



# 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 February 01, 2013 through February 28, 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

## ARCHITECTURAL BOARD

A landscape architect could, based on the facts of a situation, provide both design and construction services to a public entity so long as public contracting and procurement laws are followed. (Wilkinson, 2/22/2013)(#014)(OP-13-00044)

## CHANCERY CLERKS

If the governing authorities of a municipality and a board of supervisors enter into an interlocal agreement providing that the county will collect municipal taxes and the county tax collector conducts a tax sale, the chancery clerk is responsible for receiving payments of taxes and the statutory damages and fees to redeem property sold at such sale. (Carver, 2/15/2013)(#041)(OP-13-00038)

## CRIMINAL LAWS

A sheriff may only collect a bond approval fee for a municipal prisoner under Section 25-7-19(1) (d) if he approves the bond for the municipal prisoner held in the county jail. If the municipal judge or municipal police officer designated by the judge approves the bond prior to the prisoner being transported to the county jail, there is no bond approval fee. (Bush, 2/22/2013)(#057)(OP-13-00016)

## DEPARTMENT OF EDUCATION

The State Board of Education is authorized to adopt a policy or regulation that establishes a statewide standard for the period of time in which a student must be in attendance during a school day in order to be counted in the "Average Daily Attendance" for purposes of state funding. The policy or rule must be reasonable and consistent with the intent of the Minimum Adequate Education Program. (House, 2/15/2013)(#058)(OP-13-00045)

## INTERLOCAL AGREEMENTS

Approval of Interlocal Agreement between Panola County and the City of Sardis providing dispatching emergency communication. (McKenzie, 2/5/2013)(#277)(OP-13-00035)

The Interlocal Cooperation Agreement between the City of Madison and Madison County for the repair and resurfacing of streets is approved. (Hedglin, 2/1/2013)(#277)(OP-13-00033)

Approval of Interlocal Agreement between Webster County and Eupora re use of municipal building as temporary county courthouse. (Meek, 2/19/2013)(#277)(OP-13-00060)

Approval of Interlocal Agreement between Winston County, Mississippi, and Kemper County, Mississippi, for the transfer of maintenance and improvements of public roads and bridges and for the collection of solid waste trash. (Hathorn, 2/14/2013)(#277)(OP-13-00034)

Approval of Interlocal Agreement between DeSoto County, Mississippi, and Tunica County, Mississippi, for obtaining professional services of digital orthophotography. (Neyman, 2/25/2013)(#277)(OP-13-00051)

Approval of Interlocal Agreement between Washington County, Mississippi, and the City of Leland, Mississippi, and the City of Metcalfe, Mississippi, related to Ad Valorem and Special Assessment Taxes. (Warrington, 2/25/2013)(#277)(OP-13-00058)

## MUNICIPALITIES

In order for petition signatures to be counted, they must appear upon a page which contains language expressing in an intelligible manner the desire of the signing party that a particular referendum election be called. While inappropriate methods may have been employed in collecting signatures on a petition, the municipal governing authorities must determine the sufficiency of the petition as presented to them. (Williams, 2/22/2013)(#139)(OP-13-00054)

We refer you to the Department of Labor, Wage and Hour Division for its interpretation of the Fair Labor Standards Act with respect to what time may be considered when computing overtime pay. (Creekmore, 2/1/2013)(#142)(OP-13-00015)

The municipality is not required to collect, or cause to be collected, any sales tax associated with sales made by non-city vendors located on municipally-owned property. However, said municipality does have a legal obligation to pay taxes on the sales of admissions to an amusement event on municipally-owned property, unless such taxes are paid by the person or organization who is conducting the event, or unless the event in question is exempted from such tax by Section 27-65-22(3) or any another statutory provision. Whether any exemption enumerated in Mississippi Code Annotated Section 27-65-22(3), or any other statutory provision, applies is a factual determination to be made by the municipality, subject to review by the Mississippi Department of Revenue. The municipality may, in its discretion, require a promoter to provide a deposit equal to the amount of estimated amusement tax and may make refund of such deposit contingent upon proof of payment of the required amusement tax or proof of a statutory exemption from payment of such amusement tax by including such in the terms and conditions of its lease agreement with the promoter. (Dye, 2/1/2013)(#142)(OP-13-00011)

We cannot validate or invalidate past actions of an individual/municipality or respond by way of official opinion on questions of liability which can only be addressed by a court of competent jurisdiction. (Rafferty, 2/8/2013)(#142)(OP-13-00021)

## NEPOTISM

A violation of section 25-1-53 would occur where an alderman resigns after his sister-in-law is hired as city clerk by the board and the alderman is then reelected while the sister-in-law is still serving as city clerk. (Gibson, 2/1/2013)(#151)(OP-13-00018)

## OPEN/MEETINGS/OPEN RECORDS

The formal adoption of a policy, which provides that (1) any member of the State Board of Education may participate in an official meeting of the Board by teleconference or video means, and (2) the public has access to the meeting in the location already designated in the board's Policy 1404 and its annual schedule of meetings, will satisfy the notice requirements for teleconference meetings. (House, 2/22/2013)(#272)(OP-13-00042)

## SUPERVISORS-AUTHORITY

The current board of supervisors under the discretionary authority provided in Section 1 of House Bill No. 1741 may revoke the authorization previously granted by its predecessor board. (Williams, 2/8/2013)(#220)(OP-13-00008)

A board of supervisors may negotiate with a vendor to lower prices on an existing contractual provision regarding collection of recyclables under a garbage and rubbish disposal program without the necessity of a new RFP process. The board may also undertake various aspects of the disposal including mulching of woody materials. (Nowak, 2/8/2013)(#220)(OP-13-00031)

A county disposing of rubbish or garbage under its statutory mandate is not required to follow the procedure set forth in Section 17-25-25 for disposal of typical personal property. (Walley, 2/22/2013)(#220)(OP-13-00056)

Where a county or counties has established a regional correctional facility, the board of supervisors has budgetary control over expenditures. The sheriff of the county in which the facility is located is the statutory chief corrections officer and has control over the selection, hiring and firing of correctional facility employees. (Horan, 2/22/2013)(#220)(OP-13-00043)

## TAXES

This language grants the authority to make determinations on eligibility of property for exemption to the State Tax Commission. The governing authority then has the discretion to determine whether to grant the exemption or any part thereof which is certified eligible by the State Tax Commission. (Miller, 2/1/2013)(#242)(OP-13-00028)

Miss Code Ann., Section 27-41-103 and 27-41-107 provide that the tax collector may issue a warrant directed to the sheriff of the county for seizure and sale of the personal property upon which the taxes were owed. The sheriff shall dispose of the personal property in accordance with Miss. Code Ann., Section 13-3-165. Pursuant to Miss. Code Ann., Section 27-53-5(5), the utility company, within its discretion, may provide information regarding its manufactured or mobile home customers. (White, 2/22/2013)(#250)(OP-13-00040)

## TREASURY (STATE)

For purposes of determining the validity of claims for unclaimed property, the State Treasurer is not a "person" within the meaning of Section 91-7-322. The State Treasurer may consider an affidavit which meets the requirements of Section 91-7-322; however, payment of the claim is not mandatory and the Treasurer retains authority to determine the validity of the claim pursuant to Section 89-12-39. (Jackson, 2/8/2013)(#259)(OP-13-00037)

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.

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