



# ATTORNEY GENERAL'S OPINION OUTLINE

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The purpose of the Opinion Outline is to inform state, county and municipal officials and other interested persons of official opinions rendered by the Attorney General's Office. This issue contains synopses of opinions rendered from April 01, 2013 through April 30, 2013. When opinions are of state-wide application or interest, we will try to publish the entire opinion rather than a synopsis.

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**Jim Hood**  
Attorney General

## COURTS

A court may impose reasonable, prudent and justified safeguards and restrictions on the manner in which public access to trials is permitted. (Banks, 4/1/2013)(#056)(OP-13-00098)

## CRIMINAL LAWS

A person arrested by a municipal police officer on a fugitive warrant would be a county prisoner and the municipality would not be obligated to pay for housing that prisoner. (Williams, 4/22/2013)(#057)(OP-12-00493)

A school official wanting to file charges must file an affidavit setting forth the facts related to an incident of a vehicle passing a stopped school bus. (Mason, 4/22/2013)(#050)(OP-13-00130)

A simple assault upon a private company court program services employee is not one of the individuals listed in Section 97-3-7(1) (b) of the Mississippi Code enhancing the charge to felony assault. (Russell, 4/22/2013)(#057)(OP-13-00100)

## ELECTIONS

County party executive committee may act as temporary municipal executive committee if there is no municipal committee. County election commissioner who wishes to seek a municipal office must resign prior to January 1 of the year he or she wishes to seek such office. (Barton, 4/5/2013)(#064)(OP-13-00122)

In order for a county election commissioner to be eligible to be a candidate for any other office, including a municipal office, he or she must resign as commissioner prior to January 1 of the year in which he or she wishes to seek the other office. A commissioner may, however, be a candidate in a special election to fill a vacancy provided he or she resigns within ten (10) days after the issuance of the notice of the special election by the appropriate. (Armstrong, 4/5/2013)(#064)(OP-13-00116)

A decision by a County Democratic Committee two weeks after the qualifying deadline to act as the temporary municipal executive committee was not timely. The filing fee should be refunded to the candidate. A decision by a county executive committee to act as the temporary municipal executive committee subsequent to an affirmative vote by that executive committee must be provided in writing to the municipal clerk prior to the qualifying deadline. (Ashford, 4/22/2013)(#069)(OP-13-00121)

Pursuant to Mississippi Code Section 7-5-25, this office is authorized to issue official opinions on questions of law. Whether or not a candidate for municipal office is qualified to run for office is a factual determination to be made by either a party municipal executive committee in a primary election or the municipal election commission in a general election. (Bassi, 4/22/2013)(#069)(OP-13-00137)

A county executive committee may serve as the temporary municipal executive committee if no municipal executive committee exists. With regard to a municipal primary election, if there is only one qualified candidate for an office after the qualifying deadline, the proper executive committee shall declare the candidate the nominee. If all municipal general election races are unopposed, the election commission shall dispense with the election and declare each candidate elected without opposition as long as the candidates are otherwise qualified under the law. (Barton, 4/4/2013)(#069)(OP-13-00119)

An individual, who did not resign prior to January 1, is not eligible to run for a municipal elective office and any votes cast for her will be illegal votes. Any votes cast for her should not be considered in an executive committee's determination as to the number of legal votes each of the eligible candidates received. (Head, 4/26/2013)(#070)(OP-13-00147)

## GOVERNOR

The Board of Trustees of the Picayune School District is operating with enough members to establish a quorum and conduct business; therefore, no emergency exists which would authorize the Governor to make an emergency appointment. (Farmer, 4/5/2013)(#085)(OP-13-00108)

## HOSPITALS-COMMUNITY

A board of supervisors may not remove a member or members of the board of trustees for failure to comply with Section 41-13-47, absent a recommendation of the majority of the board of trustees. Expenditures made without approval of the budget by the board of supervisors are in violation of Section 41-13-47 and may expose hospital trustees to liability for same. (Guice, 4/26/2013)(#092)(OP-13-00140)

## INTERLOCAL AGREEMENTS

Approval of Interlocal Agreement between Tallahatchie County, Mississippi, and the Village of Glendora, Mississippi, regarding the application for a Hazard Mitigation Grant and the purchase of equipment to mitigate disasters. (Reynolds, 4/3/2013)(#277)(OP-13-00133)

Approval of Interlocal Agreement between Tallahatchie County, Mississippi, and the Cities of Charleston, Sumner, Tutwiler, Mississippi, regarding the application for a Hazard Mitigation Grant and the purchase of equipment to mitigate disasters. (Reynolds, 4/3/2013)(#277)(OP-13-00132)

Interlocal Agreement between the City of Vicksburg and Warren County Board of Supervisors for use of the Statewide Election Management System, voting machines, and county staff with regard to the conduct of the city's election. (Thames, 4/22/2013)(#277)(OP-13-00125)

Interlocal Agreement between the Mississippi Transportation Commission and the City of Ridgeland for the refinancing of an accelerated construction project appears to comply with Mississippi law and is hereby approved. (McGrath, 4/30/2013)(#277)(OP-13-00151)

Interlocal Agreement between the Mississippi Transportation Commission and the City of Laurel for the refinancing of an accelerated construction project appears to comply with Mississippi law and is hereby approved. (McGrath, 4/30/2013)(#277)(OP-13-00153)

Interlocal Agreement between the Mississippi Transportation Commission and the Harrison County for the refinancing of an accelerated construction project appears to comply with Mississippi law and is hereby approved. (McGrath, 4/30/2013)(#277)(OP-13-00152)

Interlocal Agreement between the Mississippi Transportation Commission and the Madison County for the refinancing of an accelerated construction project appears to comply with Mississippi law and is hereby approved. (McGrath, 4/30/2013)(#277)(OP-13-00154)

The Interlocal Cooperation Agreement between the City of McComb and the Board of Trustees of Southwest Mississippi Community College for operation and maintenance of the college's wastewater treatment plant is approved. (Dowdy, 4/4/2013)(#277)(OP-13-00127)

The Interlocal Cooperation Agreement between the Town of DeKalb and Kemper County for the construction of an amphitheater and walking park is approved. (Smith, 4/3/2013)(#277)(OP-13-00118)

Approval of Interlocal Agreement between Alcorn County and City of Farmington re housing of municipal prisoners and detainees. (Davis, 4/4/2013)(#277)(OP-13-00138)

Interlocal Agreement between Jackson County and the City of Ocean Springs for use of county-owned voting machines in municipal elections is approved. (Yancey, 4/9/2013)(#277)(OP-13-00126)

Interlocal Agreement between DeSoto County and the Town of Walls for fire code inspection services is approved. (Nowak, 4/9/2013)(#277)(OP-13-00117)

Approval of Interlocal Agreement between Stone and Harrison Counties and Biloxi providing for the housing of Biloxi inmates in the Stone County Regional Correctional Facility. (Holleman, 4/12/2013)(#277)(OP-13-00144)

Approval of Interlocal Agreement between City of Ridgeland and Pearl River Valley Water Supply District concerning construction, operation and use of parking facilities. (Gabriel, 4/16/2013)(#277)(OP-13-00143)

## JUSTICE COURT JUDGES

A justice court judge may accept employment with the county road department while still serving as a justice court judge. (Warrington, 4/5/2013)(#100)(OP-13-00120)

## MUNICIPALITIES

Mississippi Code Annotated Sections 21-17-1(3) and 21-19-65 are silent with respect to the specific method of documentation required for authorized lawful donations, other than the adoption of a resolution duly and lawfully adopted and spread upon its minutes, which includes the requisite factual findings that the nonprofit entity qualifies for the entitled donation of funds. Thus, in the absence of any specific mandates with respect to documentation of donations, a municipality may develop, in its discretion, its own method of documentation. Whatever method of documentation the municipality employs should be sufficient to ensure that its donations are lawful. (Edwards, 4/22/2013)(#142)(OP-13-00129)

The authority to charge a garbage fee also includes the authority to charge a reasonable late fee, when payment is not made in a timely fashion after receiving notice of the amount due. Once a garbage fee and late fee are properly assessed charged to a resident, the city is prohibited from waiving or reducing the amount owed. (Trapp, 4/5/2013)(#142)(OP-13-00104)

The municipality may be able to exercise its police power to protect and promote the public health, safety, morality or welfare by adopting an ordinance requiring private security at night clubs. However, as required in Maynard, the ordinance must be reasonably related to protecting the public, must not be oppressive, arbitrary, or discriminatory, and must pass constitutional muster. By adopting a private security ordinance for night clubs, the municipality does not abdicate its law enforcement responsibilities. The municipality remains fully responsible for providing police protection within its boundaries, i. e., it must continue to provide patrols, respond to calls, investigate crimes, make arrests, etc. The role of private security is generally limited to deterring criminal conduct, assisting in the orderly functioning of a business, and reporting violations to the police. (Powell, 4/5/2013)(#142)(OP-13-00094)

Barring a failure to pay a just bill or some action/inaction on the part of the resident which would make connection to the municipal line impossible, i.e, failure to maintain the service line from the point of connection with the main line to the residence, any termination of utility services by the municipality would result in a deprivation of a protected property right of the resident. (Ryan, 4/12/2013)(#142)(OP-13-00097)

## NEPOTISM

A city attorney may, without violating the nepotism law, continue to serve in that position if the city attorney hires an attorney whose mother is subsequently elected as mayor of the city. (David, 4/22/2013)(#151)(OP-13-00142)

## SCHOOLS

Under its "home rule" authority, a school board may use National School Lunch Program data in setting salaries for principals and teachers as long as the school board complies with applicable federal laws and regulations. (Treadway, 4/1/2013)(#176)(OP-12-00563)

Based on its powers, authority and duties to manage the school district, particularly the authority to adopt any orders, resolutions or ordinances not inconsistent with other Mississippi law, a board of trustees may change the name of the school district by board action alone. Further, the mere change of the name of the school district will not affect the status of the current taxing authority. (Rodolfich, 4/12/2013)(#180)(OP-13-00092)

Once the State Board of Education has been appointed conservator of a school district and has assumed control and administration of the schools, the conservator enjoys all of the powers of the previously existing school board, which include the authority to dispose of real property no longer needed for school purposes, as outlined in Section 37-7-471. (Williams, 4/26/2013)(#180)(OP-13-00149)

The school district is authorized to make appropriate refunds from agency or club funds as described above, but is not authorized to use activity funds for such purposes. (Arledge, 4/26/2013)(#187)(OP-13-00075)

Years of teaching experience to determine minimum salary scales in accordance with Miss. Code Ann. Section 37-19-7 and the Mississippi Accountability and Adequate Education Program is limited to actual teaching in the public or private schools. However, in setting a teacher's salary above the statutory minimum, a school district should consider factors such as "character, professional training, experience, executive ability and teaching capacity" in accordance with Miss. Code Ann. Section 37-9-37. (Smith, 4/26/2013)(#206)(OP-13-00115)

## SHERIFFS-AUTHORITY

The use of Inmate Canteen Funds to purchase a van to be used to transport inmates to church and other social activities is not an "educational related expense" as contemplated by Mississippi Code Annotated Section 19-3-81 (Revised 2012) and does not fall within the meaning of "equipment and supplies" as set forth therein. However, the sheriff is authorized to use available funds in the sheriff's budget for transporting inmates for lawful purposes. (Rinehart, 4/22/2013)(#213)(OP-13-00141)

The Sheriff may hire the Youth Court Referee to serve as legal counsel to the Sheriff's office assuming the person can perform both jobs and is not being paid under both jobs for working the same hours. We offer no opinion on the propriety of the proposed hiring under the Ethics in Government Law, the Mississippi Rules of Professional Conduct or the Mississippi Code of Judicial Conduct. (Shepard, 4/1/2013)(#213)(OP-13-00105)

## SUPERVISORS

A payment of \$15,000.00 to a private developer who failed to provide any services in return would amount to an unlawful donation by the Tunica County Utility District in violation of Section 66 of the Mississippi Constitution. (Dulaney, 4/1/2013)(#220)(OP-13-00106)

The original district(s) continue to pay the interest and principal on the bond until it has been completely satisfied. (Creekmore, 4/12/2013)(#221)(OP-13-00131)

If agreed in writing by both parties, the loan agreement may be amended to release the railroad company from the requirement of an irrevocable letter of credit on all outstanding loan amounts without being a violation of Article 4, Section 100 of the Mississippi Constitution. (Mangum, 4/26/2013)(#224)(OP-13-00146)

There is no separation of powers violation if an employee of a regional housing authority also serves as a municipal alderman. (McCaughn, 4/5/2013)(#230)(OP-13-00109)

## TAXES-REFUND

Upon a determination by the municipal governing authorities that a taxpayer has paid, through error or otherwise, a sum in excess of that which was properly due, the tax collector is authorized, on order of the governing authorities, to refund such erroneous tax payment. Pursuant to Section 27-73-3, the taxpayer must apply or petition for such a refund. Since there is no specific statute that prescribes the time within which a claim for a refund of erroneously paid ad valorem taxes must be made, the three (3) year period of limitation provided for in Section 15-1-49 applies and cannot be waived. (Baum, 4/12/2013)(#254)(OP-13-00112)

The preceding opinion outlines are based upon opinions that were rendered by this office in response to specific facts and circumstances and therefore may not be applicable in all cases.

If you desire a copy of the complete opinion, please contact the Attorney General's Office at (601) 359-3680, citing the information in the two parentheses at the end of the synopsis.

Complete opinions are also available on our internet web site at: <http://www.ago.state.ms.us/>

