



# 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 January 01, 2013 through January 31, 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

## CIRCUIT CLERKS

The \$35.00 fee provided for in Section 25-7-13(1) (b) is only for "filing and recording orders or other papers and swearing witnesses" related to a suggestion for a writ of execution and judgment debtor actions. (Alexander, 1/25/2013)(#042)(OP-13-00012)

## COUNTIES-CLASSIFICATION

Miss. Code Ann. Section 25-3-25 outlines the population thresholds for sheriffs' salaries and sets a minimum amount below which a sheriff's salary may not be reduced. (Slover, 1/11/2013)(#049)(OP-12-00580)

## COURTS

Rule 2.07 of the Rules of Justice Court provides that a defendant in a civil action who had a judgment entered against him and fails to assert a counterclaim or setoff may later file a separate action upon such claim that he could have asserted by way of counterclaim or setoff. (Turnage, 1/11/2013)(#056)(OP-12-00572)

## CRIMINAL LAWS

Section 63-9-11 of the Mississippi Code is silent as to the time by which fines, court costs and the \$10.00 fee related to defensive driving courses must be paid. However, Section 21-23-7(10) provides that the municipal court may make rules for the administration of the court's business. (Nowak, 1/11/2013)(#057)(OP-12-00443)

## DEPARTMENT OF WILDLIFE, FISHERIES, & PARKS

The MDWFP has authority to promulgate and enforce rules relating to deer hunting with dogs on the Homochitto National Forest pursuant to statutory authority and an existing MOU with the U.S. Forest Service. (Ladner, 1/11/2013)(#269)(OP-12-00586)

## ELECTIONS-SPECIAL

A special election to fill a vacancy on the board of supervisors must be held on the next regular special Election Day. Any person who is appointed in the interim or elected to fill the unexpired term must be a resident of the district he or she serves and a qualified elector. No person is eligible to serve as county supervisor if a prior conviction renders him ineligible under Section 44 of the Mississippi Constitution of 1890. (Gaylor, 1/11/2013)(#075)(OP-12-00583)

## HOSPITALS-COMMUNITY

The staggered terms of two additional at large hospital trustees are to commence on the same date of the appropriate year as the terms of the other five trustees. Subsequent appointments are to be determined in five year increments from the expiration of the original terms. Order attempting to add two trustees in excess of the statutory maximum of seven was void ab initio. Board of Supervisors may, by order, revert to a five member hospital board of trustees. (Sanders, 1/11/2013)(#092)(OP-12-00565)

## INSURANCE COMMISSION-DEPT OF

The Department of Insurance has authority to submit an application to establish a health insurance exchange without approval and over the objection of the governor. (Chaney, 1/15/2013)(#095)(OP-13-00010)

## INTERLOCAL AGREEMENTS

Approval of Amendment of Interlocal Agreement for Collection of Taxes and Assessment of Property by the Pike County Tax Assessor for the City of Magnolia, the City of McComb, the Town of Summit, and the Town of Osyka. (Dowdy, 1/2/2013)(#277)(OP-12-00577)

Interlocal Agreement between the City of Jackson and Hinds County regarding the resurfacing of the Grove Park Walking Trail is approved. (Joiner, 1/11/2013)(#277)(OP-12-00588)

Interlocal Agreement between the Town of Shuqualak and Noxubee County whereby the county will collect municipal taxes is approved. (Butler, 1/8/2013)(#277)(OP-12-00573)

Interlocal Agreement between the Town of Sebastopol and Scott County whereby the county will collect municipal taxes is approved. (Ervin, 1/11/2013)(#277)(OP-12-00584)

Interlocal Agreement between the City of Macon and Noxubee County whereby the county will collect municipal taxes is approved. (Butler, 1/8/2013)(#277)(OP-13-00005)

Interlocal Agreement between the Town of Brooksville and Noxubee County whereby the county will collect municipal taxes is approved. (Butler, 1/8/2013)(#277)(OP-13-00004)

Interlocal Agreement between the City of Ridgeland and Madison County regarding the improvements to Old Agency Road from Whipoorwill Lane to Livingston Road is approved. (Gabriel, 1/11/2013)(#277)(OP-12-00589)

Interlocal Agreement between DeSoto County and the Town of Walls for joint animal control enforcement is approved. (Nowak, 1/15/2013)(#277)(OP-13-00009)

Approval of Interlocal Agreement between Winston County and Louisville providing for the housing of Louisville inmates in the Winston County jail. (Hathorn, 1/28/2013)(#277)(OP-13-00032)

Approval of Interlocal Agreement between Desoto County, Mississippi and the Town of Walls to maintain public roads and provide certain engineering services. (Nowak, 1/23/2013)(#277)(OP-13-00019)

Interlocal Agreement between Washington County and the City of Greenville for the collection Ad Valorem and Special Assessment Taxes is approved. (Warrington, 1/31/2013)(#277)(OP-13-00029)

## MUNICIPALITIES

Once a city council has failed to confirm an appointment, the mayor may not reappoint the same individual to the same position. While we are aware of no prohibition barring the mayor from requesting that a school board trustee resign from his/her position on the municipal school board, the school board trustee is under no obligation to resign simply because the mayor has made such a request. (Magee, 1/11/2013)(#142)(OP-12-00576)

The municipal governing authorities set the rates for customers of a municipally owned utility who reside within the corporate limits. The governing authorities cannot delegate the statutory authority to set rates to a private company which is operating the utility pursuant to a lease agreement. Rates set by the governing authorities must be at a level that assures private utility company that it may expect to receive a reasonable profit. (Harness, 1/18/2013)(#142)(OP-12-00575)

There is no authority which would authorize the Yazoo City Public Service Commission to "round up" its utility bills, whether voluntary or involuntary, to generate funds for municipal projects. Should a citizen wish to make a monetary donation to a municipality, he/she may do so directly to the municipality. (Sanders, 1/25/2013)(#142)(OP-13-00007)

## SEPARATION OF POWERS

A justice court clerk may serve simultaneously as a member of the board of aldermen. (Beshears, 1/18/2013)(#271)(OP-13-00001)

## SUPERVISORS-AUTHORITY

The Board and the Chancery Clerk can continue to remit tax payments under Senate Bill 3072 of the General Session Laws of 1999 to the Stone County Economic Development Partnership and will be entitled to the protections of Section 7-5-25 in accordance with its requirements and limitations. (Gibson, 1/11/2013)(#220)(OP-12-00591)

Board of supervisors may purchase equipment for the conservation officer working in said county as long as such equipment is used for "the purpose of creating, improving or restoring parks, public game and fish habitat lying or to be situated wholly or partially within such county or in an adjoining county" as authorized in the appropriation bill for the Department of Wildlife, Fisheries & Parks. (Power, 1/11/2013)(#224)(OP-12-00579)

The board of supervisors may place a new county logo on all county vehicles to allow the public to better recognize county vehicles. However, the county must continue to comply with the vehicle identification and marking requirements contained in Miss. Code Ann., Section 25-1-87 (1972). (Neyman, 1/11/2013)(#227)(OP-12-00571)

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/>