



#633
October 29, 2019

Report to the Mississippi Legislature

A Limited Management and Financial Review of Tunica County

PEER: The Mississippi Legislature's Oversight Agency

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A joint committee, the PEER Committee is composed of seven members of the House of Representatives appointed by the Speaker and seven members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms, with one Senator and one Representative appointed from each of the U.S. Congressional Districts and three at-large members appointed from each house. Committee officers are elected by the membership, with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of four Representatives and four Senators voting in the affirmative.

Mississippi's constitution gives the Legislature broad power to conduct examinations and investigations. PEER is authorized by law to review any public entity, including contractors supported in whole or in part by public funds, and to address any issues that may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

PEER provides a variety of services to the Legislature, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and the agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

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The Mississippi Legislature

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October 29, 2019

Honorable Phil Bryant, Governor
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Members of the Mississippi State Legislature

On October 29, 2019, the PEER Committee authorized release of the report titled *A Limited Management and Financial Review of Tunica County*.

A handwritten signature in black ink that reads "Becky Currie".

Representative Becky Currie, Chair

This report does not recommend increased funding or additional staff.

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A Limited Management and Financial Review of Tunica County

CONCLUSION: The Tunica County Board of Supervisors should develop, implement, and adhere to policies and procedures necessary to ensure that the board does not engage in deficit spending; complies with state laws in the issuance of tax levies; enters all executive sessions in compliance with state laws; uses the county's general road funds exclusively for the construction, upkeep, and maintenance of the county's road and bridge system; ensures all county expenditures are supported by proper documentation and are properly recorded and classified in the county's recordkeeping system; and at all times ensures contracts for the county's housing rehabilitation program exist and are signed by the appropriate county officials and all parties responsible for the administration and operation of the program.

Background:

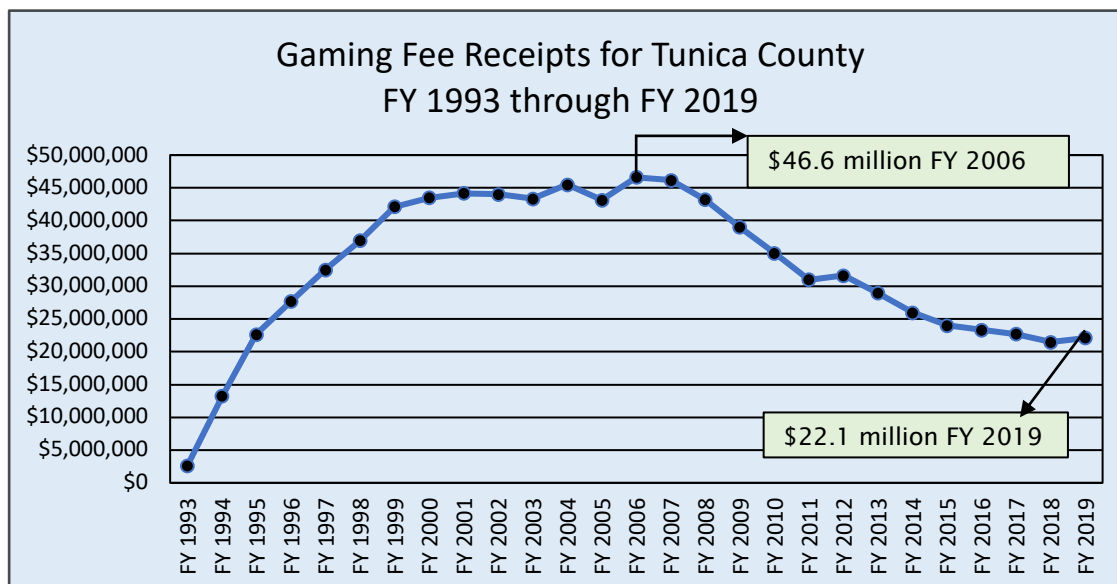
According to data from the 1980 and 1990 United States Census, Tunica County, Mississippi, was one of the poorest counties in the country at that time. Census data reported that the percentage of Tunica County's population living below the poverty line in 1980 and 1990 was 52.94% and 56.8%, respectively.

In 1990, the Mississippi Legislature first legalized gaming (in the form of dockside gambling) with the Mississippi Gaming Control Act. The first dockside casino in the state opened in August 1992, and the first such casino in Tunica County opened in October 1992. In addition to dockside gambling, the Legislature has since enacted other forms of legal gambling. For example, in 1992 the Legislature enacted the Charitable Bingo Law and authorized the Mississippi Gaming Commission to license certain organizations to conduct bingo games. In 2017, the Legislature repealed the portion of state law that prohibited sports betting, which allowed the activity to be legal in Mississippi after the U. S. Supreme Court's ruling on the issue in May 2018. Most recently, in August 2018 the Legislature enacted legislation to establish a lottery in Mississippi.

Tunica County Sources of Gaming Fee Revenues

In addition to the collection of gaming fees of up to 0.8% of monthly gaming revenue authorized by MISS. CODE ANN. Section 75-76-195 (1972), the Legislature authorized municipalities and counties, through local and private laws, to collect additional gaming fees of up to 3.2% of the gross monthly gaming revenue for any vessel docked in navigable waters zoned for gaming. Under current law, gaming fees are to be distributed between various Tunica County government operations, the Tunica County School District, and the Town of Tunica.

From December 1992 (FY 1993), when Tunica County began receiving gaming fee revenues, through September 2019 (FY 2019), the county received approximately \$882 million in gaming fees. Of this amount, the county retained approximately \$722 million and forwarded, as required by local and private legislation, approximately \$97 million to the Tunica County School District and approximately \$63 million to the Town of Tunica.



- Breakdown of the \$722 million in gaming fee revenue retained by Tunica County:
- Special Gaming Fund: \$258 million
 - General Fund: \$191 million
 - General Road Fund: \$171 million
 - Special Construction Fund: \$102 million

From FY 2013 through FY 2018, gaming fee revenue comprised 62% of Tunica County's revenues.

PEER Committee's Major Conclusions:

Financial Management and Administrative Operations

1. From October 1, 2012, through August 31, 2019, the board expended approximately \$4.3 million more than the revenues that had been received by the county—i.e., the county engaged in deficit spending.
2. As of August 31, 2019, the county's general fund had a negative balance of approximately \$4.9 million, which means the county is relying primarily on the funds in the county's general road fund to provide the necessary cash to pay the county's expenses, a practice that is contrary to state law.
3. In April 2018, the board transferred \$5 million from the county's general road fund to the county's general fund, a practice which is also contrary to state law. In December 2018, the board received an Attorney General's opinion informing the board that such a transfer was not permissible. Despite being informed of this, the supervisors did not authorize repayment of the \$5 million to the general road fund until July 15, 2019, following PEER's commencement of fieldwork on this project.
4. In FY 2015, the board began assessing a county-wide nine-mill ad valorem tax for the county's general road fund. However, because the county was inaccurate with its projection of future expenditures for road maintenance and construction, the adopted millage rate overtaxed Tunica County residents by approximately \$5.5 million during fiscal years 2015 through 2017 when compared to average expenditures.
5. PEER identified deficiencies in the internal control policies and procedures of the board and the county's administration and financial recordkeeping.
6. Minutes of the Board of Supervisors meetings did not always state with sufficient specificity the reasons for the board's entering into executive sessions, as required by MISS. CODE ANN. Section 25-41-7 (1972).
7. The board did not comply with state law in the issuance of tax levies during FY 2014 and subsequently was required by court order to refund collected taxes of approximately \$190,000 to one taxpayer, with more potential refunds in the future.
8. The Tunica County Tax Collector's Office failed to comply with state law by not including the amounts of special assessments due for two of the county's utility districts on the individual tax bills for each affected parcel for the years of 2010 through 2015.

Homeowner Rehabilitation Program

9. Since the beginning of the board's current arrangement with North Delta Regional Housing Authority and, by extension, Tunica County Housing, Inc., the board has failed to ensure either that a

contract exists or that a signed contract is in force and effect at all times between the county and the housing authority and between the housing authority and Tunica County Housing, Inc.

10. Since February 2015, the board has approved expenditures of \$1.6 million for the county's housing program without supporting documentation showing that the funds were expended as indicated or whether the work was completed at all.
11. Since October 1, 2014, approximately 41% of total housing program expenditures have been for administrative expenses. This level of administrative expenses is considered to be above average by charity watchdog groups.

PEER Committee's Major Recommendations

1. The Tunica County Board of Supervisors should:
 - Annually adopt and abide by a budget in which anticipated revenues exceed budgeted expenditures.
 - Develop and implement a plan to address the current negative balance of the county's general fund and return it to a positive balance.
 - Reconsider the current practice of supporting county-owned facilities.
 - Use the funds of the general road fund exclusively for the construction, upkeep, and maintenance of the county's roads and bridges.
 - Adopt and enforce policies and procedures that strengthen the county's internal controls.
 - Adopt a resolution memorializing the Legislature to amend *Chapter 920, Local and Private Laws of 2004*, to provide that the county's share of gaming funds be deposited to the county's general fund subject to a 3 year repealer.
 - Take steps to ensure compliance with all open meeting laws.
 - Take steps to ensure compliance with all laws and regulations for the approval of the county's budget and assessment of property taxes.
2. The Tax Collector's office should take steps to ensure that all property assessments and collections for property taxes are conducted in accordance with applicable state laws.
3. Concerning the county's housing program, the Tunica County Board of Supervisors should ensure:
 - Appropriate supporting documentation is received and placed in the county's accounting records for all expenditures of the housing program.
 - A properly executed contract, signed by all involved parties, is in effect at all times for the county's housing program.
 - Expenditures are used only for the purposes of administering or operating the program or paying housing grants awarded through the program.



A Limited Management and Financial Review of Tunica County | October 2019
For more information, contact: (601) 359-1226 | P.O. Box 1204, Jackson, MS 39215-1204
Representative Becky Currie, Chair | James A. Barber, Executive Director

A copy of the full report is available at: www.peer.ms.gov.

A Limited Management and Financial Review of Tunica County

Introduction

Authority

PEER conducted this review in accordance with MISS. CODE ANN. Section 5-3-51 et seq. (1972). CODE Section 5-3-57 delineates the PEER Committee's general authority to conduct reviews, with Section 5-3-57(b) stating:

To conduct, in any manner and at any time deemed appropriate, a review of the budget, files, financial statements, records, documents or other papers, as deemed necessary by the committee, of any agency; to make selected review of any funds expended and programs previously projected by such agency; to investigate any and all salaries, fees, obligations, loans, contracts, or other agreements or other fiscal function or activity of any official or employee thereof (including independent contractors where necessary); and to do any and all things necessary and incidental to the purposes specifically set forth in this section.

CODE Section 5-3-53 (b) defines an "agency" as:

. . . an agency, department, bureau, division, authority, commission, office or institution, educational or otherwise, of the State of Mississippi, or any political subdivision thereof which shall include all county governments and agencies thereof, all city governments and agencies thereof, and all public school districts and agencies thereof.

Scope and Purpose

In response to allegations of mismanagement of Tunica County's resources, PEER examined the county's financial records and selected county administrative and operational actions for the period of October 1, 2012, through August 31, 2019, as well as Tunica County's efficiency in managing county-owned resources.

This report addresses the following specific concerns for the period of October 1, 2012, through August 31, 2019:

- Has Tunica County’s management of budgetary matters resulted in the county’s experiencing financial difficulties?
- Does Tunica County’s use of general road funds comply with state law?
- Does Tunica County’s procedure for going into executive session meet the requirements of the Open Meetings Law?
- Has Tunica County’s management of millage and debt led to lawsuits?
- Are county-operated programs, such as the housing program, being managed efficiently?

Method

During the course of this review, PEER:

- reviewed county revenues and expenditures for FY 2013¹ through FY 2018, as reported through the county’s annual general fund budget;
- reviewed the county’s general ledger for FY 2013 through August 2019;
- reviewed the county’s receipt of gaming fee revenues² and distribution of gaming fee revenues to the Town of Tunica, Tunica County School District, Board of Levee Commissioners for the Yazoo-Mississippi Delta, and to county funds such as the county’s general road fund for FY 2013 through FY 2018;
- interviewed selected current employees of Tunica County;
- reviewed the Tunica County housing program’s funding from the county and program expenditures for FY 2013 through August 2019;
- reviewed minutes of the Tunica County Board of Supervisors for FY 2013 through July 2019; and,
- reviewed opinions of the state Attorney General pertinent to the operations of county government.

¹ In this report, *FY* refers to the fiscal year used by counties in Mississippi, which is from October 1 through September 30 annually.

² *Chapter 920, Local and Private Laws of 2004*, authorizes Tunica County to collect taxes and fees associated with gaming within Tunica County. The chapter uses the terms “taxes” and “fees” interchangeably. For the purposes of this report, PEER will use the term “fee.”

Background

According to data from the 1980 and 1990 United States Census, Tunica County, Mississippi was one of the poorest counties in the country³ at that time. Census data reported that the percentage of Tunica County's population living below the poverty line in 1980 and 1990 was 52.94% and 56.8%, respectively.⁴

In 1990, the Mississippi Legislature first legalized gaming (in the form of dockside gambling) with the Mississippi Gaming Control Act. The first dockside casino in the state opened in August 1992 and the first such casino in Tunica County opened in October 1992. In addition to dockside gambling, the Legislature has since enacted other forms of legal gambling. For example, in 1992 the Legislature enacted the Charitable Bingo Law and authorized the Mississippi Gaming Commission to license certain organizations to conduct bingo games. In 2017, the Legislature repealed the portion of state law that prohibited sports betting, which allowed the activity to be legal in Mississippi after the U.S. Supreme Court's ruling on the issue in May 2018. Most recently, in August 2018, the Legislature enacted legislation to establish a lottery in Mississippi.

Since legalization of gaming in the state, the Legislature has enacted general, local, and private laws giving local government officials, including Tunica County officials, the ability to raise revenues from gaming fees.

Tunica County's Sources of Gaming Fee Revenues

In addition to the collection of gaming fees of up to 0.8% of monthly gaming revenue authorized by MISS. CODE ANN. Section 75-76-195 (1972), the Legislature authorized municipalities and counties, through local and private laws, to collect additional gaming fees of up to 3.2% of the gross monthly gaming revenue for any vessel docked in navigable waters zoned for gaming. Since Tunica County began collecting the 3.2% gaming fees in FY 1994, local and private laws have changed the county's distribution of these gaming fees six times. Under current law, gaming fees are to be distributed between various county government operations, the Tunica County School District, and the Town of Tunica.

MISS. CODE ANN. Section 75-76-195 (1972), passed by the Legislature in the 1990 Extraordinary Session, grants municipalities and counties the right to impose fees on gaming licensees located within their geographic area of authority for conducting, carrying on, or operating any gambling game, slot machine, or other game of chance based upon the gross revenues of the licensee. The fee ranges from 0.4% on monthly revenue under \$50,000 up to 0.8% on monthly revenue of \$134,000 and greater. Tunica County began

³ This issue was brought to national prominence with a 1983 *60 Minutes* exposé entitled, "...There for All to See."

⁴ Census data showed that Tunica County had the largest percentage of population in the nation living below the poverty line in 1980 and the third largest percentage below poverty in the nation in 1990. Tunica County's percentage of population living below the poverty line was more than double the Mississippi state average and more than four times the national average for the same period.

receiving revenue derived from these gaming fees in December 1992 (FY 1993).

In addition to the gaming fees authorized by MISS. CODE ANN. Section 75-76-195 (1972), the Legislature authorized municipalities and counties, through local and private laws, to collect an additional gaming fee. The Legislature authorized the first such additional gaming fee for Tunica County in *Chapter 866, Local and Private Laws of 1992*, which authorized the Tunica County Board of Supervisors to impose a fee of up to \$1.00 on each passenger boarding a gaming vessel docked in navigable waters zoned for gaming by the board. The Legislature amended the fee to allow an amount up to \$1.50 per passenger under *Chapter 952, Local and Private Laws of 1993*. According to county officials, the board of supervisors authorized the collection of the \$1.00 and \$1.50 per passenger fee and collected at least approximately \$9.2 million from the fees.

In *Chapter 945, Local and Private Laws of 1994*, the Legislature authorized the Tunica County Board of Supervisors to collect a gaming fee of up to 3.2% of the gross monthly gaming revenue for any vessel docked in navigable waters zoned for gaming by the board rather than collecting the per person fee. The county began collecting the 3.2% gaming fee in July 1994 (FY 1994).

The 1994 legislation authorizing the 3.2% gaming fee also specified the distribution of the collected gaming fees into specific county accounts. Initially, 88% of the gaming fee was to be deposited into the county's general road fund and the remaining 12% was to be expended for educational purposes in Tunica County. Subsequent to this legislation, the Legislature amended the distribution of the 3.2% gaming fee six times. The latest amendment authorized is in *Chapter 920, Local and Private Laws of 2004*, and mandates that the gaming fees be distributed between various county government operations, the Tunica County School District, and the Town of Tunica.

See Exhibit 1, on page 5, for the gaming fees providing revenues to Tunica County as of September 1, 2019, and the required distribution of the collected fees as required by current law.

Exhibit 1: Gaming Fees that Provide Revenues to Tunica County, as of September 1, 2019

Year Passed	Legal Authority	Type of Fee	Fee Rate	Fee Distribution
1990	MISS. CODE ANN. Section 75-76-195 (1972)	Fee on monthly gross revenue derived from any gambling game, slot machine, or other game of chance.	<ul style="list-style-type: none"> • Less than \$50,000 at 0.4% • \$50,000 to \$133,999.99 at 0.6% • \$134,000 and greater at 0.8% 	County general fund
2004	<i>Chapter 920, Local and Private Laws of 2004</i>	Fee on monthly gross gaming revenue of a gaming vessel docked in navigable waters zoned for gaming by the Tunica County Board of Supervisors	<ul style="list-style-type: none"> • 3.2% of monthly gross gaming revenue 	<ul style="list-style-type: none"> • 64% to Special Gaming Fund⁵ • 12% to county road fund • 12% educational purposes⁶ • 10% Town of Tunica⁷ • 2% teacher salary supplementation and training⁶

SOURCE: PEER Review of Mississippi CODE and Local and Private Laws.

⁵ Funds may be used for the construction, maintenance, and support of roads and bridges, public or nonprofit water and sewer systems, public or nonprofit airports, public or nonprofit convention centers, storm water drainage and flood prevention, public recreation uses, public buildings, public education facilities, medical facilities, public transportation systems, debt incurred from construction projects related to the previous items, and any purposes for which monies in the county general fund may be expended.

⁶ Tunica County forwards gaming fees for the 12% educational purposes and the 2% teacher salary supplementation and training to the Tunica County School District.

⁷ Tunica County forwards gaming fees to the Town of Tunica.

Tunica County's Gaming Fee Collections and Required Distributions, FY 1993 through FY 2019

From December 1992 (FY 1993), when Tunica County began receiving gaming fee revenues, through September 2019 (FY 2019), the county has received approximately \$882 million in gaming fees. Of this amount, the county retained approximately \$722 million and forwarded, as required by local and private legislation, approximately \$97 million to the Tunica County School District and approximately \$63 million to the Town of Tunica.

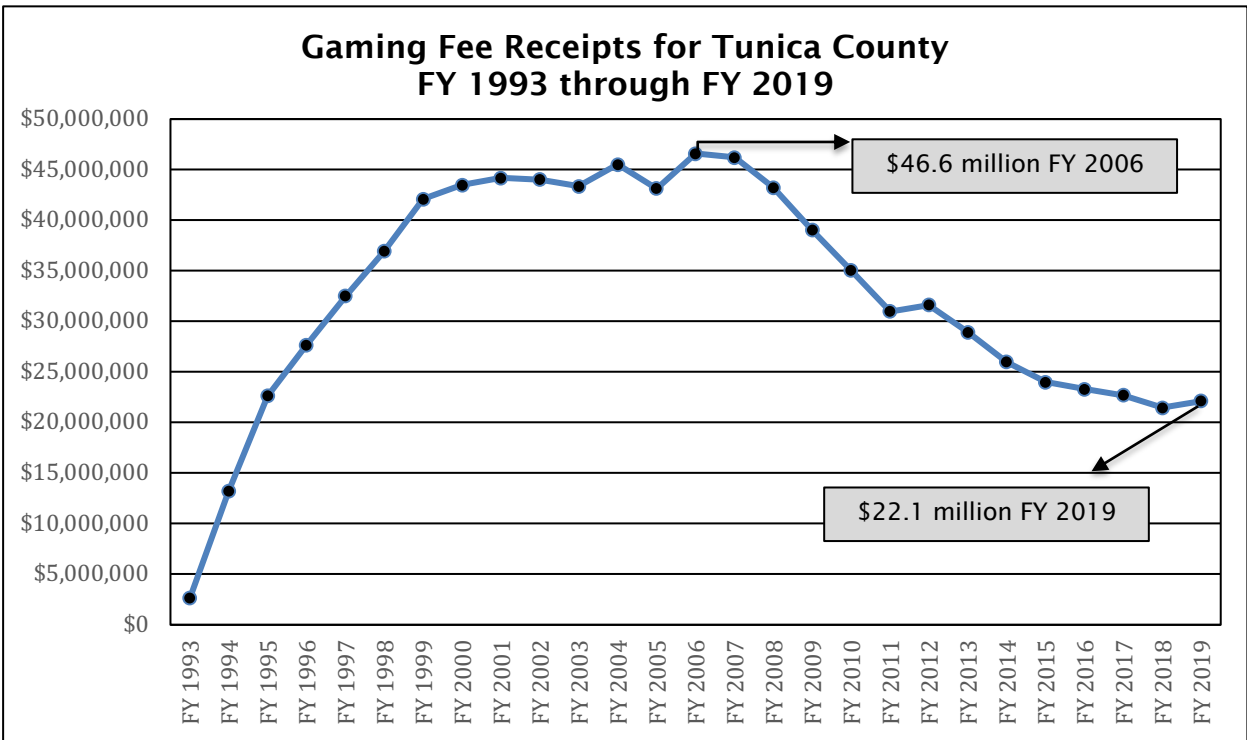
From December 1992 (FY 1993) through FY 2019, Tunica county collected approximately \$882 million in gaming fees. This figure represents total county collections resulting from the 0.4% up to 0.8% of monthly gross gaming revenue authorized by MISS. CODE ANN. Section 75-76-195 (1972), the \$1.00 per person boarding fee authorized by *Chapter 866, Local and Private Laws of 1992*, the \$1.50 per person boarding fee authorized by *Chapter 952, Local and Private Laws of 1993*, and the 3.2% of monthly gross gaming revenue originally authorized by *Chapter 945, Local and Private Laws of 1994* and as most recently amended by *Chapter 920, Local and Private Laws of 2004*.

Of the \$882 million, the county retained approximately \$722 million and forwarded, as required by local and private legislation, approximately \$97 million to the Tunica County School District and approximately \$63 million to the Town of Tunica. Of the \$722 million retained by the county, the county paid the Board of Levee Commissioners for the Yazoo-Mississippi Delta approximately \$11 million under a separate agreement to assist the levee board with the expenses of engineering costs and repairs and maintenance of levees associated with roads crossing over the levee that allow the public access to the casinos on the river side of the levees.

At first, Tunica County's gross gaming fee revenues grew steadily, peaking at approximately \$46.6 million in FY 2006. Since that time, gaming fee revenue has steadily declined to approximately \$22.1 million in FY 2019. Exhibit 2, page 7, shows gaming fee receipts from FY 1993 through FY 2019.

As authorized by MISS. CODE ANN. Section 75-76-195 (1972), the county retains all of the revenues derived from the 0.4% up to 0.8% gaming fee. However, the Legislature specified through local and private legislation how the county disbursed the per person boarding fees and shall disburse the revenue derived from the 3.2% gaming fee. Currently, *Chapter 920, Local and Private Laws of 2004*, mandates that the 3.2% gaming fees be distributed between various county government operations, the Tunica County School District, and the Town of Tunica.

Exhibit 2: Tunica County Gaming Fee Receipts, FY 1993 through FY 2019



SOURCE: PEER Review of Tunica County Financial Records.

Following is a breakdown of how the Legislature has mandated through local and private legislation, how the revenues derived from the per person boarding fees, the 0.4% up to 0.8% fee, and the 3.2% gaming fee must be distributed from December 1992 through September 2019.

- *Tunica County Special Gaming Fund (approximately \$258 million)* -- Expenditures from this fund are restricted to the construction, support, or maintenance of roads and bridges, public or nonprofit water and sewer systems, public or nonprofit airports, public or nonprofit convention centers, storm water drainage and flood prevention, public recreation uses, public buildings, public education facilities, medical facilities, and public transportation systems; indebtedness incurred with regard to any of the projects described above; and for any purposes for which monies in the county general fund may be expended.
- *Tunica County General Fund (approximately \$191 million)* -- The county general fund is the county's main cash fund that is used for the daily operation and support of county departments, facilities, and programs.
- *Tunica County General Road Fund (approximately \$171 million)* -- The county road fund is to only be used for the construction,

maintenance, and support of county roads and bridges. Under terms of an amendment to the contract with the Board of Levee Commissioners for the Yazoo-Mississippi Delta, approximately \$1.7 million of this amount was paid to the levee board to assist the board with the expenses of engineering costs, repairs, and maintenance of levees associated with roads crossing over the levee that allow the public access to the casinos on the river side of the levees.

- *Tunica County Special Construction Fund (approximately \$102 million)* -- Expenditures from this fund are restricted to the construction, support, or maintenance of roads and bridges, public or nonprofit water and sewer systems, public or nonprofit airports, public or nonprofit convention centers, storm water drainage and flood prevention, public recreation uses, public buildings, public education facilities, medical facilities, and public transportation systems. *Chapter 920, Local and Private Laws of 2004*, redirected gaming fee receipts going into this fund to the Tunica County Special Gaming Fund noted above.
- *Town of Tunica (approximately \$63 million)* -- After revenues from gaming fees are received from the county, *Chapter 920, Local and Private Laws of 2004*, requires that Town of Tunica officials deposit the gaming fee funds into the town's general fund for the support, operation, or maintenance of fire protection, streets, sidewalks and related structures; libraries; airports; municipal water and sewer systems both within and outside the corporate limits; municipal buildings; parks and recreation; the police department, supervision and finance; advertising and bringing into favorable notice the opportunities, possibilities, and resources of the municipality; and debt service as to the existing outstanding debt of the municipality as of May 6, 2004.
- *Tunica County School District Educational Purposes (approximately \$85 million)* -- After revenues from gaming fees are received from the county, *Chapter 920, Local and Private Laws of 2004*, requires the expending of these gaming fee funds for educational purposes in Tunica County.
- *Tunica County School District Teacher Salary Supplementation and Training (approximately \$12 million)* -- After revenues from gaming fees are received from the county, *Chapter 920, Local and Private Laws of 2004*, requires that these funds "shall be expended for educational purposes in Tunica County which shall include and be limited to teacher's salary supplementation and teacher training."

Tunica County's Separate Agreement with the Board of Levee Commissioners for the Yazoo-Mississippi Delta

Under an agreement between the two entities, from August 1993 until September 1, 2018, Tunica County paid the Yazoo-Mississippi Delta Board of Levee Commissioners approximately \$11 million from the county's gaming fee collections.

Apart from legislation dealing with the distribution of gaming fee revenues in Tunica County, the Tunica County Board of Supervisors entered into an agreement with the Board of Levee Commissioners for the Yazoo-Mississippi Delta (referred to hereafter as the "levee board") in August 1993 whereby the county agreed to pay a portion of gaming fee collections to the levee board for reimbursement of expenses the board would incur from levee repairs and maintenance and with assisting the county with the construction and maintenance of roads over the levee to allow public access to the casinos located on the river side of the levees. The original contract was for a term of twenty-five years with a termination date of September 1, 2018. Over the life of the contract, the county paid the levee board approximately \$11 million from the county's gaming fee collections.

The original contract called for the county to pay the levee board \$5,000 per road crossing over the levee per casino and a per capita payment of \$0.025 per customer per casino in Tunica County. At the time, *Chapter 952, Local and Private Laws of 1993*, allowed municipalities and counties to assess a per capita fee of up to \$1.50 per customer per casino for gaming operations within their jurisdiction.

On July 12, 1994, the board of supervisors and the levee board amended the original contract in response to *Chapter 945, Local and Private Laws of 1994*, which granted municipalities and counties the authority to collect a 3.2% gaming fee of the monthly gross gaming revenue of casinos operating in their jurisdiction. Under the terms of the amendment, the board of supervisors and the levee board agreed to move from a per capita amount to an arrangement whereby the county would pay the levee board 2% of the amount of gaming fee revenue received by the county's general road fund. According to county records, the county began collecting the 3.2% gaming fee on July 14, 1994, and therefore the county would have been obligated to pay the levee board under the terms of the amended contract beginning in July 1994.

Subsequently, the board of supervisors and the levee board amended the original contract a second time effective September 1, 1998. Under the terms of the second amendment, the county was required to pay the levee board 1.6% of the county's 3.2% gaming fee revenue collections. This arrangement remained in effect until the contract expired on September 1, 2018, and the board of supervisors declined to renew the contract.

Thus, under terms of the agreement between the board of supervisors and the levee board, the county paid the levee board a total of at least approximately \$11.1 million of the county's gaming fees from August 1993 until the contract's expiration on September 1, 2018. Of this amount, the county paid, according to county records, approximately \$139,000 from the county's general road fund under the contract's original terms, and approximately \$1.7 million under terms of the contract's first amendment (July 1994 through August 1998) from the county's general road fund for expenses associated with constructing and maintaining road crossings over the levees. Under terms of the contract's second amendment, the county paid the levee board approximately \$9.3 million from September 1998 through August 2018.

After the second amendment to the contract, the Legislature, through local and private legislation, amended how Tunica County was to disburse the gaming fee three times. As a result of these changes in local and private legislation, the county's payments under terms of the second amendment could have come from the county's general fund, general road fund, special construction fund, or special gaming fund.

Conclusions: Tunica County's Financial Management and Administrative Operations

This chapter addresses financial and administrative management issues PEER identified in Tunica County. These issues include:

- the county's declining financial condition;
- mismanagement of cash;
- mismanagement of fund transfers; and,
- overassessment of road maintenance and construction millage.

The County's Declining Financial Condition

From FY 2013 through August 2019, the Tunica County Board of Supervisors expended approximately \$4.3 million more than the revenues that had been received by the county. As of August 2019, the county's general fund had a negative balance of approximately \$4.9 million, which is a sign of fiscal distress and means that the county has overdrawn the general fund and must rely on other county funds to provide cash to pay county expenses.

Tunica County's main operating account is the county's general fund, which functions as the county's account to receive revenue and pay expenses for the daily operation and administration of the county, as well as the county's programs and facilities. The general fund receives ad valorem taxes, license fees, fines, gaming revenue, state funds, and federal funds; expenditures for the county's administration, public safety, programs and facilities, and daily operations are made from the general fund. The county also has several other accounts for services or activities such as road maintenance, a bond sinking fund for bond payments, and economic development projects.

From FY 2013 through August 2019 (the most recent information available at the time of this report), the Tunica County Board of Supervisors expended approximately \$4.3 million more than the revenues the county had received.

As a result of the board of supervisors' deficit spending, the county's financial condition deteriorated significantly from FY 2013 through August 2019. The balances of the county's general fund at the end of each fiscal year during this period and at the end of August 2019 are presented below, with negative balances noted parenthetically.

- FY 2013: \$801,115
- FY 2014: \$1,027,964
- FY 2015: (\$4,345,977)
- FY 2016: (\$5,414,672)
- FY 2017: (\$4,645,080)
- FY 2018: (\$1,423,887)⁸
- FY 2019 as of August 31, 2019: (\$4,850,436)

PEER notes that year to date for FY 2019 (October 1, 2018, through August 31, 2019), the county received \$635,899 more in revenues than had been expended, which is a positive step in that the county so far in FY 2019 is not experiencing deficit spending. However, even with an annual excess of revenues over expenditures equal to the current amount of \$635,899, it would take over seven years for the county's general fund to become positive.⁹

Tunica County's Use of Other Funds to Supplement the General Fund

Tunica County's negative balance of approximately \$4.9 million in the county's general fund means the county is relying primarily on the funds in the county's general road fund to provide the necessary cash to pay the county's expenses, a practice that is contrary to state law.

Rather than having separate bank accounts for each county fund, which would increase administration and paperwork, Tunica County uses the accepted business practice of aggregating county funds into one bank account and uses the county's accounting system to determine the balance of individual funds. If the county's general fund were in a bank account by itself, the account would be overdrawn by approximately \$4.9 million. Since the general fund is in a bank account along with other county accounts, but has a negative balance, the county must rely on other accounts that have a positive balance within this bank account to pay the county's expenses associated with county administration, operations, and the county's programs and facilities.

The general fund is in a bank account along with eighteen other county accounts and the net cash balance of these accounts is approximately \$1.7 million. However, six of the eighteen other county accounts have a negative balance, meaning that these six

⁸ Includes a \$5 million transfer from the county road fund in April 2018. Without the transfer, the general fund's balance would have been (\$6,423,887).

⁹ Footnotes to the financial statements included in the contract auditor's report on Tunica County for FY 2014, FY 2015, FY 2016, and FY 2017 stated that the county's general fund had a negative balance. FY 2018 was not available at the time of this report.

accounts must also use funds from accounts within this bank account with a positive balance to pay expenses.

The county's general road fund has the largest positive balance, with approximately \$6.8 million, and the account with the second largest positive balance is the county's special levy reappraisal account, with a balance of approximately \$423,000. Because the county's general road fund has by far the largest positive balance, the county's general fund and the other six accounts with negative balances rely primarily on the general road fund to provide cash to pay county expenses. Using general road funds for other purposes is contrary to state law and Mississippi Attorney General's opinions.

Having such a large negative cash balance in the county's general fund, along with a third of the county's other accounts having negative balances, is a sign of fiscal distress, which could impact the county's ability to borrow money either through a traditional loan or through issuing bonds. Without significant improvement in the county's financial condition, the county could encounter additional challenges and difficulties in finding the necessary cash to meet county obligations.

Mismanagement of Cash

From FY 2013 through FY 2018, the most recently completed fiscal year, the Tunica County Board of Supervisors incurred a deficit in four of the six years totaling approximately \$5 million. In FY 2015, the county's deficit was approximately \$3.6 million. The board of supervisors' expenditures of more than the amount of revenues received during this period has caused the financial condition of the county to deteriorate and has led to the supervisors' dependence on transfers from other county accounts, at times contrary to state law, to have the necessary cash flow to meet county expenses.

Tunica County's General Fund Expenditures, FY 2013 through FY 2018

During FY 2013 through FY 2018, the board of supervisors spent approximately \$5 million more than revenue received. As a result of this overspending, the supervisors transferred money from other funds, at times contrary to state law, to have the necessary cash flow to meet county expenses.

In order to obtain a better understanding of the board of supervisors' authorized expenditures, PEER conducted a detailed review of Tunica County's expenditures from FY 2013 through FY 2018 (the most recently completed fiscal year). During this period, the board of supervisors spent approximately \$5 million more than revenue received. As a result of this overspending, the supervisors transferred money from other funds, at times contrary to state law, to have the necessary cash flow to meet county expenses.

From FY 2013 through FY 2018, Tunica County incurred the following surpluses and deficits, with negative amounts noted parenthetically.

- FY 2013: (\$337,220)
- FY 2014: \$227,754
- FY 2015: (\$3,572,431)
- FY 2016: (\$1,219,872)
- FY 2017: \$817,243
- FY 2018: (\$873,348)

By incurring a net deficit of approximately \$5 million from FY 2013 through FY 2018, the board of supervisors has caused the county's financial position to deteriorate and placed increased pressure and uncertainty on the county's ability to meet its future financial obligations.

Tunica County's Dependence on Gaming Fee Revenues

Because Tunica County is heavily dependent on gaming fee receipts, which comprised approximately 62% of the county's revenues from FY 2013 through FY 2018, recent decreases in gaming fee receipts have placed increased financial pressures on the county.

PEER conducted a detailed review of the county's general fund expenditures from FY 2013 through FY 2018 (the most recently completed fiscal year). (See Appendix A, page 73, for a detailed list of revenues and expenditures during this period.)

From FY 2013 through FY 2018, gaming fee receipts totaled approximately \$102.7 million and accounted for 62% of the county's general fund's total revenue. Gaming fee receipts fell 26% from approximately \$20.6 million in FY 2013 to approximately \$15.3 million in FY 2018.

After analyzing Tunica County's general fund revenues and expenditures, PEER notes the following additional items related to the county's revenues from FY 2013 through FY 2018:

- Total county revenues decreased approximately 21%, from approximately \$32.7 million to approximately \$25.9 million.¹⁰
- Ad valorem tax revenue increased 130%, from approximately \$2 million to \$4.7 million.
- The increased ad valorem tax revenue was partially offset by a decline in licenses, fees, fines, and forfeitures from approximately \$2.1 million to approximately \$1.4 million.

¹⁰ FY 2017 revenues exclude approximately \$18 million in lease revenue related to the Schulz economic development project. The funds were received after Schulz was purchased by another company and the purchasing company forwarded funds to the county to pay off debt related to the economic development project.

- The county also receives revenue from state sources, federal sources, and miscellaneous sources, but these sources vary annually and are difficult to project.

Given the county's dependence on gaming fee receipts as a major source of general fund revenue, the significant decline in gaming revenues places increased financial pressure on the county and increases the importance of the board of supervisors' adjusting expenditures accordingly.

The Tunica County Board of Supervisors' Continued Support of County-Owned Facilities and Other Organizations

Although the Tunica County Board of Supervisors decreased expenditures by approximately 19% from FY 2013 through FY 2018, the board expended approximately \$22.9 million during this period on county-owned facilities such as the Battle Arena and Exposition Center and an additional \$5.5 million in financial support to other organizations, thus contributing to the continued decline in the county's financial condition.

The board of supervisors did reduce expenditures in response to declining revenues. However, the approximately 21% decline in revenues was larger than the approximately 19% decrease in expenditures. As a result, the board continued deficit spending in three out of the last four years, with a deficit of \$873,348 in FY 2018.

After analyzing Tunica County's detailed general fund revenues and expenditures, PEER notes the following items related to the county's expenditures from FY 2013 through FY 2018:

- Total county expenditures decreased 19%, from approximately \$33 million to approximately \$26.7 million.¹¹
- The Tunica County Board of Supervisors expended approximately \$22.9 million on the county-owned or county-operated facilities (see list on page 16). The expenditure figures presented are net of any revenues or fees paid by the facility back to the county. For example, from FY 2013 through FY 2018, the county expended approximately \$10.5 million on the Battle Arena and Exposition Center and received approximately \$3.8 million in fees paid to the county, which nets to the \$6.7 million shown in the following table on page 16.

¹¹ FY 2017 expenditures exclude approximately \$18 million in lease payments related to the Schulz economic development project. The lease payments were made after Schulz was purchased by another company and the purchasing company forwarded funds to the county to pay off debt related to the economic development project.

County Facility	Approximate Dollar Amount Provided by Board of Supervisors, FY 2013- FY 2018
Battle Arena and Exposition Center	\$6.7 million
Tunica Health Clinics	6.5 million
Tunica National Golf and Tennis Center	4.1 million
Tunica River Park	3.6 million
Tunica County Airport	2.0 million

- The Tunica County Board of Supervisors expended approximately \$5.5 million in support of other organizations, as follows:

Organization	Approximate Dollar Amount Provided by Board of Supervisors, FY 2013- FY 2018
Tunica County Utility District	\$1.4 million
Tunica County Soil and Water Conservation District	1.3 million
Tunica County Chamber of Commerce	1.1 million
Mid-State Opportunity, Inc. ¹²	861,297
North Delta Planning and Development District	505,935
Mississippi State University Extension Service	305,299

¹² Mid-State Opportunity, Inc. is a private non-profit community action agency operating programs in DeSoto, Panola, Quitman, Tallahatchie, Tate, and Tunica counties. This organization has not received any contributions from Tunica County since FY 2015.

From FY 2013 through FY 2018, the Tunica County Board of Supervisors also approved approximately \$3.4 million in expenditures from an account entitled “Board of Supervisors Grants to Other Agencies.” The board incorrectly approved some of these expenditures as grants when the expenditures were actually for items such as reimbursement of homestead exemption from the state, fee in lieu of taxes, or for services the county received. The misclassification of expenditures clouds taxpayers’ ability to determine how public funds are expended and impairs the county’s ability to budget future years’ expenditures.

In addition to the above-noted amounts totaling approximately \$5.5 million, from FY 2013 through FY 2018, the board of supervisors also approved approximately \$3.4 million in expenditures from an account entitled “Board of Supervisors Grants to Other Agencies.”

PEER reviewed selected expenditures from this account and noted that some expenditures were improperly classified as grants. For example, the Tunica County School District received approximately \$1.7 million through this grant account when at least \$1.1 million of the expenditures were actually payments to the school district for homestead exemption reimbursement from the state¹³ and fees in lieu of ad valorem taxes.¹⁴ Also, the North Tunica County Fire District received \$96,515 through this grant account when the entire amount was actually payments to the fire district for fees in lieu of ad valorem taxes.

Further, according to county officials, the county hired a consultant through the North Delta Planning and Development District (NDPDD) to assist the county in addressing audit findings and accounting issues. Rather than listing these expenditures as professional services, PEER noted that \$11,590 of the consultant’s fees were listed as a grant to the NDPDD.

PEER notes that the board of supervisors did provide general support to some organizations from FY 2013 through FY 2018 through the “Board of Supervisors Grants to Other Agencies” account, such as \$315,162 to the Tunica County Museum. Although the county reports expenditures through this grant account on the county’s claims docket, such expenditures are not as transparent as support to organizations that have their own general fund account. By including support to the Tunica County Museum in an account that includes expenditures to over a dozen other organizations, the county’s support to the museum is not easily noted and transparency regarding how the supervisors are expending tax funds in support of an organization is diminished.

¹³ MISS. CODE ANN. Section 27-33-41 (1972) authorizes the Mississippi Department of Revenue and the Mississippi Department of Finance and Administration to reimburse local governments for the loss of revenues associated with homestead exemption.

¹⁴ MISS. CODE ANN. Section 27-31-104 (1972) allows local governments to enter into a fee in lieu of taxes arrangement for private enterprise projects that meet certain project dollar levels, have specific capital investment structures, or are located in certain areas. Under the arrangement, an enterprise pays a set fee rather than paying ad valorem taxes.

From FY 2013 through FY 2018, the board of supervisors approved expenditures to the following organizations and recorded the expenditures in the “Board of Supervisors Grants to Other Agencies” account. PEER cautions that some of these expenditures were grants to the named agencies, while other expenditures were for purposes other than grants.

Organization	Approximate Dollar Amount Provided by Board of Supervisors, FY 2013-FY 2018
Tunica County School District	\$1,667,761
Tunica County Economic Development Foundation	874,029
Tunica County Museum	315,162
Tunica County Chamber of Commerce	192,334
North Tunica County Fire Department	96,515
Tunica County Golf and Tennis Center	86,565
Aaron E. Henry Community Health Services Center	75,000
Town of Tunica	40,341
North Delta Planning and Development District	26,090
Mid-South Food Bank	16,000
Northwest Mississippi Community College	12,056
Coahoma Community College	9,451
I-69 Mid-Continent Highway Coalition, Inc.*	8,000
Yazoo-Mississippi Levee Board	5,581
Mississippi Agricultural and Forestry Experiment Station	2,605

*I-69 Mid-Continent Highway Coalition, Inc., is a nonprofit organization that promotes the construction of Interstate 69, which would run between Texas and Indiana and pass through Mississippi.

In summary, although the Tunica County Board of Supervisors did make reductions in some areas of expenditures during the period of FY 2013 through FY 2018, presumably in an attempt to reduce deficit spending, the board continued expending millions of dollars in support of county-owned facilities and other organizations. This practice contributed to the county's declining financial health.

Mismanagement of Fund Transfers

As the county's financial condition deteriorated, from September 2017 through November 2018, the Tunica County Board of Supervisors transferred a total of \$6.95 million from other county accounts to the county's general fund. This included a \$5 million transfer from the county's general road fund, a practice that is contrary to state law.

As the county's financial condition deteriorated and the general fund continued to have negative balances, the board of supervisors transferred a total of \$6.95 million from September 2017 through November 2018 from other accounts to the general fund in order to increase the amount in the county's general fund and attempt to return it to a positive balance.

Transfers to the general fund occurred on the following dates for the following amounts from the following funds:

Date	Amount	Transferred from Which Fund
September 2017	\$300,000	Payroll Clearing Account
April 2018	\$1,300,000	Special Levy Reappraisal Fund
April 2018	\$5,000,000	General Road Fund
November 2018	\$350,000	Payroll Clearing Account

Transfers from Tunica County's Payroll Clearing Account

For unknown reasons, county officials transferred more funds than necessary to the county's payroll clearing account, which resulted in excess funds accumulating in this account and contributing to the county's negative general fund balance. The board of supervisors transferred a total of \$650,000 from the payroll clearing account to the general fund in FY 2017 and FY 2019.

Organizations use a payroll clearing account as a way of monitoring payments to employees by checks and direct deposits to the employees' bank accounts. An organization transfers sufficient funds to ensure that employees receive their money for each pay period. Theoretically, the payroll clearing account balance should be zero after each pay period after the organization deposits the funds and employees receive their deposits or cash their checks.

However, if an employee does not cash a check, that amount remains in the payroll clearing account until the check is cashed.

For reasons unknown, county officials transferred approximately 10% more than the amount needed for each payroll period to the payroll clearing account. As a result of this practice, the county's payroll clearing account accumulated a substantial balance. It was this practice that allowed the supervisors to transfer \$300,000 in September 2017 and an additional \$350,000 in November 2018 from the payroll clearing account to the county's general fund account.

After the September 2017 transfer, it should have been obvious to the board that the accounting for the payroll clearing account was not being performed correctly. In response to this realization, the board should have taken steps to ensure that administrative officials took corrective actions so that the appropriate amount was transferred to the clearing account each pay period. Had the board done so, the November 2018 transfer would not have been necessary because the excess funds would have remained in the general fund and improved the general fund's balance. Because this incorrect payroll procedure continued, the county's general fund balance was lower than it should have been and thus contributed to the county's poor financial outlook.

Transfer from the County's Special Levy Reappraisal Fund

In April 2018, the board of supervisors approved the transfer of \$1.3 million from the county's special levy reappraisal fund to the general fund. Although the transfer was not contrary to state law, the transfer was precipitated by the board's deficit spending and an effort to increase the balance in the county's general fund account.

Regarding county ad valorem taxes, MISS. CODE ANN. Section 27-39-329 (2) (b) (1972) states the following:

Beginning with taxes levied for the Fiscal Year 1983, each county shall levy each year an ad valorem tax of one (1) mill upon all taxable property of the county, which may be used for any purpose for which counties are authorized by law to levy an ad valorem tax...

The CODE section further requires the county to hold the avails of the one mill in "escrow" until such time as the Department of Revenue certifies that the county complies with all legal requirements associated with property reappraisal. After certification, the county may expend these revenues for any purposes for which a levy is lawful as set out in MISS. CODE ANN. Section 27-39-317 (1972), which includes general county purposes.

According to officials from the Mississippi Department of Revenue, Tunica County had met all requirements associated with property reappraisal and the county had received permission to expend the escrow funds during FY 2018. In April 2018, the Tunica County

Board of Supervisors approved the transfer of \$1.3 million from the county's special levy reappraisal fund to the general fund.

Although the transfer met the requirements of state law, the supervisors transferred the \$1.3 million to the general fund in an effort to bolster the county's general fund. Had the supervisors exercised prudent financial management by not consistently expending more funds than the county received, the \$1.3 million could have been used for other purposes, such as paying down outstanding county debt, making repairs to county facilities, or performing maintenance to county property that the annual budget could not financially support.

Transfers from the County's General Road Fund

In April 2018, the board of supervisors approved the transfer of \$5 million from the county's general road fund to the county's general fund. As a result of the board's actions, road department resources have been committed to projects and activities that are not associated with the purposes and responsibilities of road and bridge construction, upkeep, and maintenance. Use of road and bridge funds for other purposes is contrary to state law.

Counties are empowered to levy and expend locally levied funds for the construction and maintenance of local roads, bridges, and culverts.¹⁵ MISS. CODE ANN. Sections 65-15-1 and 65-13-7 (1972) specifically address the uses to which such levied funds may be directed. Section 65-15-1 provides the following:

The board of supervisors may raise funds for working, constructing, reconstructing and maintaining public roads or for building bridges by an ad valorem fee on all assessed feeable property in the county, or by a bond issue, or by either or both of said methods.

In a like manner, Section 65-15-7 provides:

The board of supervisors of any county may, in its discretion, levy annually an ad valorem fee on all feeable property of the county, to be used for constructing and maintaining all bridges and culverts on the public roads throughout the county.

Funds levied for roads, bridges, and culverts are to be managed as special funds (see Section 65-15-3).

The language in these two CODE sections makes it clear that funds levied for the purposes defined within them may be used only for road and bridge construction and maintenance. In *Attorney General's Opinion to Shelton*, August 6, 2004, the Attorney General opined the following respecting road and bridge levies:

¹⁵MISS. CODE ANN. Section 27-39-305 allows a levy of ad valorem fees for such purposes.

Funds raised by levying ad valorem taxes may be used only for the purposes of the fee levy and funds raised by issuing bonds may be expended only for the purposes set forth in the resolution accompanying the issuance of the bonds. Counties are authorized to maintain an account for roads, an account for bridges or an account for both roads and bridges with funds raised pursuant to a fee levy or by issuing bonds.

In another instance, the Attorney General responded to a question of whether road and bridge funds could be used for recreational facilities. In *Attorney General's Opinion to Holliman*, June 4, 2004, the Attorney General opined, in part, that road and bridge funds could be used for a hiking and biking trail under limited circumstances. Specifically, the opinion stated:

Expenditure of county road funds may only be used for roads and bridges and related purposes. We have previously opined that where a hiking/biking trail is part of the public road, road funds may also be used for the project. MS AG Op., Trapp (January 17, 1997).

In April 2018, the Tunica County Board of Supervisors transferred \$5 million from Tunica County's general road fund to the county's general fund to be used for purposes and responsibilities not associated with road and bridge construction, upkeep, and maintenance. At the time of the transfer, the county's general fund balance was approximately a negative \$4.7 million and the general road fund balance was approximately \$7.9 million. Even though the county's general road fund had sufficient funds for the transfer and yet still meet its other obligations due to the continued inflow of revenue from gaming fees and ad valorem tax revenues, state law prohibits the expenditure of road and bridge funds for other purposes and the supervisors should not have approved the transfer.

The Board of Supervisors' Response to the Attorney General's Opinion Concerning the Transfer of \$5 Million from the County's General Road Fund

After its April 2018 transfer of \$5 million from the general road fund to the general fund, the Tunica County Board of Supervisors received an Attorney General's opinion in December 2018 informing the board that the transfer of funds from the county's general road fund to the general fund was not permissible. Despite being informed of this, the supervisors did not authorize repayment of the \$5 million to the general road fund until July 15, 2019, following PEER's commencement of fieldwork for this report.

The Tunica County Board of Supervisors' attorney requested an Attorney General's opinion regarding whether it was permissible to transfer funds from the county's general road fund to the county's general fund. On December 21, 2018, the Attorney General responded that the county should not make such a transfer.

Despite being informed that the transfer from the general road fund to the general fund was not permissible, the Tunica County Board of Supervisors took no action to reverse the transfer or even set a repayment schedule for the transfer. In fact, when PEER began fieldwork in June 2019, the transfer had not been reversed and the county had made no plans to repay the funds. After PEER made inquiries about the transfer, the board of supervisors authorized the transfer of the \$5 million back to the general road fund on July 15, 2019. Even though the \$5 million was transferred back to the general road fund, the road fund was essentially supporting and paying for expenditures from the county's general fund while the general fund had a negative balance because of the way the county's funds are set up.

The Tunica County Board of Supervisors' lack of corrective action in response to the Attorney General's opinion is troubling. After being informed that the transfer was not permissible, the board should have transferred the funds back to the general road fund as soon as possible or at least should have set up a repayment schedule. The Tunica County Board of Supervisors has a duty to the county's taxpayers to abide by the letter of the law and use taxpayer funds in a manner consistent with state law.

Actions Taken by the Tunica County Board of Supervisors to Address the County's Declining Financial Condition

From FY 2013 through FY 2018, the Tunica County Board of Supervisors did take some actions in response to the county's declining financial condition. These actions included increasing ad valorem taxes and decreasing expenditures. Although the board reduced the amount of financial support to other organizations and county facilities slightly, it continued this financial support despite the county's financial pressures.

From FY 2013 through FY 2018, the Tunica County Board of Supervisors did take some actions in response to the county's deteriorating financial condition. The board reduced the county's expenditures by approximately 19%, from approximately \$33 million to approximately \$26.7 million, during this period. However, during this same period, revenues declined approximately 21%, from approximately \$32.7 million to approximately \$25.9 million, and the county experienced deficits in three of the last four fiscal years (including a \$873,348 deficit in FY 2018).

From FY 2013 through FY 2018, the board of supervisors, under authority of MISS. CODE ANN. Section 27-39-321 (1972), increased ad valorem tax revenue by approximately \$2.6 million. However, this increase was partially offset by an approximately \$602,000 decline in collections of licenses and fees.

Also, the board reduced grants to other organizations whose names appear as part of the general fund budget (i.e., line items) from approximately \$2.1 million in FY 2013 to \$317,595 in FY 2018.

During this period, the board of supervisors reduced net expenditures for support of county-owned facilities from approximately \$5.3 million in FY 2013 to approximately \$4 million in FY 2018. The two county-owned facilities receiving the largest amount of county support, net of any revenues or fees paid by the facilities back to the county, in FY 2108 were the Tunica County Health Clinics (approximately \$1.6 million) and the Battle Arena and Exposition Center (approximately \$1.2 million).

One area for potential budget reduction for Tunica County is the county's financial support for county-owned facilities. The board should carefully weigh continued support for each facility and measure the benefits derived from such support. Although, such facilities can increase the quality of life for Tunica County citizens and boost tourism, the board must also consider whether continued support of these facilities is financially prudent and whether each facility generates sufficient economic activity and tax revenue to justify the amount spent (approximately \$4 million in FY 2018).

Overassessment of Road Maintenance and Construction Millage

In response to a declining balance in the county's road maintenance fund, Tunica County began assessing a county-wide nine mill ad valorem tax during Fiscal Year 2015. However, because the county was inaccurate with its assessment of future expenditures and budgeted county needs for road maintenance and construction, the adopted millage rate overtaxed residents by approximately \$5.5 million during fiscal years 2015 through 2017 when compared to average expenditures.

Tunica County's Road Maintenance Fund¹⁶ began receiving 12% of the revenues earned by the county under its 3.2% gaming revenue fee legislation.¹⁷ However, as shown in Exhibit 3 on page 25, even with the revenue generated from these fees, the balance in the county's Road Maintenance Fund decreased to approximately \$1.77 million by the end of Fiscal Year 2014.

¹⁶ Counties are required to account for road maintenance and/or construction funds in a special fund as directed by MISS. CODE ANN. Section 65-15-3 (1972).

¹⁷ Tunica County was directed to divert varying amounts of the revenues generated from gaming to the Tunica County Road Maintenance and Construction Fund beginning in 1993. The current requirement of 12% was enacted by changes to the enabling local and private legislation in 2001.

Exhibit 3: Tunica County Road Maintenance Fund Balances (for Fiscal Years ended September 30, 2013, through September 30, 2018)

Fiscal Year Ended	Total Revenues	Revenues from Millage	Annual Surplus (Deficit)	Balance in Fund
September 30, 2013	\$3,590,701	\$0	(\$2,059,484)	\$ 2,667,811
September 30, 2014	\$3,445,196	\$0	(\$ 902,733)	\$ 1,765,078
September 30, 2015	\$5,095,566	\$1,960,527	\$ 2,346,357	\$ 4,436,040
September 30, 2016	\$5,341,353	\$1,998,233	\$ 1,854,196	\$ 6,290,236
September 30, 2017	\$4,599,525	\$1,608,604	\$ 1,260,868	\$ 7,551,104
September 30, 2018	\$3,121,741	\$333,521	(\$ 322,657)	\$ 2,228,447*

* The county transferred \$5 million from the County Road Maintenance Fund to the County General Fund on April 18, 2018.

SOURCE: Tunica County Financial Reports.

According to county administration personnel, the county sought to address this decline by assessing a county-wide ad valorem tax during Fiscal Year 2015, allowed under MISS. CODE ANN. Section 27-39-305 (1972). The county assessed a 9.00 mill tax for fiscal years 2015 through 2017, a 2.00 mil tax for Fiscal Year 2018, and then reduced the millage rate to 0.00 for Fiscal Year 2019 and 2020.¹⁸

Although PEER has confirmed that county road maintenance fund expenditures exceeded revenues generated in the periods leading up to the assessment of the road fund ad valorem tax, it questions the necessity of an assessment of an ad valorem tax rate of 9.00 mills. For the period reviewed, fiscal years ended September 30, 2013 through September 30, 2018, average revenues collected (less ad valorem tax) and average expenditures were \$3.22 million and \$3.83 million, respectively. This shows an average deficit of approximately \$610,000 per year. During Fiscal Year 2015, the ad valorem tax for road and bridge maintenance and/or construction generated approximately \$218,000 per mill. For all periods reviewed, this tax generated an average of \$196,000 per mill. Based on these calculations, the county's operations need approximately 3.11 mils to fund the average annual deficit, approximately one-third of the rate assessed.

While the assessment of the 9.00 mill ad valorem tax was within the authority of the Tunica County Board of Supervisors, county officials could provide no rationale to PEER for the choice of this rate other than a desire to return the account to its historical level of funding. Any ongoing concern should have reserves to address unexpected expenditures, but these reserves should be based on

¹⁸ Because state law has established guidelines regarding county ad valorem tax increases, Tunica County sought an Attorney General's opinion prior to its assessment of the 9.00 mill tax in FY 2015. The Attorney General opined that because Tunica County had not assessed a tax for road fund maintenance in the previous ten years, its assessment in Fiscal Year 2015 fell within the guidelines established under MISS. CODE ANN. Section 27-39-305 (1972).

inputs such as future projected needs (or even a percentage of average annual expenditures) and not on items such as a return to historical balances.

Since the county began assessing and collecting an ad valorem tax for road maintenance in Tunica County, annual expenditures from the fund have decreased, no large projects have been funded, and the balance in the road fund had increased to approximately \$7.5 million as of September 30, 2017.

In light of these factors, the balance accrued in Tunica County's maintenance fund appears excessive, more than doubling the county's average expenditures on road and bridge maintenance and construction for the last six years.

While PEER cannot know the future needs of the road maintenance fund in Tunica County, a comparison between the funds raised based on the tax rate set by the board of supervisors and the county's average expenditures from the road maintenance fund over the last six years shows that the county has collected approximately \$5.5 million in excess revenues from the taxpayers in Tunica County for the road maintenance fund since the beginning of Fiscal Year 2015.

While they represent a burden to current taxpayers, these funds would normally stay in the road maintenance fund (and create a reserve for the county to use if future expenditures were larger than expected). However, county officials moved money from the county general road fund to the general fund in April 2018 to cover shortfalls in the general fund related to deficit spending and thus returning the road maintenance fund balance to pre-ad valorem assessment levels. While this transfer did not infringe on the ability of the road fund to meet county obligations, it was contrary to state law.

Conclusions: Tunica County's Administrative Operations, Policies, and Procedures

This chapter addresses issues PEER identified with Tunica County's administrative operations, policies, and procedures. These issues include:

- mismanagement of payables;
- management of collection of special assessments;
- deficiencies in internal controls; and,
- deficiencies in transparency of financial statements.

Mismanagement of Payables

While Tunica County's policy is to issue checks within a few days of each month's first board of supervisors meeting, the county routinely held payment of checks to both the Tunica County School District and the Town of Tunica until later in the month during the period of PEER's review. Delays in payment by the county place additional stress on the budgets of the school district and town. This could potentially lead to issues with cash flow and meeting future obligations.

In light of the deficit spending by the Tunica County Board of Supervisors and comments made by county personnel, PEER reviewed the county's process for issuing payments for county obligations.

Tunica County's Policy on Issuing Checks for Payables

Tunica County issues regular checks after the first meeting of the board of supervisors each month. Once checks are signed by the Chancery Clerk, the county's practice is to hold a check only if it has unresolved questions from the board of supervisors.

During PEER's review, county administration personnel stated that Tunica County only issues checks once per month, at the first board meeting of each month. All invoices and payables received by the 25th of the previous month are placed on the claims docket for approval by the Board of Supervisors at the board's meeting.

The morning following the board meeting, personnel in the county administration offices print all checks that were approved in the previous night's board meeting. Once printed, the checks are taken to the Chancery Clerk's office for signature. Once signed, the checks are returned to the administration offices to be mailed.

When PEER asked about the county's process for mailing checks once they have been signed, the County Administrator stated that only checks that the board still had questions about would be held and all others would be mailed.

Time Frame of Payments Made to the Tunica County School District and Town of Tunica, Fiscal Year 2013 through May 31 of Fiscal Year 2019

In a departure from established practice, during the period of FY 2013 through FY 2019, Tunica County routinely withheld gaming fee revenue diversions to the Tunica County School District and Town of Tunica by an average of eight and seven days respectively.

In an effort to assess the county's process for the administering of checks, PEER reviewed the county's payment of gaming fees to the Tunica County School District and the Town of Tunica during the period of Fiscal Year 2013 through May 31 of Fiscal Year 2019. Payments to these two entities offer a unique opportunity to assess this process because disbursement of these funds is mandated by local and private laws.

Chapter 920, Local and Private Laws of 2004, allocates 14% of the fees generated under the bill to be expended on education in Tunica County (12% on education and 2% on limited categories of education spending). For the period reviewed, the county satisfied these requirements by issuing checks made payable to the Tunica County School District.¹⁹ Additionally, the bill directs Tunica County to make payable to the Town of Tunica 10% of the proceeds derived from the bill. The county transfers the funds to the town through the issuance of a check.

PEER obtained information from the Tunica County School District for July 2014 through May 2019 and from the Town of Tunica for October 2014 through May 2019. For all months in which payments were made, PEER compared the dates that each payment was received and the date of the first Friday of each month, which would have allowed county personnel time to prepare, sign, and mail checks after the first board meeting each month (typically the first Monday). On average, the lapse between the projected date for the county's mailing the check and the receipt date by the Tunica County School District and the Town of Tunica was eight days and seven days, respectively.

While the local and private legislation that created the gaming fee diversion does not mandate a timeframe for payment of the funds to the school district or town, a delay of seven to eight days is contrary to the practice detailed by county administration.

The delay of an occasional payment, such as a delay due to an absence of the Chancery Clerk, could potentially be explained, but a consistent delay averaging seven or eight days across each month

¹⁹ *Chapter 920, Local and Private Laws of 2004*, does not direct the county to transfer the funds to the control of the school district, only that the funds be expended on the stated purpose of education in Tunica County.

for approximately three years may be indicative of financial distress. When asked about these delays in payment, county personnel stated that the county prefers to mail checks closer to the 15th of each month to make sure the county will have enough funds in the account to leave a reserve for unexpected expenditures once all checks are cashed.

In light of the deficit spending and negative general fund balances, it is possible that the county is delaying payment of these amounts in order to use the following month's gaming revenue proceeds to pay the current month's obligations.

Related Lawsuit over the Constitutionality of Gaming Fee Diversion

After losing a legal challenge as to the constitutionality of local and private legislation requiring diversion of a portion of gaming fee revenues to the Town of Tunica and the Tunica County School District, Tunica County was required to continue making payments to both the town and the school district. In addition, Tunica County settled with the Town of Tunica for \$350,000 to cover legal fees and imputed interest on gaming fee revenue diversions that had been delayed.

During the period of PEER's review, Tunica County filed a lawsuit against the Town of Tunica and the Tunica County School District over the constitutionality of the requirements of *Chapter 920, Local and Private Laws of 2004*, to divert gaming revenue fees to the town and the school district.

For approximately fourteen months (November 2014 through December 2015), neither the school district nor the Town of Tunica received the required payments of gaming fee revenue diversions from Tunica County. After a Mississippi Supreme Court ruling affirmed a lower court's decision that Tunica County had failed to prove how the required disbursements were not constitutional, Tunica County resumed making payments to both entities. Tunica County transferred the full amount that had not been sent during the fourteen months, approximately \$3.94 million and \$2.24 million, to Tunica County School District and the Town of Tunica, respectively. The Tunica County School District received its funds from the county over the period between March and May of 2016 and the Town of Tunica received its funds from the county on December 23, 2015.

In addition to the repayment of all withheld gaming fee revenues, in May 2018, Tunica County reached a settlement with the Town of Tunica. This settlement required the county to pay \$350,000 to the town to cover the town's attorney's fees relating to the original lawsuit and interest imputed on the delay of payment of the gaming revenues.

Management of Collection of Special Assessments

For the period of 2010 through 2015, the Tunica County Tax Collector failed to record and collect special assessments related to special revenue bonds in the county as required by state law. These errors created difficulty for county in the subsequent collection of these special assessments and created the potential for future legal expenditures for the county.

During fieldwork for this report, PEER was made aware of an order by the Tunica County Chancery Court dealing, in part, with the improper collection of special tax assessments on parcels in the county.²⁰ Based on components of this case, PEER reviewed the operations of the Tunica County Tax Assessor's/Collector's office regarding its compliance with state laws governing the recording and collection of special tax assessments.

Issuance of Bonds by the Tunica County Utility District and Diamond Lake Utility and Improvement District

During 2010, the Tunica County Board of Supervisors authorized and approved the issuance of special revenue tax bonds by the Tunica County Utility District and the Diamond Lake Utility and Improvement District. While the bonds are special revenue bonds of the districts and thus not the responsibility of the county, the Tunica County Board of Supervisors attached itself as additional surety for the bonds.

As stated above, during 2010, the Tunica County Board of Supervisors authorized and approved the issuance of Mississippi Development Bank special obligation refunding bonds by the Tunica County Utility District (TCUD) and the Diamond Lake Utility and Improvement District (DLUID). The proceeds of these bonds were used to refinance the outstanding principal and interest on existing bonds that were issued by TCUD²¹ and DLUID,²² in addition to funding the issuance of the new bonds.

DLUID's new bonds were issued in October 2010 with a face value of \$10,050,000, with part set to mature in 2017, the rest in 2022. TCUD's new bonds were issued in December 2010 with a face value of \$10,395,000, with maturity in December 2018.

Both of the bond issues are special tax revenue bonds, meaning that the principal and interest on the bonds is designed to be paid with

²⁰ Tunica County Chancery Court, Cause No. 2018-84, *Agreed Order Extending the Redemption Period as Necessary, Clearing the Cloud on Title and Closing the Petition*, is a court order between the Tunica County Board of Supervisors, Tunica County Utility District, Diamond Lake Utility and Improvement District, the State of Mississippi, Hancock Whitney Bank, TJM Tunica, LLC, Tunica Hospitality & Entertaining, LLC, Advanced Technology Building Solution, LLC, and Don Hewitt involving the disposition of land in Tunica County.

²¹ Tunica County Utility District (formally known as the Robinsonville-Commerce Utility District) issued \$16,575,000 Mississippi Development Bank Special Obligation Taxable Water and Sewer Bonds, dated December 1, 1998. At refinance, the bonds had an outstanding principal amount of \$10,085,000.

²² Diamond Lake Utility and Improvement District issued \$18,600,000 Mississippi Development Bank Special Obligation Refunding Bonds, dated December 1, 1997. At refinance, the bonds had an outstanding principal amount of \$10,500,000.

special tax revenues.²³ These special tax revenues include special assessment revenues²⁴ and special tax levy revenues.²⁵

Creation of the Special Tax Assessments

To fund their 2010 bond issues, the boards of commissioners of TCUD and DLUID adopted resolutions authorizing the creation of special assessments. These funds were to be assessed and collected on specific real property parcels located within each district, comprising most of the Harrah's Casino's Tunica property.

As stated previously, the primary source for servicing the debt associated with the bonds issued by TCUD and DLUID was special tax assessments. These special assessments were authorized through resolutions adopted by the Boards of Commissioners of both TCUD and DLUID. Authority for the authorization of these special assessments for the TCUD and DLUID boards was established under *Chapter 986, Local and Private Laws of 1998*, and *Chapter 968, Local and Private Laws of 1998*, respectively.

These funds were to be assessed and collected on specific real property parcels located within each district, all owned by BL Development Corp,²⁶ comprising most of the Harrah's Casino Tunica property.

Improper Recording of Special Tax Assessments

The Tunica County Tax Collector's Office did not comply with state law because it did not include the amounts of special assessments due for DLUID and TCUD on the individual tax bills for each affected parcel for the years of 2010 through 2015. When PEER asked about this deviation from state law, county personnel deferred to an informal verbal agreement arranged between the taxpayer and the county.

As a component of the establishing legislation, any special assessments created by the boards of commissioners of TCUD and DLUID must be levied and collected by the county tax collector in the manner provided under MISS. CODE ANN. Sections 21-41-1 through 21-41-53 (1972).

MISS. CODE ANN. Sections 21-41-1 et seq. (1972) outline the creation of special improvements, the recording of assessments for their support, and the method that county tax collector must use

²³ While the bonds are designed as special revenue bonds of the districts (only paid with special assessments levied by the districts), the Tunica County Board of Supervisors, in resolutions during September and November of 2010, attached itself as additional surety for the bonds with a pledge of an ad valorem tax levy as additional security for the payment of the bonds.

²⁴ *Special assessment revenues* are the revenues derived from special assessments authorized by the district and levied yearly.

²⁵ *Special tax levy revenues* are the avails of a special ad valorem tax, not to exceed 5 mills per annum, levied by the county, at the request of the district, on all taxable property within the geographical limits of the district in an amount sufficient to provide, together with any other moneys available for such purpose, for the payment of the bonds.

²⁶ BL Development is a Minnesota Corporation that is a wholly-owned subsidiary of Grand Casinos, Inc. Grand Casinos, Inc. is a wholly-owned subsidiary of Caesars Entertainment Operating Company, Inc. (formerly Harrah's Operating Company, Inc.), which in turn is a wholly-owned subsidiary of Caesars Entertainment Corporation (formerly Harrah's Entertainment, Inc.) ("Caesars").

to collect payments for these assessments. While this section of the CODE specifically references municipalities, the enabling legislation of both TCUD and DLUID require the districts to follow these sections as the manner for collecting all of the assessments of the districts. As directed under MISS. CODE ANN. Section 21-41-25 (1972):

All assessments levied under provisions of this chapter shall be enforced in the same manner in which the payment of other taxes in said municipality is enforced, and all statutes regulating the collection of other taxes in said municipality shall apply to the enforcement and collection of the assessments levied under the provisions of this chapter.

After the authorization of the special assessments above, the first step in the collection of the assessments for the bonds is for the board of commissioners for each district to provide information to the Tunica County Tax Collector on amounts and allocations of each assessment. As detailed in MISS. CODE ANN. Section 21-41-19 (1972):

The governing authorities shall annually certify to the tax collector, or other officer charged with the duty of collecting taxes in the municipality, the annual installment of assessment due from each tract of land against which an assessment has been levied...

Once the tax collector has been notified of the annual installments and their allocations, he or she is directed by law to record these amounts on the annual tax roll. MISS. CODE ANN. Section 21-41-19 (1972) states:

...The collector shall thereupon enter upon the annual tax roll of the municipality, in a separate column, the amount of the installment and interest to be collected from each tract of land assessed...

PEER reviewed annual real estate tax bills for affected parcels for tax years 2010 through 2018. PEER found that the Tunica County Tax Collector's office was not in compliance with state law because it did not include the amounts of special assessments due for TCUD and DLUID on the individual tax bills for each affected parcel for the years of 2010 through 2015.

When PEER asked about this lack of compliance with state law, county personnel referred to an informal verbal agreement arranged between the taxpayer and the county. This agreement allowed for the districts' special assessments to be charged separately instead of being included in the county tax rolls and in the parcels' annual tax bills.

Because the Tunica County Board of Supervisors pledged itself as additional surety for these bonds (and by extension the taxpayers of the county), the board and county administration should have

done their due diligence and vouched that these amounts were being included in the parcels' annual real estate tax statements.

Improper Collection of Special Tax Assessments

Due to reliance on an informal agreement, the Tunica County Tax Collector's Office was out of compliance with state law because it did not collect payments for the TCUD and DLUID special assessments together with all other ad valorem tax payments. As additional surety for the bonds associated with the special assessments, the Tunica County Board of Supervisors and county administration should have ensured that the special tax revenues were being collected in accordance with state law.

Once the special assessments have been recorded in the tax rolls, the amounts are to be included in the annual ad valorem real estate tax bill sent to property owners. Under state law, the responsible party has until February 1 of the year following to pay the taxes for the property (including any special assessments assessed on the property) to the county tax collector. MISS. CODE ANN. Section 27-41-1 (1972) states:

...all state, county, school, road, levee, and other taxing districts and municipal ad valorem taxes, except ad valorem taxes levied for county or district or municipal bonds and other evidences of indebtedness for money borrowed, and interest thereon, heretofore or hereafter assessed or levied shall be due, payable and collectible by the tax collector and shall be paid on or before the first day of February next succeeding the date of the assessment and levying of such taxes.

When the taxpayer makes a payment, the county tax collector is required to collect the payments for all aspects of the taxes (including special assessments). This requirement is outlined in MISS. CODE ANN. Section 21-41-19 (1972), which reads:

...and said collector shall collect said installment, together with the interest upon all unpaid installments, together with, and at the same time he collects the annual municipal tax.

According to the order rendered by the Tunica County Chancery Court on April 15, 2019 (*Agreed Order Extending the Redemption Period as Necessary, Clearing the Cloud on Title and Closing the Petition*), the Tunica County Tax Collector was acting contrary to MISS. CODE ANN. 21-41-19 (1972) and accepting the payment for ad valorem tax levies separately from the payments of TCUD and DLIUD special tax assessments.

PEER verified that the Tunica County Tax Collector's Office processed payments separately for each of these types of tax levies for the period between the 2010 and 2015 tax years, with the

exception of 2014 (i.e., requested records for that year were not provided to PEER by county officials).

It must be noted that the Tunica County Tax Collector changed during 2012, so the individual that initially set up this informal arrangement between the county and the taxpayer is no longer the tax collector. When PEER asked the new tax collector why the informal payment arrangement (between the taxpayer and Tunica County) was not changed after she took office, she commented that there was no breach of law in the collection of the property taxes and special assessments because they collected them at the same time. As stated above, PEER analysis shows that this incorrect.

Because the Board of Supervisors pledged itself as additional surety for these bonds (and, by extension, the taxpayers of the county), prudent management dictates that the board and county administration should have done their due diligence and vouched that these amounts were being collected in accordance with state law.

Impact of Informal Agreement for the Assessment and Collection of Special Tax Assessments

Because the Tunica County Tax Collector's Office assessed and collected special tax assessments in violation of state law, there was a loss of transparency in the operations of the county, uncertainty was injected into the process for collection of delinquent taxes, and the county was exposed to additional legal expenses.

As stated previously, PEER's review of the 2010 through 2018 real estate tax bills for the affected parcels confirmed that the special assessments relating to the TCUD and DLUID special revenue bonds were not included in the assessment system or in the tax bills prior to 2016. Because assessment records and property tax bills are documents of public record, these omissions limited transparency in the county's tax records and obfuscated the true liability associated with these parcels.

Additionally, the informal arrangement created uncertainty within the process for the collection of delinquent taxes. Operating under the informal arrangement, the taxpayer responsible for the parcels affected by the TCUD and DLUID special assessments made all required payments for ad valorem taxes and special assessments through 2014 and all ad valorem tax payments for 2015.²⁷ However, after Caesars Entertainment Operating Company, Inc., and subsidiaries of it, including BL Development Corp., filed for bankruptcy in January 2015, payment of the affected parcels' ad valorem taxes and special assessments stopped without payments made to cover the 2015 special assessment for that year's principal and interest payments.

²⁷ PEER only reviewed the payment history of these special assessments from the issuance of the new bonds in 2010 to present. While not reviewed by PEER, it is possible that a similar informal arrangement existed between the taxpayer and Tunica County for previous iterations of the bonds.

The property was purchased through the U.S. Bankruptcy Court of Illinois by TJM Tunica, LLC. Because the special assessment was not included in the tax assessor's roll and because the taxes were allowed to be paid separately, at the time of TJM's purchase of the property, the 2015 tax statements for the involved parcels indicated that all taxes owed for that year had been paid while the 2015 special assessments were still outstanding. The special assessments for all parcels affected totaled approximately \$2.7 million.

The situation described above created a level of uncertainty about the amount of tax due on the affected parcels and created the situation where there was a subsequent tax sale of the 2015 special assessments in August of 2016 even though the affected parcels all had 2015 tax bills that appeared fully paid. Had the tax collector complied with state law and collected the 2015 special assessments for TCU and DLIUD with the payment of the 2015 ad valorem tax levy, then when the taxpayers responsible for the affected parcels made their payments, there would have been no amounts outstanding to be sold at the subsequent tax sale.

Additionally, had the special assessments been recorded in accordance with state law, then it would not have been possible for TJM Tunica, LLC to purchase a property through the bankruptcy court that appeared to have a clean title, when in fact it was encumbered.

All of these issues contributed to the legal situation sorted out by the Tunica County Chancery Court in its above-referenced decision. Had the Tax Collector assessed and collected the TCU and DLIUD special tax assessments in accordance with state law, then Tunica County could potentially have avoided the additional legal expense incurred in these matters.

Deficiencies in Internal Controls

PEER identified several deficiencies in the internal control policies and procedures of the Tunica County Board of Supervisors and the county administration. These breaches of best practice hinder transparency of the county's financial statements, hurt the county's ability to budget its revenues and expenditures accurately, increase the risk of fraudulent use of county resources, and expose the county to possible litigation.

In light of the responsibilities outlined in MISS. CODE ANN. Section 7-7-211 (1972), the Mississippi Office of the State Auditor (OSA) has prescribed the *Mississippi County Financial Accounting Manual*. The purposes of this manual are:

- to establish uniform minimum financial management standards for Mississippi counties;
- to improve control over the use of county resources;

- to provide better financial information to aid in making decisions; and,
- to establish high standards for overall financial management.

Within the manual, the OSA highlights various best practices that should be employed by county officials; chief among these is the management practice of *internal control*. The *County Financial Accounting Manual* defines “internal control” as:

A process, effected by a county’s board of supervisors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations.

During its fieldwork for this report, PEER identified issues within Tunica County’s operations that are contrary to the objectives of effectiveness and efficiency of operation and reliability of financial reporting outlined by OSA. However, because PEER did not conduct a complete review of the internal controls of Tunica County, the deficiencies noted in this section should not be considered to be a complete record of weaknesses in the county’s internal controls.

Effectiveness and Efficiency of Operations

In the course of fieldwork for this report, PEER noted several issues with Tunica County operations that appear to violate the internal control tenets of effective and efficient operation. These issues included errors in journal entries, problems with the county’s chart of accounts, weaknesses in segregation of duties, and no formalization of a county contract.

As stewards and fiduciaries of taxpayers’ money, the Tunica County Board of Supervisors and, by extension, the county administration, bear the burden of using the resources of the county in a manner that is both effective and efficient. In the course of fieldwork, several issues with Tunica County operations were noted that appear to violate the internal control tenets of effective and efficient operation.

Errors in Journal Entries

During analysis of Tunica County’s general ledger for the period of September 2012 through August 2019, PEER noted several sets of journal entries that appeared to move the same funds through multiple accounts, often completely reversing and duplicating themselves. The effort needed to continually adjust these items is not an efficient use of county personnel’s time or the county’s accounting resources.

Each year, external auditors contracted through the Office of the State Auditor conduct a financial audit of Tunica County. While these are financial audits, the auditors must assess (in a limited

capacity) the internal control environment of Tunica County's operations.

All audit reports released since Fiscal Year 2013 have included findings related to Tunica County's establishment and utilization of internal controls. These audit findings were centered around the county's need to procure external accounting services (an entity different than the external auditor) to take the financial records created by the county, throughout the year, and make adjustments to them.

Without the adjustment made to its financial records (by the external accounting service), the county's records would not have conformed to the requirements established in the Office of the State Auditor's *County Financial Accounting Manual*. If these financial adjustments had not been made, then the county's external auditors would be unable to perform the required annual audit.

During analysis of Tunica County's general ledger for the period of September 2012 through August 2019, PEER noted several sets of journal entries that appeared to move the same funds through multiple accounts, often completely reversing and duplicating themselves. While PEER has drawn no conclusion as to the nature of these transactions, it is evident that county personnel were unsure of the correct accounting treatment of these items and that the effort needed to continually adjust these items is not an efficient use of county personnel's time or the county's accounting resources.

Problems with County's Chart of Accounts

PEER's analysis of the county's expanded chart of accounts shows that each account only has a limited description, often containing abbreviated words or duplicate descriptions. Additionally, when PEER asked about a county chart of accounts, not all employees involved in the accounting function of Tunica County were aware that the county had a chart of accounts. These two factors have contributed to inefficiency within the accounting function of the county's government and represent a breach of internal controls.

County governments must also follow the uniform chart of accounts outlined and required by the *County Financial Accounting Manual*. The manual provides a nine-digit framework that allows the county to categorize its activity by fund,²⁸ department (or program),²⁹ and objective account numbers.³⁰ While the manual establishes the minimum coding requirements that must be

²⁸ A fund is a fiscal and accounting entity with a self-balancing set of accounts that is used to record financial resources and liabilities, as well as operating activities, and which is segregated in order to carry on certain activities or attain targeted objectives. Funds are represented by the first three digits of an account number.

²⁹ *Departments* relate to the type of service (or program) being provided and the office responsible for a specific expenditure. Departments are represented by the second three digits of an account number.

³⁰ *Object classifications* are a grouping of expenditures on the basis of goods or services purchased (e.g. personnel services, contractual services, or commodities). Object classifications are represented by the third three digits of an account number.

utilized, it also states that counties may expand on this framework (as needed) to meet their reporting requirements.

Tunica County has developed a chart of accounts built on the fundamental structure outlined in the *County Financial Accounting Manual*. However, analysis of the county's expanded chart of accounts shows that each account only has a limited description, often containing abbreviated words or duplicate descriptions. For example, Tunica County's chart of accounts contains three separate account numbers for "Clinic Fees." Additionally, when PEER asked about a county chart of accounts, not all employees involved in the accounting function of Tunica County were aware that the county had a chart of accounts.

In light of the general fund analysis described previously, it is possible that these two factors have contributed to inefficiency within the accounting function of the county's government and represent a breach of internal controls.

Weakness in Segregation of Duties

By implementing segregation of duties, an organization can minimize the occurrence of fraud and error. PEER found a county invoice that was submitted for compensation of an employee for time worked that was approved by the employee being compensated. This is a violation of the segregation of duties internal control principle.

According to the American Institute of Certified Public Accountants (AICPA)³¹, *segregation of duties* is a basic building block of sustainable risk management and internal controls for an entity. The principle of segregation of duties is the sharing of the responsibility of a key process that disperses the critical functions of that process to more than one person or department. By utilizing strong segregation of duties, an organization can minimize the occurrence of fraud and error.

For example, strong internal control policies and procedures would require a supervisor to approve an employee's timesheet before it is submitted for compensation. This policy would help to mitigate the risk of an employee being compensated for hours not worked or allowing an employee to utilize some manner of leave time without having to claim its usage.

During fieldwork, PEER found an invoice that was submitted for compensation of an employee for time worked that was approved by the employee being compensated. This is a violation of the internal control principle of segregation of duties. PEER does not

³¹ Founded in 1887, the American Institute of Certified Public Accountants represents the CPA profession nationally regarding rule-making and standard-setting, and serves as an advocate before legislative bodies, public interest groups and other professional organizations. The AICPA develops standards for audits of private companies and other services by CPAs; provides educational guidance materials to its members; develops and grades the Uniform CPA Examination; and monitors and enforces compliance with the profession's technical and ethical standards.

make the assertion that fraud was conducted in this instance, but this type of practice increases the risk that fraud could occur.

PEER notes that Tunica County has a policy in place to mitigate this specific risk associated with employee compensation. The timecard in question had separate signature lines for both the employee and his or her supervisor. However, this invoice demonstrates a breakdown in implementation of the procedures Tunica County has in place to ensure enforcement of internal controls regarding employee compensation.

No Formalization of a County Contract

The February 2015 proposed contract between the Tunica County Board of Supervisors and North Delta Regional Housing Authority was not signed by all parties. The unsigned contract was entered into the board of supervisors' minutes and the county conducted business with North Delta Regional Housing Authority under the unsigned contract from February 2015 until September 2018. Having a signed, formalized contract ensures that all parties to the contract are clear on their responsibilities and obligations, as well as the compensation being received for their contribution.

While the board of supervisors is in charge of the operations of the county, there are some duties, responsibilities, and services that the members of the Tunica County Board of Supervisors are unable to provide personally. Thus, state law grants authority to the board to enter into contracts accordingly. Specifically, MISS. CODE ANN. Section 19-3-41 (9) (1972) states:

The board of supervisors of any county may perform and exercise any duty, responsibility or function, may enter into agreements and contracts, may provide and deliver any services or assistance, and may receive, expend and administer any grants, gifts, matching funds, loans or other monies, in accordance with and as may be authorized by any federal law, rule or regulation creating, establishing or providing for any program, activity or service. The provisions of this subsection shall not be construed as authorizing any county, the board of supervisors of any county or any member of a board of supervisors to perform any function or activity that is specifically prohibited under the laws of this state or as granting any authority in addition to or in conflict with the provisions of any federal law, rule or regulation.

During the course of the review of Tunica County's housing program, PEER discovered that the February 2015 proposed contract between the Tunica County Board of Supervisors and North Delta Regional Housing Authority was not signed by all parties. The unsigned contract was entered into the board of supervisors' minutes and the county conducted business with

North Delta Regional Housing Authority under the unsigned contract from February 2015 until September 2018.³²

In September 2017, the Tunica County Board of Supervisors and North Delta Regional Housing Authority drafted a new proposed contract to formalize their continued partnership in the provision of the county's housing program. The parties involved were unable to provide PEER with a signed copy of this new proposed contract.

While it is possible for contracts to exist between parties without formalization, agreements entered into by the Tunica County Board of Supervisors should be written. Formalization of the contract in writing ensures that all parties to the contract are clear on their responsibilities and obligations as well as the compensation being received for their contribution. In addition to being formalized, prudent business practices dictate that all parties to a contract sign the contract signifying their agreement to the parameters of the contract, their agreement to satisfy all obligations detailed in the contract, and their promise to operate within the confines of expected behavior.

In addition, the formalization of county contracts increases transparency. When the expectations of all parties are in writing, the public is made aware of what is expected. This formalization helps eliminate the possibility of uncertainty due to informal arrangements.

Reliability of Financial Reporting

In the course of fieldwork for this report, PEER noted several issues with Tunica County operations that appear to violate the internal control tenet of reliability of financial reporting. These issues included improper classification of expenditures, lack of supporting documentation for paid invoices, and inaccurate allocation of expenditures.

As an extension of the premise outlined above, the Tunica County Board of Supervisors and the county's administration are also responsible for the reporting of how county funds have been expended. In the course of PEER's fieldwork, several issues with Tunica County operations were noted that appear to violate the internal control tenets of reliability of financial reporting, including the improper classification of expenditures, a lack of supporting documentation for paid invoices, and issues related to accurate allocation of expenditures.

Improper Classification of Expenditures

PEER found several expenditures that were classified improperly, which affects the accuracy of financial statements. If financial statements are not accurate, then their ability to convey an accurate picture of the county's activity and financial situation is diminished.

³² An addendum to this contract was created and signed by the Tunica County Board of Supervisors' vice president and Chancery Clerk on June 4, 2015, but was not signed by the North Delta Regional Housing Authority.

Tunica County is required to issue financial statements each year detailing the financial situation of the county and its financial activities for the previous fiscal year. These statements are utilized by a myriad of entities (e.g., county personnel, taxpayers, future potential businesses, and bondholders / issuers) to make decisions. If during its operations, county personnel assign the expenditure of funds in a manner that is not consistent with the county's chart of accounts or generally accepted accounting principles, then the results of the financial statements may be inaccurate or misleading. During the course of fieldwork for this report, PEER found several examples of expenditures that were classified improperly. Some of these transactions include:

- *Grants to Other Agencies* -- From FY 2013 through FY 2018, the board of supervisors approved at least \$1 million in expenditures recorded as grants to the Tunica County School District and the North Tunica County Fire District, when in fact the expenditures were reimbursing the school district and the fire district for fees in lieu of taxes associated with an economic development project in the county.
- *Grants to Other Agencies* -- From FY 2013 through FY 2018, the board of supervisors approved at least \$116,965 in expenditures recorded as grants to the Tunica County School District, when in fact the expenditures were for reimbursing the school district for their portion of homestead reimbursement payments received by the county from the state.
- *Legal Fees* -- In April 2018, the board of supervisors approved an expenditure of \$350,000 that was booked as legal fees, when the expenditure was actually a settlement amount paid to the Town of Tunica resulting from a 2014 lawsuit in which the Town of Tunica challenged the county's decision to withhold gaming fee revenues from the town.

Properly classifying expenditures is important to get an accurate picture of the county's true financial activity. As recorded, a person reviewing the county's records would erroneously believe the county had given the Tunica County School District almost a million dollars, when in fact the amounts paid were derived from an arrangement for an economic development project to pay a fee rather than paying ad valorem taxes.

Also, accurately recording expenditures is vital to the county's ability to budget for future years, since budgets are at least in part based on current and past expenditures. Therefore, improper classification of expenses clouds the taxpayers' ability to determine how their tax dollars are expended and impairs the county's budgeting ability.

Lack of Supporting Information for Paid Invoices

PEER found several invoices that lacked supporting documentation or had no supporting information. While it is possible that a transaction without supporting documentation could be a legitimate business expense, the risk that this transaction is in some way fraudulent increases when internal control policies and procedures are not followed.

One of the most important tenets of good internal controls is that all submissions for expenditures be accompanied by supporting documentation. Policies and procedures in this area are important because they help to mitigate the risk of fraudulent expenditures (or expenditures that are inaccurate or contrary to county business or state law).

Good policies should mandate the inclusion of information for each transaction that documents the timing, purpose, and amount of needed expenditure for each transaction. For example, a reimbursement for an employee's use of a personal car on business should include items such as the approval for the trip, the date of the trip, the business purpose of the trip, the places visited during the conducting of business, the mileage between points of the trip, and the amount requested.

During the course of fieldwork, PEER found several examples of invoices that lacked supporting documentation or had no supporting information. Some of these transactions include:

- *Tunica County Housing Program* -- From FY 2015 through August 2019, the board of supervisors approved approximately \$1.7 million in housing program expenditures without supporting documentation, such as the rehabilitation contract between the homeowner and the building contractor.
- *Tunica County Economic Development* -- On at least five occasions during FY 2017 and FY 2018, the board of supervisors approved expenditures totaling \$231,212 to the Tunica County Economic Development without supporting documentation.
- *Tunica County Chamber of Commerce* -- From April 2018 through July 2018, the board of supervisors approved expenditures totaling \$186,633 to the Tunica County Chamber of Commerce without supporting documentation.

Although PEER does not question the legitimacy of any of these transactions, prudent financial management and good stewardship of public funds would dictate that all expenditures of public funds be supported with proper documentation to increase transparency and accountability.

Inaccurate Allocation of Expenditures

In one instance reviewed by PEER during its analysis of the general ledger, the county had allocated expenditures for payroll and retirement matching to a program, but it did not allocate the corresponding expenditure for the salary that would have necessitated these amounts. Thus, the reporting of expenditures, at least on the program level, would be inaccurate.

As discussed, expenditures must be coded accurately and consistently to promote reliability in financial reporting. In addition to making sure that expenditures are placed in the correct account, county personnel must also be sure to divide expenditures correctly when accounting for the allocation of expenditures. Simply put, not all transactions are wholly for one fund, division, or object classification.

One area where this is common is in the allocation of labor. Within county operations it is not uncommon for an employee to be responsible for many tasks that may fall into several divisions or programs (“wearing multiple hats”). When this happens, prudent financial management dictates that the expenses for employing this person (e.g., salary, payroll tax withholding and matching, insurance benefits paid by the county, and retirement matching) be allocated to each fund or division for which the employee spends time working.

PEER found evidence that Tunica County utilizes procedures for the allocation of employee expense. However, in one instance reviewed by PEER during its analysis of the general ledger, the county allocated expenditures for payroll and retirement matching to a program, but it did not allocate the corresponding expenditure for the salary that would have necessitated these amounts.

While PEER does not make any assertions as to the accuracy of Tunica County’s total personal services expenditures or the validity of the expenditures for payroll tax and retirement matching, this situation does highlight that incomplete allocation of the salary would cause personal services expenses for one county program to be to higher and one lower than reality dictates. And while it is feasible that county-wide personal services expenditures will be accurate, on a program-by-program basis they would be incorrect. County administration should take care to ensure the complete and accurate allocation of all expenditures. The accurate allocation of expenditures helps to create a more accurate picture of the true cost to the county for each program, resulting in more reliable financial reports and better data for future budgeting.

Transparency Issues

In several instances, the minutes of the Tunica County Board of Supervisors do not state with sufficient specificity the reasons for the board's entering into executive session, as required by MISS. CODE ANN. Section 25-41-7 (1972). Additionally, the board did not comply with state law in the issuance of tax levies during FY 2014 and subsequently was required by court order to refund collected taxes to one taxpayer, with more potential refunds in the future.

As elected officials, the Tunica County Board of Supervisors have been placed in office by the citizens of Tunica County. This vote of confidence from their constituents implies that the citizens of Tunica County expect the supervisors to work in the best interest of the county. To help ensure that this happens, state law has requirements to promote transparency in the governmental process and provides several procedures to ensure that citizens have ample opportunity to be made aware of county business and voice their concerns and opinions. During fieldwork for this report, PEER became aware of two issues in transparency within the Tunica County Board of Supervisors' actions.

Issues Regarding Lack of Compliance with Open Meetings Laws and Regulations

In several instances, the minutes of the Tunica County Board of Supervisors do not state with sufficient specificity the reasons for entering executive session, as required by MISS. CODE ANN. Section 25-41-7 (1972).

Local governing authorities of the state of Mississippi, like other state agencies, must conduct their meetings openly, as required by MISS. CODE ANN. Section 25-41-1 et. seq (1972). Generally referred to as the Open Meetings Law, the policy behind this enactment was as stated in Section 25-41-1:

It being essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into the making of public policy, it is hereby declared to be the policy of the State of Mississippi that the formation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided herein.

Generally, this act requires that public bodies, including boards of supervisors, conduct meetings in open session so that the public can be apprised of what actions their policymakers take in representing the interests of the public.

CODE Section 25-41-7 makes clear that the public body must strictly follow a procedure for going into an executive session. Sub-

sections 1 through 3 set out the procedure to be followed in order to go into executive session. These sub-sections state:

(1) Any public body may enter into executive session for the transaction of public business; however, all meetings of any public body shall commence as an open meeting, and an affirmative vote of three-fifths (3/5) of all members present shall be required to declare an executive session.

(2) The procedure to be followed by any public body in declaring an executive session shall be as follows: Any member shall have the right to request by motion a closed determination upon the issue of whether or not to declare an executive session. The motion, by majority vote, shall require the meeting to be closed for a preliminary determination of the necessity for executive session. No other business shall be transacted until the discussion of the nature of the matter requiring executive session has been completed and a vote, as required in subsection (1) hereof, has been taken on the issue.

*(3) An executive session shall be limited to matters allowed to be exempted from open meetings by subsection (4) of this section. **The reason for holding an executive session shall be stated in an open meeting, and the reason so stated shall be recorded in the minutes of the meeting.** [PEER Emphasis added] Nothing in this section shall be construed to require that any meeting be closed to the public, nor shall any executive session be used to circumvent or to defeat the purposes of this chapter.*

Thus, the law recognizes that in some cases, matters may need to be discussed in closed or non-public settings. For this reason, MISS. CODE ANN. Section 25-41-7 sets out the procedures for going into executive session. Sub-section 4 provides the matters that can be addressed in executive session (See Appendix B, page 75).

According to the board's minutes, during several meetings of the board held between December 4, 2017, and May 20, 2019, the Tunica Board of Supervisors went into executive session to discuss "litigation matters," "personnel issues," "trade secrets," or a combination of these grounds. The minutes do not include further explanation as to the particular "litigation," "trade secret," or "personnel" matter to be discussed. In one instance, the board also used "legal issues" as a basis for going into executive session. As shown in Exhibit 4, on page 46, PEER identified multiple instances wherein the board went into executive session between December 4, 2017, and May 20, 2019, for the above-cited "reasons," without further elaboration on the matters being discussed. Such language does not reflect the specificity contemplated by CODE Section 25-41-7 (4).

Exhibit 4: Reasons Recorded in Minutes of the Board of Supervisors of Tunica County for Going into Executive Session, December 4, 2017, through May 20, 2019

Date of Executive Session	Minute Book and Page Reference	Reason(s) For executive Session
December 4, 2017	Book 183, Page 434	Litigation and personnel issues
February 20, 2018	Book 184, Page 606	Personnel issues and litigation
March 19, 2018	Book 185, page 249	Legal issues, litigation, and trade secrets*
August 6, 2019	Book 187, page 410	Tax litigation issues
August 20, 2018	Book 187, page 603	Litigation and personnel issues
October 15, 2018	Book 188, page 665	Litigation issues
November 29, 2018	Book 189, page 269	Potential litigation issues
February 4, 2019	Book 190, page 390	Personnel issue and certain issues of trade secrets
April 15, 2019	Book 191, page 655	Personnel issue
May 20, 2019	Book 191, page 192	Litigation and a personnel issue

* The minutes for this meeting also reflect that “appointments” were included for discussion following the board’s entry into executive session. Specific appointments could arguably have been a specific personnel matter, but such language was not included in the minutes for this meeting as a basis for going into executive session.

SOURCE: Tunica County Board of Supervisors Minute Books.

Since 2008, state law has given the Mississippi Ethics Commission the responsibility for taking complaints and resolving disputes involving the Open Meetings Law. [See MISS. CODE ANN. Section 25-41-15. (1972)] In at least two orders of the commission rendered in 2010 and 2015, the commission addressed both the proper and improper way of going into executive session to discuss personnel matters. These orders set out examples of sufficient specificity for inclusion in announcements to the public and in the minutes of the boards or councils impacted by these orders.

In *Mason v. Board of Aldermen of Aberdeen*, M-10-001 (2010), the Ethics Commission addressed procedures for conducting an executive session on a personnel matter. While citing the city for failing to conduct a closed session to consider going into executive session, the commission noted that the reason for going into executive session was sufficiently specific under the circumstances for an executive session. The minutes reflected the following related to the board’s decision to go into executive session:

A motion was made by Alderman Garth, seconded by Alderman Sykes to go into Executive Session to

discuss personnel issues involving the entire Aberdeen Electric Department, investigation of possible misconduct and prospective litigation. On a roll call vote, all present voted "Aye."

In another order, *Hinds v. Mayor and City Council, City of Columbus M-14-005* (2015), the commission addressed several allegations regarding the council's use of "personnel matters" as a basis for going into executive session. The order notes that the council went into executive session to discuss five personnel matters, with the city's Chief Operation Officer (COO) telling the public that the council was going into executive session to discuss five personnel matters. Before going into executive session, the city's COO, upon questioning, clarified the reasons for going into executive session. The Ethics Commission order explains the situation as follows:

Accordingly, had a member of the public not questioned the city's Chief Operations Officer when he announced that the council was going into executive session to discuss five personnel matters, the council would have failed to announce reasons for entering executive session with sufficient specificity. When he clarified that the personnel matters involved the city's "Police, Fire, Federal Programs and Public Works" departments, he informed those present that, "there is in reality a specific, discrete matter or area which the board had determined should be discussed in executive session." Id. at 111. The reason initially announced by the COO was woefully inadequate and, without the additional specificity prompted by a member of the public, would have violated the Act. Ultimately, the council did state its reasons for entering executive session with sufficient specificity and did not violate the Open Meetings Act on April 1, 2014.

The order also notes that the minutes set out the specifics of what was discussed in the executive session, as well as final actions, if any.

Regarding other allegations of violations of the Open Meetings Law, the commission added a footnote about several instances wherein the council came close to a violation. In note 3 of the order, the commission noted:

3. The council should take care to ensure the reason for entering executive session which is announced to the public is accurately recorded in the minutes of the meeting. There are discrepancies in the statement of what the mayor discussed with the council during closed session and the reason which was announced to the public in the minutes for March 19, 2013, April 2, 2013 and May 7, 2013. But for the city attorney specifically stating the matters considered in executive session at the conclusion of the executive

*session, a violation of Section 25 - 41 - 7 could occur simply due to inaccurate information recorded in the minutes.*³³

Thus, announcements to the public and the recitation of reasons for going into closed and executive sessions set out in minutes must be of sufficient specificity to meet the requirements of the Open Meetings Law, a specificity absent in the examples from the Tunica County Board of Supervisors set out above.

PEER also notes that in some cases, the Tunica County Board of Supervisors went into executive session to discuss “potential litigation” and “trade secrets.” “Potential litigation” and “trade secrets” suffer from the same weakness as personnel matters, when offered without further detail. In one instance, “legal issues” was invoked, along with “litigation” and “trade secrets,” as a basis for going into executive session. “Legal issues” is not a statutorily accepted basis for going into executive session. (See Section 25-41-7 [4].)

Failure to specifically apprise the public of the reason for closing a meeting and recording the reasons in the minutes of the board can erode public confidence in government. The evils of vague or nebulous grounds for going into executive session was perhaps best set out by the state’s Supreme Court in *In Hinds County Bd. of Sup'rs v. Common Cause of Mississippi*, 551 So.2d 107 (Miss, 1989). In this case, Common Cause challenged the county’s practice of the board’s going into executive session to discuss personnel matters, without further clarification. In finding that this practice violated the provisions of the Open Meetings Law, the court had this to say about using personnel matters or litigation as grounds for closing a session of the board to the public:

A board which only announces "litigation" or "personnel matters" for going into executive session has said nothing. It might as well have stated to the audience, "Ladies and gentlemen, we are going into executive session," and stopped there. The Act requires that a board cannot use its statutory authority to go into executive session upon certain matters as a device to circumvent the very purposes for which it is under the Open Meetings Act. The purpose of the Act is that the business conducted at all meetings of public boards be wide open.

Here the minutes reveal the Board failed woefully to comply with the Act. Had the Board, as required by the Act, first closed its meeting to discuss a need to go into executive session at all on these various matters, the Board president could quite easily have given the audience a reason with some particularity, some

³³ See also *Noonan v. Mayor and City Council, City of Bay St. Louis*, M-18-013, (2018).

specificity and some meaning. (See Hinds County, supra, at 113 and 114).

Issues Noted with Procedure for Assessment of Property Tax Millage

The Tunica County Board of Supervisors did not comply with state law in the issuance of tax levies during FY 2014 and was subsequently required by court order to refund collected taxes to one taxpayer (with more potential refunds in the future).

During fieldwork for this report, PEER became aware of a lawsuit filed by the parent company of the Hollywood Casino against the Tunica County Board of Supervisors. Subsequently, PEER reviewed the board of supervisors' compliance with state laws governing public notice over the adoption of budgets and tax levies.

Responsibilities of the Board

State law proscribes procedures that county boards of supervisors must follow for assessing taxes and tax increases on ad valorem property within the county.

One of the sources of revenue that Tunica County's Board of Supervisors utilizes for the operation of Tunica County is the proceeds from the assessment of taxes on ad valorem property.

MISS. CODE ANN. Section 27-39-303 (1972) grants the Tunica County Board of Supervisors the authority to assess taxes on ad valorem property in the county for general fund operations and MISS. CODE ANN. Section 27-39-305 grants the board the authority to assess and increase levies for road and bridge maintenance and construction. In an effort to promote transparency and public awareness in government, especially in the area of tax levies, the law also governs the procedures that the board of supervisors must follow for these taxes and increases to be legal. MISS. CODE ANN. Section 27-39-203(2)(a) states:

Except as otherwise provided in this subsection, the public hearing shall be advertised in accordance with the following procedures. The advertisement shall be no less than one-fourth (¼) page in size and the type used shall be no smaller than eighteen (18) point and surrounded by a one-fourth-inch solid black border. The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear. It is the intent of the Legislature that the advertisement appears in a newspaper that is published at least five (5) days a week, unless the only newspaper in the county is published less than five (5) days a week. It is further the intent of the Legislature that the newspaper selected be one of general interest and readership in the community, and not one of limited subject matter. The advertisement shall be run once each week for the two (2) weeks preceding the adoption of the final budget. The advertisement shall state that

the taxing entity will meet on a certain day, time and place fixed in the advertisement, which shall be not less than seven (7) days after the day the first advertisement is published, for the purpose of hearing comments regarding the proposed budget and proposed tax levies. Any increase in the projected budget revenues or any increase in the millage rate over the current fiscal year shall be explained by the governing body giving the reasons for the proposed increase. A taxing entity collecting taxes in more than one (1) county shall make the required advertisement by publication in each county where the taxing entity collects taxes.

Lawsuit and Court Decision

The parent company of Hollywood Casino filed a lawsuit against the Tunica County Board of Supervisors in Tunica County Circuit Court alleging that the board had approved tax increases in 2014 (for FY 2015) that adversely affected the taxpayers of Tunica County, including that company. Subsequently, the court ordered Tunica County to refund the excess taxes collected from that company that had been generated from the unlawful tax increase.

On June 4, 2015, HWCC-Tunica, LLC (hereafter known as HWCC), the parent company of Hollywood Casino, filed a lawsuit against the Tunica County Board of Supervisors in Tunica County Circuit Court. The lawsuit alleged that the board had approved tax increases in 2014 (for FY 2015) that adversely affected the taxpayers of Tunica County, including HWCC.

The court heard all arguments and rendered its verdict in an order dated October 15, 2015. In this order, the court stated its findings that the Tunica County Board of Supervisors' conduct when approving its 2014 budget and tax increases was in violation of MISS. CODE ANN. Section 27-39-305(2)(a) (1972), and as such, the new taxes levied under the 2014 tax increase were illegal and could not be enforced. The court ordered Tunica County to refund the excess taxes collected from HWCC generated from the unlawful tax increase.

Result of Court Decision

In the event that a county receives an erroneous tax payment, state law outlines the procedure the county tax collector is authorized to use to refund these proceeds. As a result of the court's order, the Tunica County Board of Supervisors was required to pay Hollywood Casino's parent company a judgement totaling \$189,790.90 and it is possible that Tunica County will be required to satisfy additional claims.

In the event a county receives an erroneous tax payment, MISS. CODE ANN. Section 27-73-7 (1972) outlines the procedure the county tax collector is authorized to use to refund these proceeds, as follows:

The tax collector is authorized and empowered to refund any individual, firm or corporation any ad

valorem, privilege or excise tax which has been paid or collected through error or otherwise when such person, individual, firm or corporation has paid any such tax in excess of the sum properly due whether paid under protest or not. Taxes erroneously paid within the meaning of this section shall include, but not be limited to, double payment, or overpayment, or payment on state, United States, vacant and exempt land, and the purchase paid for the redemption of lands erroneously sold for taxes.

All refunds under this provision shall be made out of any monies collected by the tax collector from the same source of revenue, or if such source of revenue no longer exists the refund shall come from the general fund collections. The tax collector shall issue a warrant to the claimant and deduct the proper amounts from his next settlement.

As a result of the circuit court's order, the Tunica County Board of Supervisors was required to pay HWCC a judgement totaling \$189,790.90. This payment was memorialized in the board's minutes on May 10, 2018.

As a side note, in its conclusion of the case, the circuit court highlighted that the improper taxes levied by the county on Hollywood Casino also occurred to all taxpayers in Tunica County. It is not inconceivable that all such taxpayers might seek the reimbursement of such improperly levied and collected taxes.

Based on these facts, the court sought advice from both the Mississippi Department of Revenue and the Office of the State Auditor. Based on these conversations, an alternative option was proposed to the Tunica County Board of Supervisors suggesting, "An alternative to individually refunding each such claim, if any, the county might consider reducing the current ad valorem tax levy of the taxpayers in Tunica County, Mississippi, to take into account the overage such tax payers had been charged."

The court is quick to point out that this is not a mandate, but merely an option that the board could consider. As highlighted above, the Tunica County Board of Supervisors chose to repay the judgement only to Hollywood Casino and did not make adjustments to the tax rate for the county as a whole.

By the conclusion of PEER's fieldwork, additional taxpayers had filed suit against the county along similar grounds. It is possible that Tunica County will be required to satisfy additional claims from this breach of procedure.

Conclusions: Tunica County Homeowner Rehabilitation Program

One of the areas of concern expressed to PEER concerned Tunica County's Homeowner Rehabilitation program (hereafter referred to as "housing program"). Therefore, PEER reviewed the following areas of the program:

- a history of the Tunica County Homeowner Rehabilitation Program;
- contracts between the Tunica County Board of Supervisors and the North Delta Regional Housing Authority and contracts between the housing authority and Tunica County Housing, Inc.;
- details of the operational process of the Tunica County Homeowner Rehabilitation Program for receiving and reviewing applications and awarding grants;
- a history of the program's housing expenditures; and,
- details concerning current administrative fees for the program.

History of the Tunica County Homeowner Rehabilitation Program

Since creation of the Tunica County Homeowner Rehabilitation Program in January 1998, the Tunica County Board of Supervisors has approved five different administrative and operational arrangements for the program.

As a component of its community development responsibilities, the board of supervisors created a county-funded housing program to help citizens of Tunica County find housing, purchase homes, and rehabilitate existing homes. Through a board resolution on January 5, 1998, the board of supervisors created the Tunica County Homeowner Rehabilitation Program, with the stated purpose of relieving the housing problems for elderly and handicapped individuals in Tunica County.

During the life of the housing program, the essential structure of the program has remained relatively consistent, but the board of supervisors has made changes as to how the program is administrated and operated.

On January 5, 1998, the Tunica County Board of Supervisors contracted with North Delta Regional Housing Authority to jointly administer the county's housing program.

Through a January 5, 1998, resolution, the board of supervisors contracted with the North Delta Regional Housing Authority

(NDRHA)³⁴ to jointly administer the county's housing program. Under the contract, NDRHA was to provide oversight of the program and its expenditures, interact with homeowners and contractors, and act as the escrow agent for the homeowners. The county provided assistance to the program by hiring a Tunica County Housing Director who was responsible for taking and processing all applications and helping with the contracting process. The original contract stated a figure for the program's budget, but NDRHA did not receive any compensation for providing services to the program.

On February 2, 1998, the board of supervisors approved an amendment to the contract that specified NDRHA would receive \$500 for each house receiving rehabilitation or purchased through the program. On November 4, 2002, the board of supervisors and NDRHA renewed the contract twenty-two months after the expiration of the original contract. The new contract did not include terms addressing the renewal or termination of the contract.

On June 7, 2004, the Tunica County Board of Supervisors approved a contract allowing the North Delta Regional Authority to assume responsibility for the housing program and contract with Tunica County Housing Project, Inc. to assist with the program.

On June 7, 2004, the board of supervisors approved a new contract altering the administration and operation of the housing program. Under the new contract, NDRHA assumed responsibility for total operation and administration of the program and in return received a tiered monthly management fee and a fee of \$1,000 for each house receiving rehabilitation or purchased through the program. The revised contract allowed NDRHA to contract with Tunica County Housing Project, Inc.³⁵ to assist in the administration and operation of the program. When asked by PEER, NDRHA and county officials stated that the change was made to ensure recipients were chosen on the basis of need.

On October 1, 2012, the Tunica County Board of Supervisors approved a contract for North Delta Regional Housing Authority to assume full administrative and daily operational responsibility for the housing program.

On October 1, 2012, the board of supervisors approved a contract that allowed NDRHA to assume full administrative and daily operational responsibility for the housing program. Under this contract, the fundamental structure of the program remained unchanged, but NDRHA hired an employee to provide an "on-the-ground" presence in Tunica County. NDRHA hired an employee to be the Community Housing Director and be located in office space

³⁴ Established under MISS. CODE ANN. Section 43-33-103 (1972), the North Delta Regional Housing Authority is a regional housing authority created to provide housing assistance to low-income residents of Coahoma, Panola, Quitman, Tallahatchie, and Tunica counties.

³⁵ Tunica County Housing Project, Inc., is a 501(c)(3) nonprofit corporation registered, and in good standing, with the Mississippi Secretary of State. Founded in 1992, its stated mission is the construction and rehabilitation of homes in Tunica County for low-income families.

provided by Tunica County. The director was responsible for the daily operations of the program but NDRHA retained responsibility for handling and processing program funds. Under this contract, administration costs were limited to no more than 30%. Thus, with a budget of \$500,000 at the time, administration fees could be as high as \$150,000.

On August 1, 2014, the Tunica County Board of Supervisors approved a contract for Tunica County Housing, Inc., a newly created nonprofit corporation, to assume all administrative and operational responsibilities of the housing program.

On August 1, 2014, the board of supervisors approved a contract for moving all administrative and operational responsibilities from NDRHA to Tunica County Housing, Inc. (TCHI), a newly created nonprofit corporation, which is a different organization from Tunica County Housing Project, Inc., that the county used previously for the housing program.

TCHI was created in April 2014, and registered with the Mississippi Secretary of State as a nonprofit corporation on April 9, 2014. The person that NDRHA employed as the Tunica County Housing Director created and operated TCHI. The same person continued to own and operate TCHI at the time of this report.

The contract between Tunica County and TCHI kept the structure of the Homeowner Rehabilitation Program intact, but changed the administrative compensation to a monthly fee of \$12,000 per month.

On December 5, 2014, in response to a request by a county supervisor, the Attorney General opined that the Tunica County Board of Supervisors cannot directly contract with a nonprofit organization to administer and manage a first-time homebuyer and rehabilitation program.

In *Attorney General's Opinion to Dunn*, December 5, 2014, the Attorney General opined the following concerning the county's use of a nonprofit organization to administer and operate a first-time homebuyer and rehabilitation program:

Thus, it is the opinion of this office that the Board of Supervisors cannot directly contract with a non-profit organization to administer and manage a first-time homebuyer and rehabilitation program with county funds pursuant to Section 19-3-40. To do so would directly conflict with the statutory authority granted Section 43-33-1, et seq., which provides for the method in which a county and/or municipality may utilize public money to establish a public housing program.

After receiving the Attorney General's opinion informing the board of supervisors that the county could not contract with a nonprofit organization to administer and operate the county's housing program, the board once again changed how the housing program operated.

Without conducting a competitive bid process, on February 12, 2015, the Tunica County Board of Supervisors adopted a resolution to contract with North Delta Regional Housing Authority to carry out the administrative duties of the housing program and contract out all operational duties to Tunica County Housing, Inc. The board of supervisors adopted the resolution to prepare a contract without exploring whether another qualified organization could have overseen the program for a lower administrative fee. Thus, the possibility existed that less money was available for housing rehabilitation and first-time homebuyers because of the amount spent on administrative fees.

On February 12, 2015, the Tunica County Board of Supervisors adopted a resolution to contract with NDRHA to carry out “the administrative duties of the housing program while contracting out all operational duties to Tunica County Housing, Inc.” Also, on February 12, 2015, NDRHA officials prepared and signed a contract with TCHI that would have approved TCHI to perform the operational duties of the county’s housing program. However, the president of TCHI did not sign the contract. TCHI was the same organization used by the board prior to this contract in a process that was deemed by an Attorney General’s opinion to be contrary to state law.

The board of supervisors and NDRHA officials selected TCHI without a competitive bid process to determine whether another qualified organization could have overseen the program for a lower administrative fee. NDRHA officials have asserted to PEER that they followed instructions of the board of supervisors when they selected TCHI without using a competitive process. Officials also noted that the Tunica County Board of Supervisors was one of five boards that created NDRHA, the selection was not illegal, and therefore authority officials followed the board’s directions. The president of TCHI stated his belief that his organization was selected because of his familiarity with the process and the people in the program knew him.

Although not required by law, prudent financial management would also dictate using a competitive bid process in order to determine whether another qualified organization could administer and operate the housing program for a lower administrative fee, resulting in more funds being made available for housing rehabilitation and first-time homebuyers.

Problems with Tunica County Homeowner Rehabilitation Program Contracts

Since the beginning of the board of supervisors' current arrangement with North Delta Regional Housing Authority and, by extension, Tunica County Housing, Inc., the board has failed to ensure either that a contract exists or that a signed contract is in force and effect at all times between the county and the housing authority and between the housing authority and Tunica County Housing, Inc. As a result, the board of supervisors failed to perform an essential element of program oversight by not having approved, signed written agreements in place at all times between the county and parties providing services and resources. Thus, the county's ability to hold other parties accountable for their actions, or inactions, has been diminished.

As part of this review of the county's Homeowner Rehabilitation Program, PEER requested copies of all contracts concerning the current arrangement between the county and NDRHA from the board of supervisors. Because the contract between the county and NDRHA contains language referencing an additional contract between NDRHA and TCHI for performing operational duties related to the housing program, PEER also requested copies of all contracts between NDRHA and TCHI.

No Current Contract Between Tunica County and NDRHA

The Tunica County Board of Supervisors does not have a contract currently in effect with the North Delta Regional Housing Authority. The lack of a contract leads to an environment of uncertainty regarding the obligations, responsibilities, and remedies in case of disputes between the county and the housing authority.

The board of supervisors prepared a contract for the county and the NDRHA with a term of February 12, 2015, through October 1, 2016. However, the copy of the contract provided to PEER by the board of supervisors was unsigned by county officials.

The terms of the proposed contract specified that it:

...shall be renewed each year by written agreement signed by all parties unless terminated by either party prior to renewal.

The terms of the contract also specified:

In the event this contract is not terminated by either party before August 1 of any year, then at the end of the term, the Agreement will cease and the parties will be required to renegotiate and sign a new contract for the upcoming year which shall begin on October 1, 2016.

Despite this language, the board and NDRHA did not renew this contract in a timely manner. Thus, the board of supervisors has continued to forward funds to NDRHA for the county's housing program without any contract in place.

The board of supervisors did not consider another contract with NDRHA until September 18, 2017, when the board entertained

another contract effective October 1, 2017, through October 1, 2018. The copy of this contract provided to PEER by the board of supervisors was also unsigned by either county or NDRHA officials. Further, the board of supervisors could not produce a contract for any terms after October 1, 2018, meaning that at the time of fieldwork for this report, the county did not have an enforceable contract with NDRHA in place but continues to send funds to NDRHA for the housing program.

The purpose of a contract is to spell out the specific duties, responsibilities, and obligations of each party and therefore provide a framework for the expectations of work to be performed by each party. By not having approved, signed, written agreements in effect at all times between the county and NDRHA, the board of supervisors has failed to ensure that an essential element of program oversight is in place and therefore, the county's ability to hold NDRHA responsible for their actions, or inactions, has been diminished.

No Current Contract Between NDRHA and TCHI

The North Delta Regional Housing Authority does not have a contract currently in effect with Tunica County Housing, Inc. Since contracts set out the duties and responsibilities between parties, it is impossible to legally determine the operational duties that Tunica County Housing, Inc. is supposed to perform and therefore there is no contractual basis for the housing authority or the county to hold Tunica County Housing, Inc. accountable for performance or lack thereof.

In the February 12, 2015, proposed contract between the board of supervisors and NDRHA for the administration and operation of the county's housing program, the proposed contract language stated:

It is agreed, approved, and understood that NDRHA will by separate agreement contract out all operational duties to carry out said Programs to Tunica County Housing, Inc.

NDRHA proposed a contract with TCHI dated February 12, 2015, through October 1, 2016, that spelled out the operational duties and tasks to be performed by TCHI. Further, the language concerning the separate agreement between NDRHA and TCHI is repeated verbatim in the proposed contract between the board of supervisors and NDRHA effective October 1, 2017, through October 1, 2018.

Because of the language in the proposed contract between the board of supervisors and NDRHA concerning a separate agreement between NDRHA and TCHI that establishes the operational duties and responsibilities TCHI will perform for the housing program, and given the arrangement of the county sending housing funds to NDRHA, which then sends the funds, less a \$500 handling fee, to TCHI, the board of supervisors has a vested interest in ensuring that the separate contract between NDRHA and TCHI is executed

and renewed as required. However, other than the proposed contract dated February 12, 2015, the board of supervisors could not produce for PEER any contracts between NDRHA and TCHI detailing the operational duties and responsibilities of TCHI concerning the housing program. NDRHA officials only provided PEER with the proposed contract between NDRHA and TCHI dated February 12, 2015.

The purpose of a contract is to spell out the specific duties, responsibilities, and obligations of each party and therefore provide a framework for the expectations of work to be performed by each party. The lack of a contract diminishes accountability of the parties involved in the housing program process and causes an environment of uncertainty regarding the obligations, responsibilities, and remedies in case of disputes between the county, the housing authority, or TCHI. As a result, the county's ability to seek remedies in case of non-performance or poor performance by other parties is impaired.

Previous Contracts Not Signed by All Parties

The Tunica County Board of Supervisors failed to produce for PEER a copy of any contract between the county and North Delta Regional Housing Authority or between the housing authority and Tunica County Housing, Inc. that was signed by all parties involved. The legal enforceability of a contract can be called into question if the contract is not signed by all parties. For example, in June 2015 the board of supervisors proposed a contract addendum reducing the housing program's monthly administration fee from \$12,500 per month to \$10,500 per month and the board began paying the lower amount. However, on advice of the board's attorney, in September 2017 the board paid Tunica County Housing, Inc. \$60,000 in "back" administrative fees. If the board had properly executed the addendum to the contract by having all parties sign the addendum, the county would have saved \$60,000 in administrative fees that could have been used to fund additional housing grants.

As noted previously, PEER requested from the board of supervisors signed contracts between the board and NDRHA. In addition to the board's lapse in having contracts in affect at all times, the board of supervisors did not produce any contract between the county and NDRHA that had been signed by all parties. The February 12, 2015, proposed contract, which was entered into the board's official minutes, was only signed by the executive director of NDRHA. Also, the board of supervisors provided a copy of the proposed contract for October 1, 2017, through October 1, 2018, that was not signed by anyone.

PEER also requested from the board of supervisors signed copies of the agreements between NDRHA and TCHI that are referred to in the unsigned contract between the county and NDRHA. The February 12, 2015, proposed contract between NDRHA and TCHI, which was entered into the board's official minutes, was only signed by the executive director of NDRHA. The board of supervisors was unable to produce for PEER any other agreements between NDRHA and TCHI, despite the February 12, 2015, proposed contract's expiration date of October 1, 2016.

The legal enforceability of a contract can be called into question if all parties do not sign a contract. For example, in June 2015, four months after the county began using NDRHA in conjunction with TCHI, the board of supervisors proposed a contract addendum reducing the housing program's monthly administration fee from \$12,500 per month to \$10,500 per month and the board began paying the lower amount. However, on advice of the board's attorney, in September 2017 the board paid TCHI \$60,000 in "back" administrative fees. If the board had properly executed the addendum to the contract by having all parties sign the addendum, the county would have saved \$60,000 in administrative fees that could have been used to fund additional housing grants.

Without a signed contract in effect at all times, it is impossible to contractually determine the administrative and operational duties that NDRHA and TCHI are supposed to perform for the county's housing program and therefore there is no contractual basis for the county to hold the housing authority or TCHI accountable for performance or lack thereof. As a result, the county's ability to safeguard taxpayer funds used in the program is weakened.

Tunica County Housing Incorporated's Application and Grant Awarding Process

On behalf of Tunica County and the North Delta Regional Housing Authority, Tunica County Housing, Inc., handles all administrative and programmatic details of the county's housing rehabilitation program. Proper accountability and oversight dictate that all parties involved in the housing program would also be involved in the payment process.

Tunica County's housing rehabilitation program is administered by NDRHA through a draft contract with TCHI that was not signed by all parties. Under terms of the contract between NDRHA and TCHI, NDRHA's only responsibility for the housing rehabilitation program is forwarding to TCHI the monthly administration fee of \$12,000, later reduced to \$10,000, along with an amount of funds sufficient to cover the grants awarded for specific housing rehabilitation projects. The draft contract states that TCHI is responsible for all operational duties of the housing rehabilitation, as detailed below:

- The TCHI President/CEO or his administrative assistant reviews each grant application and obtains copies of tax returns, paystubs, and/or social security or disability checks to ensure that the applicant meets the program's income eligibility requirement. The application also requests demographic information regarding the applicant and others within the applicant's household.
- The TCHI President/CEO makes a decision as to who is eligible to receive a grant and places the applicant's name on a waiting list, which is grouped by supervisor's district. The President/CEO selects applicants on a first-come, first-served basis using a rotational method through the five supervisors' districts.

- Once an applicant is selected to receive a grant, the TCHI President/CEO inspects the home with the homeowner to assess the level of rehabilitation that can be completed with the available grant funds. Often the rehabilitation needs exceed the available grant funds and the homeowner has to prioritize the desired repairs.
- After the repair needs are identified, TCHI develops a “Notice to Homeowners and Contractors Rehabilitation Bidding” document that is distributed to contractors included on TCHI’s eligible contractor list, currently composed of three local-area contractors. The TCHI President/CEO contends that he uses a rotational process to award the repair work to the “lowest and best” bidder.
- After the TCHI President/CEO selects the contractor, he develops a “Contract for Residential Rehabilitation” document that is signed by the homeowner and the contractor. The contract identifies the scope of work to be performed, the responsibilities of both parties, and how compensation will be paid, including a 5% retainage for one year after completion of the work. The TCHI President/CEO also signs the contract and holds the grant funds in escrow.
- After the contract has been signed, TCHI submits a request to the board of supervisors requesting grant funds to cover the cost of the contract amount. Once funds are transferred through NDRHA, TCHI maintains the funds in its operating account until the repairs are completed.
- After the repairs are completed, the contractor submits an invoice and an affidavit to TCHI stating that all subcontractors, materials, and laborers have been paid in full. The TCHI President/CEO, Tunica County building inspector, contractor, and homeowner inspect the repairs upon their completion. Once the inspection is completed, all named parties in the contract sign off on the repairs.
- Once all parties involved in the contract have signed off on the repairs, the TCHI President/CEO pays the contractor (withholding the 5% retainage for one year).

Payment Process for the Homeowner Rehabilitation Program

Based on information on the process that was provided to PEER, after the homeowner and the contractor sign the contract for rehabilitation, the president of Tunica County Housing, Inc., submits an invoice to the board of directors requesting grant funds for the amount of the contract. The invoice is not accompanied by supporting documentation and is submitted prior to the completion of the work. Since the current arrangement began in February 2015, the board has approved the expenditure of approximately \$1.6 million in housing funds without supporting documentation showing that the funds were expended as indicated or whether the work was completed.

After the “Contract for Residential Rehabilitation” is signed by the homeowner and the contractor, the president of TCHI submits an invoice to the county requesting grant funds to cover the cost of the contracted amount. This invoice is submitted without any supporting documentation, such as a copy of the contract between the homeowner and the contractor. Based only on the invoice submitted, the board of supervisors approves the expenditure of funds for the county’s housing program.

Further, the president of TCHI submits the invoice to the board of supervisors after the contract is signed by the homeowner and the contractor, but prior to the work being completed. Thus, the board pays the invoice prior to the work being completed or perhaps before the work is even started. PEER notes the practice of paying for construction work prior to the work being completed demonstrates a lack of oversight and accountability.

Since the current arrangement between the county and NDRHA and between NDRHA and TCHI began in February 2015, the board has approved the expenditure of approximately \$1.6 million in housing funds without proper supporting documentation. Although PEER is not alleging any wrongdoing by parties involved in the housing program, all invoices for payments should be accompanied by proper supporting documentation to ensure that taxpayer funds are being spent in accordance with state law and program guidelines. Furthermore, the homeowner rehabilitation work should be completed and accepted before funds are expended for such work. The current practices do not adequately safeguard taxpayer funds to ensure that such funds are used for their intended purpose and may deprive individuals who qualify for the program from having their home rehabilitated.

The president of Tunica County Housing, Inc., submits housing invoices to the county on North Delta Regional Housing Authority letterhead, personally picks up the check that is payable to the housing authority, deposits the check in the housing authority’s bank account, and after receiving the bank deposit slip, the housing authority pays the president of Tunica County Housing, Inc. This process completely removes the housing authority from the reimbursement process and diminishes the accountability of program, since the president of Tunica County Housing, Inc., handles all aspects of program reimbursement.

The current reimbursement process used by the owner of TCHI and allowed by NDRHA and the county does not establish proper controls, accountability, or oversight over the county’s housing program. The current reimbursement process is as follows:

- The president of TCHI seeks reimbursement by submitting housing program invoices on NDRHA letterhead.
- After the board of supervisors approves the expenditure of funds for reimbursement, the check is made payable to NDRHA.

- Although made payable to NDRHA, the president of TCHI picks up the check from county offices and deposits the check in the housing authority's bank account.
- The president of TCHI then submits the deposit slip to NDRHA for reimbursement.
- After receiving the deposit slip, NDRHA reimburses the president of TCHI the requested amount less NDRHA's monthly fee.

Proper accountability and oversight dictate that all parties involved in the housing program would also be involved in the payment process. For example, invoices submitted to the county on NDRHA letterhead should be prepared by NDRHA after ensuring that the invoices are supported by proper documentation. Under the current process, the president of TCHI controls the entire reimbursement process and NDRHA has no knowledge of what was submitted to the county until housing officials receive the deposit slip from the president of TCHI.

Although PEER is not accusing any parties involved in the housing program with mishandling funds, the current process diminishes accountability and control over the payment process and diminishes the county's ability to ensure the proper accounting and disbursement of funds.

History of the Tunica County Housing Program's Expenditures

Since the beginning of the housing program in June 1998, the Tunica County Board of Supervisors has approved approximately \$13.6 million in expenditures for the program.

From the beginning of the county's housing program in June 1998 through August 2019, the Tunica County Board of Supervisors has approved approximately \$13.6 million in expenditures for the program. A breakdown of expenditures by fiscal year is presented on the following page:

FY 1998	\$ 212,173
FY 1999	660,009
FY 2000	674,016
FY 2001	591,706
FY 2002	1,409,089
FY 2003	1,018,769
FY 2004	943,013
FY 2005	967,156
FY 2006	1,083,150
FY 2007	1,310,387
FY 2008	991,679
FY 2009	187,992
FY 2010	376,368
FY 2011	457,495
FY 2012	358,948
FY 2013	500,879
FY 2014	226,250
FY 2015	323,700
FY 2016	303,675
FY 2017	397,000
FY 2018	300,000
FY 2019*	342,700
Total	\$13,636,154

*Through August 2019.

During the life of the housing program, the supervisors operated the program using county employees and also contracted with outside organizations. As noted previously, the board of supervisors currently utilizes the NDRHA to oversee the program and the NDRHA has an arrangement with Tunica County Housing Inc., to operate the program on a daily basis.

Housing Program Expenditures from October 2014 through August 2019

From October 2014, the beginning of the first full fiscal year in which the board of supervisors used Tunica County Housing, Inc., and later authorized the North Delta Regional Housing Authority and Tunica County Housing, Inc., to administer and operate the county's housing program, through August 2019, the board of supervisors has approved the expenditure of approximately \$1.7 million for the county's housing program.

In August 2014, the board of supervisors authorized Tunica County Housing, Inc., to operate the county's housing program. However, due to an Attorney General's opinion dated December 5, 2014, in

February 2015 the board of supervisors authorized NDRHA, in conjunction with TCHI, to administer and operate the housing program.

At the time of fieldwork for this report, the board of supervisors continues to operate the county’s housing program using NDRHA and TCHI. From October 2014 through August 2019, the board of supervisors expended \$1,667,075 on the housing program, as shown below:

Total Expended, October 2014 through August 2019	Expenditure Purpose
\$963,625	Housing rehabilitation or first-time homebuyers
\$681,000	Administrative fees
\$21,475	White Oak Gas Project
\$975	Mississippi Housing Conference
\$1,667,075	Total Expenditures

The following sections provide discussion of these expenditure purposes.

Tunica County Housing Program Administrative Fees

From FY 2015, the first full fiscal year that the board of supervisors used Tunica County Housing, Inc., and later the North Delta Regional Housing Authority and Tunica County Housing, Inc., to administer the county’s housing program, through August 2019, administrative fees represented approximately 41% of program expenditures. This level of administrative fees is considered to be above average by charity watchdog groups. As a result of the above average administrative fees, funds available for rehabilitation and first-time homebuyers are reduced.

Rather than paying a per grant administrative fee or capping the administrative fee at a certain percentage of the county’s annual housing program budget, the board of supervisors currently pays NDRHA, and ultimately TCHI, a \$10,500 monthly administrative fee. When NDRHA and TCHI began to jointly administer the program in February 2015, the administrative fee had been \$12,500 monthly.

As shown above, of the \$1,667,075 in total expenditures for the county’s housing program for the period of October 2014 through August 2019, the board of supervisors approved \$963,625 for housing rehabilitation or first-time homebuyers. During this same time, the board also approved expenditures of \$681,000 for

administrative fees, which averaged to approximately \$5,044 for each of the 135 grants awarded during this period.

PEER is aware that in addition to overseeing rehabilitation projects and the grant process, TCHI's responsibilities include making multiple site visits, meeting with people at TCHI's offices, and answering phone calls. However, the question arises as to whether paying an average of \$5,044 per grant represents a prudent, effective use of taxpayer funds in a program designed to help individuals improve their living conditions.

The \$681,000 total in administrative fees represents approximately 41% of total housing program expenditures from October 2014 through August 2019. Although there are no legal requirements for the level of administrative fees that charity or grant programs should charge, charity watchdog groups offer guidelines regarding administrative fees. PEER's research found three organizations that recommended the following guidelines:

- Better Business Bureau recommends that no more than 35% of a nonprofit's budget be spent on administrative and operating fees.
- Charities Review Council sets a standard that expenses used to support an organization's program should not exceed 35%.
- Charity Navigator sets a standard that administrative expenses should not exceed 25% for a grant-making organization.

The goal of Tunica County, NDRHA, and TCHI should be to use county housing program funds to provide the maximum amount of the county's housing program budget to persons seeking rehabilitation grants and first-time homebuyer grants. As a result of the high administrative fees, the amount of funds available for grants is reduced, potentially depriving some individuals of a grant.

Monthly Administrative Fees Retained by NDRHA

Under the board of supervisors' current arrangement with the North Delta Regional Housing Authority, the board pays a monthly administrative fee of \$10,500 for the county's housing program. Of this amount, North Delta Regional Housing Authority retains \$500 monthly, or \$6,000 annually, as a fee for forwarding the remaining \$10,000 to Tunica County Housing, Inc. The question arises as to whether the board of supervisors' agreement to pay \$6,000 annually to an organization in return for writing twelve checks represents a prudent use of taxpayer funds.

Under terms of the February 12, 2015, draft contract between the board of supervisors and NDRHA (that was not signed by all parties), the county paid NDRHA a \$12,500 monthly administrative fee in addition to any grants awarded each month. The board of supervisors allowed NDRHA to retain \$500 per month as a fee for forwarding the remaining \$12,000 in administrative funds along with any grant funds to TCHI. The original draft contract between NDRHA and TCHI (that was not signed by all parties) dated

February 12, 2015, confirmed the \$12,000 monthly fund transfer and NDRHA's \$500 monthly fee and also stipulated:

The parties agree that NDRHA will have no other responsibilities for said program unless agreed to in writing, which writing shall become an addendum to this contract and become a part of this contract upon the signing of said addendum by all parties.

Beginning in September 2017, the board of supervisors reduced the monthly administrative fee to \$10,500 monthly. However, the board continued to allow NDRHA to retain \$500 monthly as a fee for forwarding the remaining \$10,000 monthly administrative fee and any grant funds to TCHI.

Although the board of supervisors may pay any amount they wish to a party for writing one check per month, prudent financial management would dictate that \$6,000 annually to write twelve checks is excessive and deprives the housing program of funds that could be better used for the program's intended purposes.

Expenditures Not Related to the Housing Program

From October 2014 through August 2019, the board of supervisors approved expenditures from the county's housing program for items not related to administration of the program or providing grants to individuals. The board approved \$975 for a housing conference and an additional \$21,475 for the White Oak Gas Project from housing program funds. By expending housing program funds on items not related to providing grants to individuals, the board reduced the amount of funds available for grants and redirected the program's funds from the original purpose of helping individuals improve their living conditions.

PEER reviewed all housing program invoices from October 2014, the start of the first full fiscal year that the board used TCHI as part of the housing program, through August 2019. During this time, the board of supervisors did not expend all of the housing program funds for administration of the program or grants for rehabilitation or first-time home purchases.

In March 2016, the board of supervisors approved \$975 for personnel from either NDRHA or TCHI to attend the Mississippi Housing Conference. The invoice did not indicate who would attend the conference or provide any supporting documentation for the invoice amount. Given the monthly administration fee of \$10,500, PEER believes administrative funds should have been used to attend the conference rather than expending additional housing funds.

In November 2017, May 2018, and July 2018, the board of supervisors approved the expenditure of a total of \$21,475 in housing program funds for the White Oak Gas Project. According to news reports, the White Oak Gas Project has the potential to serve up to 215 customers in the White Oak Community in Tunica

County and the board of supervisors agreed to expend almost \$200,000 for the \$485,000 project.

While the gas project may be worthy of the county's financial support, it lies outside the scope and purpose of the housing program and deprives the housing program of funds that could be used to fund additional rehabilitation grants or first-time homebuyer grants. A more suitable place to record support of the gas project would have been through grants to other organizations, with the receiving organization and amount approved clearly noted in the county's annual general fund budget.

Recommendations

1. Concerning the financial management of Tunica County, the Tunica County Board of Supervisors should:
 - Annually adopt and abide by a budget in which anticipated revenues exceed budgeted expenditures.
 - Develop and implement a plan to address the current negative balance of the county's general fund and return it to a positive balance.
 - Reconsider the board's current practice of supporting county-owned facilities, such as the Battle Arena and Exposition Center and the Tunica National Golf and Tennis Center, and explore alternatives, such as leasing these facilities to professional organizations experienced in operating such facilities.
 - Use the funds of the county's general road fund exclusively for the construction, upkeep, and maintenance of the county's roads and bridges.
 - Adopt and enforce policies to ensure that accounting transactions for the receipt and expenditure of county funds are properly classified and recorded in the county's accounting system.
 - Adopt and enforce policies to ensure that accounting transactions for the expenditure of county funds are supported by appropriate documentation.
2. The governing authorities of Tunica County, the Town of Tunica, and the Tunica County School District should resolve as appropriate to amend *Chapter 920, Local and Private Laws of 2004*, as follows:
 - Require the distribution of all gaming revenues, allocated to the Town of Tunica, to be directly transferred from the Mississippi Department of Revenue to the Town of Tunica.
 - Institute a timeframe requiring the transfer of funds allocated to the Tunica County School District within five business days of the Tunica County Board of Supervisors' first monthly meeting.
3. The Tunica County Board of Supervisors should adopt a resolution memorializing the Mississippi Legislature to amend *Chapter 920, Local and Private Laws of 2004*, to eliminate the requirement that certain gaming funds be deposited to the county's general road fund and to further provide that such funds shall be deposited to the county's general fund. Further

the resolution should provide that these amendments shall be subject to a three-year repealer.

4. The Tunica County Tax Assessor/Collector should take steps to ensure that all property tax assessments and all collections for property taxes are conducted in accordance with applicable state laws.
5. Concerning the administrative policies and procedures of the county, the Tunica County Board of Supervisors should adopt and enforce policies and procedures that strengthen the county's internal controls in the areas of:
 - testing an assessment of the county's internal control environment;
 - the development of a county-wide chart of accounts;
 - the processing of journal entries;
 - the issuance of contracts;
 - the classification and allocation of expenditures; and,
 - the approval of invoices.
6. The Tunica County Board of Supervisors should take steps to ensure compliance with all open meetings laws and regulations.
7. The Tunica County Board of Supervisors should take steps to ensure compliance with all laws and regulations for the approval of the county's budget and assessment of property taxes.
8. Concerning the county's Homeowner Rehabilitation Program, the Tunica County Board of Supervisors should adopt and enforce policies and procedures to ensure that:
 - Appropriate supporting documentation, such as the contract for rehabilitation or purchase of a first-time home, is received and placed in the county's accounting records for all expenditures of housing program funds.
 - A properly executed contract, signed by all involved parties, is in effect at all times for the county's housing program including contracts with organizations with responsibility for the administration or daily operations of the program.
 - Invoices are submitted by the appropriate party and program expenditures directed to the named payee.
 - Expenditures are used only for the purposes of administering or operating the program or paying grants awarded for home rehabilitation or first-time homebuyers.

9. The Tunica County Board of Supervisors should review the current administrative and operational process for the county's Homeowner Rehabilitation Program and determine if a more economical administrative and daily operational fee arrangement from qualified parties could be secured.
 - In conjunction with the above item, the board should consider the use of a competitive bid process to secure from qualified organizations administrative and daily operational services for the housing program.

Appendix A: Tunica County Actual Revenues and Expenditures, FY 2013 through FY 2018

	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	Total
County General Fund Revenue							
Ad valorem Taxes	\$ 2,027,711	\$ 2,134,105	\$ 3,571,564	\$ 3,610,253	\$ 3,365,258	\$ 4,670,167	\$ 19,379,059
Licenses and Fees	1,790,565	1,870,098	1,594,548	1,773,715	1,511,041	1,188,239	9,728,206
Fines and Forfeitures	352,421	317,207	285,479	234,129	200,765	242,611	1,632,612
Federal Revenue	516,037	568,854	560,629	180,854	1,393,181	886,074	4,105,628
Gaming Revenue	20,577,025	18,495,450	15,637,271	16,586,019	16,144,907	15,281,804	102,722,476
Other State Revenue	1,095,792	1,036,633	919,754	846,525	946,359	860,239	5,705,301
Miscellaneous Revenue (1)	3,354,156	3,484,745	3,949,450	1,886,623	2,668,228	1,465,431	16,808,634
Other Revenue (2)	3,000,000	-	-	-	-	1,300,000	4,300,000
Total County General Fund Revenue	\$32,713,707	\$27,907,091	\$26,518,696	\$25,118,120	\$26,229,739	\$25,894,564	\$164,381,916
County Administration and Operations							
Board of Supervisors	\$2,051,961	\$2,432,554	\$2,469,915	\$2,181,376	\$2,237,934	\$2,193,590	\$13,567,331
Board of Supervisors - Legal Fees (3)	146,386	140,283	290,417	477,933	180,379	606,351	1,841,749
Chancery Clerk	49,629	74,698	59,932	75,819	51,232	49,334	360,644
Circuit Clerk	185,917	190,955	205,591	191,679	196,426	201,197	1,171,765
Tax Assessor/Collector	296,275	305,929	333,458	327,716	322,389	330,955	1,916,721
Planning Commission	215,870	175,718	230,069	203,934	191,467	178,463	1,195,521
County Administration and Operations	710,493	725,322	781,809	687,765	711,725	687,744	4,304,859
Maintenance Buildings and Grounds	1,010,444	956,384	1,204,689	1,260,090	1,211,249	1,122,281	6,765,138
Data Processing	269,867	220,329	166,323	174,104	168,161	223,532	1,222,317
Board Attorney	56,305	58,411	54,226	42,397	60,026	59,252	330,616
Election Expense	40,717	51,827	62,423	51,390	52,753	46,966	306,075
Total County Admin. and Operations	\$5,033,864	\$5,332,411	\$5,858,851	\$5,674,204	\$5,383,742	\$5,699,665	\$32,982,737
Court Operations							
Court Operations (5)	\$1,082,541	\$1,050,521	\$1,049,348	\$1,019,790	\$1,005,914	\$1,017,656	\$6,225,770
District Attorney and County Attorney	72,014	72,946	65,172	59,868	95,005	66,165	431,169
Public Defender	103,949	105,132	112,157	105,597	106,241	115,332	648,408
Chancery Clerk Deputies	22,113	22,326	22,339	-	22,428	35,977	125,183
Adolescent and Youth	254,370	237,036	238,710	217,701	193,891	304,190	1,445,898
Total Court Operations	\$1,534,987	\$1,487,960	\$1,487,225	\$1,402,956	\$1,423,479	\$1,539,321	\$8,876,429
Other County Offices							
Sheriff Dept. and Jail	\$8,279,745	\$8,049,776	\$7,280,303	\$6,923,214	\$7,087,785	\$8,101,854	\$45,722,678
Reappraisal and Mapping	105,000	100,000	112,600	95,700	74,000	67,100	554,400
Coroner	65,089	71,242	63,711	67,535	62,460	76,674	406,711
Constables	60,872	63,738	71,121	49,470	44,331	43,781	333,313
Emergency Management	347,395	380,870	376,848	226,986	220,214	192,350	1,744,663
Total Other County Offices	\$8,858,101	\$8,665,627	\$7,904,583	\$7,362,905	\$7,488,790	\$8,481,759	\$48,761,765
County Operated Facilities							
Parks and Recreation	\$2,488,928	\$2,271,585	\$2,031,975	\$2,070,962	\$2,039,911	\$2,174,535	\$13,077,896
Tunica Health Clinics	1,821,962	1,789,109	1,586,471	1,563,506	1,559,690	1,685,715	10,006,455
Battle Arena & Expo	1,879,982	1,699,250	1,585,355	1,782,461	1,740,785	1,852,188	10,540,022
Tunica Riverpark	986,090	595,892	692,614	707,912	546,088	525,938	4,054,534
Tunica National Golf	964,257	832,526	503,398	601,115	616,321	575,265	4,092,882
Airport Commission	608,591	480,197	174,225	263,000	208,333	279,167	2,013,513
Total County Operated Facilities	\$8,749,810	\$7,668,560	\$6,574,038	\$6,988,956	\$6,711,129	\$7,092,808	\$43,785,301
County Services and Programs							
Ambulance Service	\$720,000	\$600,000	\$816,000	\$576,391	\$528,000	\$440,000	\$3,680,391
Garbage Solid Waste	485,332	480,255	354,140	553,156	489,069	439,846	2,801,799
Housing Department	430,448	296,681	323,700	303,675	412,000	300,000	2,066,504
Council on Aging	282,977	264,515	119,428	556,765	612,363	462,850	2,298,898
Library	320,884	311,293	272,430	278,495	289,385	271,208	1,743,695
Dundee Fire Department	-	-	457,309	1,712	-	-	459,021
Other Services and Programs (6)	303,425	281,002	166,235	180,249	184,383	165,895	1,281,190
Total County Services and Programs	\$2,543,067	\$2,233,746	\$2,509,242	\$2,450,443	\$2,515,200	\$2,079,799	\$14,331,497
County Support of Other Organizations							
Board of Supervisors Grants to Other Agencies (7)	\$791,273	\$121,002	\$622,529	\$158,037	\$948,320	\$762,066	\$3,403,225
Tunica County Utility District	881,530	12,113	100,000	-	415,919	-	1,409,562
Watershed Project	514,238	160,237	163,651	181,568	166,406	143,284	1,329,385
Tunica County Chamber of Commerce	217,498	219,679	224,150	165,864	144,000	132,000	1,103,191
Mid-State Opportunity Inc. (8)	412,500	373,797	75,000	-	-	-	861,297
North Delta Planning and Development District	15,000	15,000	429,822	15,000	17,364	13,750	505,935
Extension Service	66,944	71,772	58,624	47,491	31,907	28,561	305,299
Delta Council	23,763	-	-	-	-	-	23,763
Other Organizations (9)	790	3,016	-	-	-	-	3,806
Total County Support of Other Orgs.	\$2,923,536	\$976,616	\$1,673,776	\$567,960	\$1,723,914	\$1,079,661	\$8,945,463

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Debt Service, Capital Projects, Transfers to Other Funds							
Debt Service (10)	\$1,533,478	\$1,833,308	\$3,606,583	\$1,562,796	\$166,242	\$794,899	\$9,497,306
Capital Projects	441,669	(518,892)	1,224	-	-	-	(75,999)
Transfers to other funds	1,432,414	-	475,105	327,772	-	-	2,235,291
Total Debt Service, Capital Projects, and Transfers to Other Funds	\$3,407,561	\$1,314,416	\$4,082,912	\$1,890,568	\$166,242	\$794,899	\$11,656,598
Total General County Expenditures	\$33,050,926	\$27,679,336	\$30,091,127	\$26,337,992	\$25,412,496	\$26,767,912	\$169,339,790
Difference (Revenue less Expenses)	\$ (337,220)	\$ 227,754	\$ (3,572,431)	\$ (1,219,872)	\$ 817,243	\$ (873,348)	\$ (4,957,874)
<p>(1) Miscellaneous revenue includes charges for services and revenue from accounts names Miscellaneous Revenue and Other Sources; FY 2017 does not include \$18 million in revenue related to Schulz lease payments.</p> <p>(2) Other Revenue in FY 2013 related to a Disaster Loan and FY 2018 represented a transfer from the Special Levy Reappraisal account to the General Fund account.</p> <p>(3) Legal fees represent expenditures for attorneys other than the monthly expenses associated with the county board supervisors' attorney.</p> <p>(4) County Administration includes the offices of the County Administrator, Comptroller, and Human Resources.</p> <p>(5) Court Operations include Chancery Court, Circuit Court, Juvenile Court, Mental Health Court, and Justice Court.</p> <p>(6) Other Services and Programs include, Veterans Services, Animal Control, County Health Department, Mental Health, Literacy Council, Welfare Administration and Professional Services.</p> <p>(7) Board of Supervisors Grants to Other Agencies is a line item in the supervisors' budget. The budget does not specify what agencies receive these funds.</p> <p>(8) Mid-State Opportunity, Inc. is a private nonprofit community action agency operating programs in DeSoto, Panola, Quitman, Tallahatchie, Tate, and Tunica counties.</p> <p>(9) Other Organizations were Mississippi Wildlife Enforcement in FY 2013 and Tunica County Tourism Commission in FY 2014.</p> <p>(10) FY 2017 does not include \$18 million in payments related to the Schulz lease payments.</p>							
SOURCE: PEER review of Tunica County Budget Information.							

Appendix B: Requirements of MISS. CODE ANN. Section 25-41-7 (4) (1972) Regarding Reasons for Public Bodies Holding an Executive Session

A public body may hold an executive session pursuant to this section for one or more of the following reasons:

(a) Transaction of business and discussion of personnel matters relating to the job performance, character, professional competence, or physical or mental health of a person holding a specific position, or matters relating to the terms of any potential or current employment or services agreement with any physicians or other employees of public hospitals, including any discussion of any person applying for medical staff privileges or membership with a public hospital.

(b) Strategy sessions or negotiations with respect to prospective litigation, litigation or issuance of an appealable order when an open meeting would have a detrimental effect on the litigating position of the public body.

(c) Transaction of business and discussion regarding the report, development or course of action regarding security personnel, plans or devices.

(d) Investigative proceedings by any public body regarding allegations of misconduct or violation of law.

(e) Any body of the Legislature which is meeting on matters within the jurisdiction of that body.

(f) Cases of extraordinary emergency which would pose immediate or irrevocable harm or damage to persons or property, or both, within the jurisdiction of the public body.

(g) Transaction of business and discussion regarding the prospective purchase, sale or leasing of lands.

(h) Discussions between a school board and individual students who attend a school within the jurisdiction of the school board or the parents or teachers of the students regarding problems of the students or their parents or teachers.

(i) Transaction of business and discussion concerning the preparation of tests for admission to practice in recognized professions.

(j) Transaction of business and discussions or negotiations regarding the location, relocation or expansion of a business, medical service or an industry.

(k) Transaction of business and discussions regarding employment or job performance of a person in a specific position or termination of an employee holding a specific position. The exemption provided by this paragraph includes transaction of business and discussion in executive session by the board of trustees of a public hospital regarding any employee or medical staff member or applicant for medical staff privileges and any such individual's credentialing, health, performance, salary, raises or disciplinary action. The exemption provided by this paragraph includes the right to enter into executive session concerning a line item in a budget which might affect the termination of an employee or employees. All other budget items shall be considered in open meetings and final budgetary adoption shall not be taken in executive session.

(l) Discussions regarding material or data exempt from the Mississippi Public Records Act of 1983 pursuant to Section 25-11-121.

(m) Transaction of business and discussion regarding prospective strategic business decisions of public hospitals, including without limitation, decisions to open a new service line, implement capital improvements, or file applications for certificates of need or determinations of nonreviewability with the State Department of Health.

(n) Transaction of business of the boards of trustees of public hospitals that would require discussion of any identifiable patient information, including without limitation, patient complaints, patients' accounts, patients receiving charity care, or treatment that could be identified to a patient.

SOURCE: MISS. CODE ANN. Section 25-41-7 (4) (1972).

PEER Committee's Response to the Tunica County Board of Supervisors' Response

On behalf of the Tunica County Board of Supervisors, the county's Board Attorney submitted a response to the PEER Committee's report entitled *A Limited Management and Financial Review of Tunica County*. While the PEER Committee rarely comments on a reviewed entity's response to a report, the Committee has, on occasion, included in its final report such a response, especially when a response from a reviewed entity illustrates that the entity does not grasp the significance and seriousness of the Committee's conclusions.

As the report title conveys, the Committee undertook a management and financial review of Tunica County. In conducting this review, PEER staff interviewed county personnel and reviewed the county's revenues, expenditures, administrative and operational procedures and records, and the board's management of county resources and programs for the period of October 1, 2012, through August 31, 2019. At the conclusion of the review, PEER staff made the final report available to Tunica County officials on-site in Tunica County and off-site in PEER offices for more than two weeks so that they could develop a response.

The Committee's major conclusions included the following:

- From October 1, 2012, through August 31, 2019, the board expended approximately \$4.3 million more than the revenues that had been received by the county—i.e., the county engaged in deficit spending.
- As of August 31, 2019, the county's general fund had a negative balance of approximately \$4.9 million, which means the county is relying primarily on the funds in the county's general road fund to provide the necessary cash to pay the county's expenses, a practice that is contrary to state law.
- In April 2018, the board transferred \$5 million from the county's general road fund to the county's general fund, a practice which is also contrary to state law. In December 2018, the board received an Attorney General's opinion informing the board that such a transfer was not permissible. Despite being informed of this, the supervisors did not authorize repayment of the \$5 million to the general road fund until July 15, 2019, following PEER's commencement of fieldwork on this project.
- In FY 2015, the board began assessing a county-wide nine-mill ad valorem tax for the county's general road fund. However, because the county was inaccurate with its projection of future expenditures for road maintenance and construction, the adopted millage rate overtaxed Tunica County residents by approximately \$5.5 million during fiscal years 2015 through 2017 when compared to average expenditures.
- PEER identified deficiencies in the internal control policies and procedures of the board and the county's administration and financial recordkeeping.
- Minutes of the Board of Supervisors meetings did not always state with sufficient specificity the reasons for the board's entering into executive sessions, as required by MISS. CODE ANN. Section 25-41-7 (1972).

- The board did not comply with state law in the issuance of tax levies during FY 2014 and subsequently was required by court order to refund collected taxes of approximately \$190,000 to one taxpayer with more potential refunds in the future.
- Since the beginning of the board's current arrangement with North Delta Regional Housing Authority and, by extension, Tunica County Housing, Inc., the board has failed to ensure either that a contract exists or that a signed contract is in force and effect at all times between the county and the housing authority and between the housing authority and Tunica County Housing, Inc.
- Since February 2015, the board has approved expenditures of \$1.6 million for the county's housing program without supporting documentation showing that the funds were expended as indicated or whether the work was completed at all.
- Since October 1, 2014, approximately 41% of total housing program expenditures have been for administrative expenses. This level of administrative expenses is considered to be above average by charity watchdog groups.
- The Tunica County Tax Collector's Office failed to comply with state law by not including the amounts of special assessments due for two of the county's utility districts on the individual tax bills for each affected parcel for the years of 2010 through 2015. This failure resulted in confusion as to the collection of delinquent taxes and exposed the county to additional legal expenses.

While Tunica County's response does not specifically address PEER's conclusions or recommendations, the response also does not refute the facts upon which PEER drew its conclusions.

The PEER Committee is confident in the factual accuracy of the conclusions detailed in the report and urges the board of supervisors to give serious consideration to developing, implementing, and adhering to corrective actions for each issue addressed in the report.

Agency Response



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October 23, 2019

Via Email: James.Barber@peer.ms.gov

Mr. James A. Barber
Executive Director
Joint Committee on Performance Evaluation & Expenditures Review "PEER Committee" or "PEER"
P.O. Box 1204
Jackson, MS 39215-1204

Re: Response of the Tunica County Board of Supervisors ("Tunica County" or "the Board") to the PEER Committee Exit Interview

Dear Mr. Barber:

I write this letter in response to the PEER report titled "A Limited Management and Financial Review of Tunica County" that was requested by [REDACTED]. In answering the letter expected to be made public within the next month, I would like to emphasize the following:

1. Although there were two (2) small windows of four (4) hours to review and respond to the PEER findings, this is not the amount of time that has been allotted to other entities in the past. While it is expected that certain steps in the investigation process may be undertaken in secrecy, not allowing a copy to be thoroughly studied and referenced for legal accuracy is unfathomable. Due to the haphazard way that the County officials were expected to review your findings, please forgive the lack of sequential order in answering the same in this correspondence.
2. It seems that the majority of the research and investigation conducted by PEER has focused on various governmental agencies, it seems that the focus of your investigation seemed to focus on a few hot-button issues of political nature. While the County Administrator focused on a number of hours from his extremely busy schedule on accommodating your requests, when he would ask for attention to be given to ideas that were forward leaning, you always seemed to return to the central topics of:
 - a) Redistribution of funds from the County to the Town;
 - b) The deficit spending of a County heavily dependent on gaming revenue while said revenue is declining; and
 - c) Reviewing the housing rehabilitation efforts of the County.
3. While being expressive on criticisms, your findings were very short on the many positive efforts that have been made by the County including:

- a) Efforts to reduce county debt by nearly 40% over the last four (4) years; and
 - b) Attempts to make expenditures cuts by this Board related to decisions and agreements entered into by the County over a decade ago.
4. The request to change local and private legislation does not reflect the reality that when legislation is presented to the County legislative delegation, it is sabotaged prior to being placed for a vote (normally not making it out of committee):

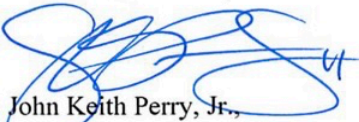
This concern includes:

- a) Any efforts to implement the gaming device fee that nearly all other gaming counties in the State receives;
 - b) Any local and private legislation that deals with re-appointment of money allocation dealing with Tunica County Convention and Visitors Bureaus; and
 - c) Efforts of the County to allow the casinos to move inland and not be stifled by the antiquated rule making casinos appear to be floatable barges in order t allow gaming.
5. While the report mentioned the various entities that were operating at deficit spending, there was no mention of any solutions for any of the spending deficits that were noted.
6. The County will ask North Delta Planning and Development District to require a signature be placed on any contracts involving the County going forward.

The County reserves the right to do a more thorough response when allowed to study the complete and final copy of the PEER Committee Report.

Sincerely, I Remain,

PERRY GRIFFIN, PC



John Keith Perry, Jr.,
Board Attorney
Tunica County Board of Supervisors

PEER Committee Staff

James A. Barber, Executive Director

Legal and Reapportionment

Ted Booth, General Counsel
Ben Collins
Barton Norfleet

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Quality Assurance and Reporting

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Matthew Holmes
Taylor Mullins
Sarah Williamson
Julie Winkeljohn
Ray Wright

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Linda Triplett, Director
Kirby Arinder
Debra Monroe-Lax
Meri Clare Ringer

