



Michael Watson
SECRETARY OF STATE

May 5, 2023

The Honorable Lynn Fitch
Office of the Attorney General
550 High Street, Suite 1200
Jackson, Mississippi 39201

Re: Outstanding Tidelands Matters

Dear General Fitch:

I write once again to express my concerns about matters in which we have requested assistance from your office to no avail. While I have sent numerous similar correspondence, this one is specific to tidelands-related issues necessitating some level of litigation. As state-wide public officials, one of our fundamental duties is to ensure the rights and interests of the citizens of the state of Mississippi are protected. We have repeatedly requested assistance from your office on the tidelands matters mentioned herein. Given your office's inactivity, in the face of numerous requests from my office, I will be submitting a request to hire outside counsel to handle the subject tidelands matters. I have included a chronology below outlining our multiple attempts to obtain assistance from your office, as the state's "law firm" and its failure to act on behalf of my office to protect the state's interests.

On July 12, 2022, I submitted a request, via surface mail and electronic mail correspondence, to Michelle Williams requesting assistance from the Office of the Attorney General (AGO), as the state's attorney, to resolve issues concerning the use of state-owned Public Trust Tidelands by entities, both public and private, who have either failed to obtain a lease or to make its lease payments. Said correspondence provided a description of the issues, coupled with my office's statutory authority, and a request that your office notify me of the attorney who had been assigned to handle these matters. I sent additional correspondence on July 12, 2022, requesting AGO assistance in trying to resolve a Tidelands permitting issue with the Department of Marine Resources (DMR). After communicating with members of your staff (Ms. Williams and Kim Turner via telephone on September 14, 2022), your office took the position that it believed DMR "lacked the ability to condition the permit on obtaining what the permittee may need from [SOS]." Essentially, the AGO agreed with the position contained in DMR Executive Director Joe Spraggins' April 28, 2022, letter (which we understand was produced through consultation with the AGO), that DMR has no jurisdiction or authority over the Public Trust Tidelands, that such jurisdiction and authority resides with the Secretary of State as the Trustee, and while expressing "the utmost respect" for the Secretary's role of trustee", DMR would not honor his decisions concerning use of the Tidelands. Therefore, my office provided that if the AGO could not, as the state's attorney (representing both agencies), provide a path to resolution that would protect the interests of both SOS and DMR, we would be relying on the AGO to take the appropriate legal action against those entities/persons that have failed to secure a lease or other authorization from my office in order to preserve the state's interests.

In response, Ms. Williams instructed my staff to compile the necessary information to provide to the AGO for action. As directed, my office provided the requested information, along with any pertinent supporting documentation regarding unauthorized users of state-owned property. By letter dated October 28, 2022, we provided, to Ms. Williams, the necessary information on public entities making use

of tidelands and submerged lands without a lease or other authorization and requested AGO assistance to ensure that the express authority of this office is preserved by bringing the unauthorized users in compliance with state law. By letter dated January 6, 2023, we provided, to Ms. Williams, the necessary information on private, commercial entities making use of tidelands and submerged lands without a lease or other authorization and requested AGO assistance to ensure the express authority of this office is preserved by bringing the unauthorized users in compliance with state law. By letter dated January 31, 2023, we provided Ms. Williams with the necessary information concerning the Maritime and Seafood Industry Museum's default for failure to pay the agreed annual rent for over two years. It should be noted we referenced our October 28, 2022, and January 6, 2023, submissions in said correspondence with the hope it would trigger activity in those matters. To our chagrin, as of today's date, there has been no attempt on the part of the AGO to provide any assistance whatsoever to our office in these matters, other than some missed phone calls between Ms. Williams and Carla Thornhill, my Chief of Staff, over the Christmas/New Year holiday season and an email from Ms. Williams to say the AGO is "in the process of reviewing the materials." According to our records, the last phone call attempt during the holiday season was made by Ms. Thornhill in which she left a voicemail for Ms. Williams indicating we were ready to send the next letter with necessary information but wanted to check on the status of our first (October 28) correspondence. Unfortunately, we received no communication after that time. Regardless of the silence from your office, we continued to send the necessary information as instructed by Ms. Williams.

The first time we were notified the AGO had any issues with the information we submitted was in an email exchange beginning on January 31, 2023, between myself and Ms. Williams in which I reached out to inquire about the status of these tidelands matters. As I mentioned in that email exchange, it is unclear to my office what more information (in addition to what we provided) the AGO would need to take legal action when an entity/person is unlawfully using state-owned property or has failed to make its lease payments. Had your office communicated to us what specific information it needed, we would gladly have taken whatever steps necessary to provide it. Though these matters relate to the Public Trust Tidelands, the issues involve basic contract and trespass law. In that same email exchange, Ms. Williams, on February 5, 2023, acknowledged the AGO committed to work with our office "to review individual instances to see if there is some fact-based way to assist..." and requested we send "what [we] can." In response, Assistant Secretary of State Ray Carter forwarded all information again (in four separate emails) within 30 minutes of Ms. Williams' request. Additionally, on February 6, 2023, in that same email exchange, I repeatedly requested of Ms. Williams an in-person meeting with you and your staff for the purpose of generating some activity on these outstanding matters; specifically, the Maritime & Seafood Industry Museum matter, which is a simple breach of the lease agreement for a failure to pay rent. Receiving no response from Ms. Williams on a meeting date, I sent another email to Ms. Williams on February 21, 2023, asking about potential meeting dates to which she failed to respond or acknowledge. Much to my, and my office's, dismay, we have received zero communication regarding any activity from your office whatsoever.

In a desperate attempt to spark some activity from your office, you will recall I emailed you specifically on March 24, 2023, to request a meeting on these matters so that we can move forward and ensure the interests of the state are preserved, especially in light of the Mississippi Supreme Court's recent ruling in the RW Development case. The recent Mississippi Supreme Court precedent in *State of Mississippi v. RW Development* demonstrates the court's willingness to forever bar the State's efforts to enforce rights given it by the legislature where the State previously failed to act. Of note, the court found the State's silence on previous construction of improvements on state-owned lands amounted to a representation the State authorized them and held estoppel theory prevented the State from requiring

a lease for new replacement improvements. I take my job very seriously and will do everything in my power to preserve the interests of the state and to perform my statutory duties. I would be derelict in my duties as Secretary of State if I remain idle. I cannot in good conscience let that happen. Alas, to date, I have received no response from you regarding my request for a meeting in my March 24, 2023, email.

You will recall on January 10, 2022, I submitted a request to hire outside counsel and provided a number of reasons in the justification portion of the memorandum required by your office. Some of the reasons listed included inactivity by your office on matters in which we had requested assistance and an instance where our office was forced to represent itself due to my office disagreeing with the legal strategy used by your office (ultimately, the court disagreed with your office's position). In the past, I have expressed my office cannot risk the erosion of its legislative authority by continuing to permit entities/persons to ignore our enforcement efforts and the lack of a timely response by your office was hindering my office's ability to enforce its statutorily mandated responsibilities. Unfortunately, on January 18, 2022, you denied my request to obtain outside counsel and stated "the Attorney General's Office strives to provide the highest level of customer service to all the agencies, boards, and commissions...." Furthermore, you considered our request to hire outside counsel as an effort to "effectively supplant the Attorney General's Office as the attorney for the Mississippi Secretary of State's Office" and, concluded that you "cannot approve a contract that effectively cedes the Attorney General's statutory authority as it relates to [my] office." The subject tidelands matters addressed herein are yet another victim of the failure of your office to act.

Having no solution and virtually no assistance from the AGO, I have no option except to retain outside counsel with Tidelands funds to protect against these unauthorized uses. We have informed the Mississippi Senate and House leadership of this decision and our impending request. Your office should expect the submission of the appropriate request to hire outside counsel along with its pertinent documentation by close of business today.

Sincerely,



MICHAEL WATSON
Secretary of State
State of Mississippi

cc: Honorable Delbert Hosemann, Lieutenant Governor
Honorable Philip Gunn, Speaker of the House of Representatives
Whitney Lipscomb, Deputy Attorney General
Carla Thornhill, Chief of Staff, Mississippi Secretary of State
Leigh Janous, General Counsel, Mississippi Secretary of State
Raymond D. Carter, Assistant Secretary of State, Gulf Coast