bonds.⁸⁶ The exercise of eminent domain within or without the corporate limits is permissible in the laying out, constructing, erecting or perfecting of levees for the protection of the municipality; in the changing of channels of water courses, streams, or ditches; and in the construction of a drainage system.⁸⁷

Municipalities may build or otherwise acquire waterworks and operate same or they are able to contract for some other person to operate waterworks for a term not to exceed 25 years.⁸⁸

In Gulfport it is provided by ordinance that a permit be attained and a bond

made payable to the city prior to the excavation and/or removal of dirt in subdivisions, residential areas, or any other area of the city if it would leave the property at a lower level than the surrounding area and cause a drainage problem.⁸⁹

G. SOIL CONSERVATION DISTRICTS

The enabling state legislation for Soil Conservations Districts declared it to be the function of such district "to provide for the conservation of the water and said resources of this State, and for the control and prevention of soil erosion, and thereby preserve the natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, prosperity and general welfare of the people of this State."⁹⁰

In the execution of these purposes, Soil and Water Conservation Districts are empowered to research and publish findings on erosion and control problems and to conduct demonstration projects, carry out erosion prevention and control measure and furnish financial aid with appropriated funds to any governmental or private landholders.⁹¹

Districts can obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, or devise, any property, real or personal, or rights or interests therein. They have the power to develop such lands in carrying out the purposes of this act and can sell, lease, or otherwise dispose of any property or interests therein in like manner. Eminent domain proceedings, however, cannot be exercised in the acquiral of lands or interests therein for recreational purposes.⁹²

Lands within the district, whether public or private, are subject to regulations promulgated by the district commissioners. The following types of regulations

may be adopted:

- (a) Provisions requiring the carrying out of necessary engineering operations, terrace outlets, check-dams, dikes, ponds, ditches, and other necessary structures.
- (b) Provisions requiring the observance of particular methods of cultivation... and planting of lands to water conserving and erosion preventing plants, trees and grasses... .
- (c) Specifications of cropping programs and tillage practices to be observed.
- (d) Provisions requiring the retirement from cultivation of highly erodible areas... .
- (d) Provisions for such other means, measures, operations, and programs as may assist conservation of water and soil resources and prevent or control soil erosion. ⁹³

Although regulations are to be uniform throughout the district, reasonable classifications of soil and land conditions may be provided form copies of these water and land use regulations are to be made available to all owners and operators in the district. ⁹⁴

District commissioners have the authority to formulate the regulations, however only after public meetings and hearings are conducted, due notice is provided the landowners, and referendum approval has been acquired will the regulations take effect. Provisions for repeal are conducted in much the same manner, however referendum on adoption, amendment, supplementation, or repeal of water and land use regulations shall not be held more than once in 12 months. ⁹⁵

Approval by at least 66 2/3% of landowners owning at least 66 2/3% of all lands affected must be acquired before a regulation will be enacted. ⁹⁶

SOIL AND WATER RESOURCES, RIGHTS AND MANAGEMENT

FOOTNOTES

[Unless otherwise specified all footnotes refer to Miss. Code Ann. (1972)].

1. See generally § 51-31-7, et seq.
2. § 51-31-143.
3. § 51-29-5.
4. § 51-29-123.
5. § 29-1-99.
6. § 51-31-55.
7. § 51-29-77.
8. § 51-29-125.
9. § 51-31-5.
10. § 51-29-3.
11. § 51-29-119.
12. § 51-29-19.
13. § 51-31-1.
14. § 51-29-5.
15. § 51-35-11.
16. § 51-33-17.
17. § 51-29-5.
18. § 51-31-125.
19. § 51-29-157.
20. § 51-29-137.
21. § 51-29-125.
22. § 51-29-123.

23. § 51-29-77.
24. § 51-35-5.
25. § 51-29-35.
26. § 51-31-5.
27. § 51-33-33.
28. § 51-35-15.
29. Id.
30. § 51-35-11.
31. § 51-35-5. These lands will be subject to taxation as are other lands.
32. § 51-35-203.
33. § 51-35-105.
34. § 51-35-159.
35. § 51-35-7.
36. § 51-35-197.
37. § 51-35-171.
38. § 51-15-119(a).
39. §§ 51-15-1 to 9.
40. § 51-15-119(d).
41. § 51-15-119(x).
42. § 51-15-1 to 9.
43. § 51-15-119(e).
44. § 51-15-119(f).
45. § 51-15-119(y).
46. § 51-15-119(b).

47. § 51-15-1.
48. Id.
49. Id.
50. Id.
51. § 51-15-119(o).
52. § 51-15-119(p).
53. § 51-15-5.
54. § 51-15-119(z).
55. § 51-9-103.
56. § 51-9-121.
57. Id.
58. § 51-9-125.
59. § 51-9-121.
60. Id.
61. Id.
62. § 51-9-125.
63. § 51-9-121.
64. Id.
65. § 51-9-127.
66. § 51-9-121.
67. Id.
68. Id.
69. Id.

70. § 51-9-157.
71. § 51-9-123.
72. § 51-9-161.
73. § 51-11-11.
74. § 51-11-13. The right of eminent domain shall be superior to that of
railroad, telegraph and telephone companies.
75. Id.
76. Id.
77. Id.
78. Id.
79. § 51-11-11.
80. Id.
81. § 51-11-13.
82. Id.
83. § 21-37-15.
84. § 21-33-301.
85. § 21-37-3.
86. § 21-27-7.
87. Gulfport Code § 17-8.
88. § 69-27-3.
89. § 69-27-35.
90. Id.
91. § 69-27-37.
92. Id.
93. Id.

