



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 July 01, 2013 through July 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

AGRICULTURAL COMMISSION

Commissioner may enter into an agreement with the Commodity Credit Corporation ("CCC") for the CCC to collect peanut assessments from Mississippi producers who have put peanuts under loan with or sold peanuts to the CCC and to remit these assessments to the Department, as provided in Miss. Code Ann. Section 69-48-5. (Smith, 7/12/2013)(#004)(OP-13-00232)

COUNTIES-CLASSIFICATION

Whether Madison County Public Defenders are properly classified as independent contractors is a determination that must be made by the Madison County Board of Supervisors consistent with fact. The findings of the Board are subject to review by a court of competent jurisdiction. (Espy, 7/5/2013)(#049)(OP-13-00227)

COUNTY SOIL CONSERVATION DIST

Soil and water conservation district employees hired pursuant to Section 69-27-33 are considered county employees only for the purpose of including the employees in a county life and/or health insurance or workers' compensation insurance program. Upon agreement between the county board of supervisors and the district commissioners, the county may provide to district employees certain insurance benefits as stated in Section 69-27-33. The county is not required to provide retirement benefits to district employees. (Smith, 7/19/2013)(#054)(OP-13-00259)

CRIMINAL LAWS

A requirement that inmates visit with friends and relatives over telephones installed at the facility is not cruel and unusual punishment.. (Slover, 7/5/2013)(#057)(OP-13-00243)

HOSPITALS-COMMUNITY

An individual appointed by a board of supervisors as trustee of a county owned community hospital may not enter upon the duties of that office or receive any remuneration until he or she qualifies for the office by, inter alia, securing the statutorily required bond. If the appointee fails to acquire the bond within a reasonable period of time, the board of supervisors must appoint another qualified individual to fill the office. (Williams, 7/26/2013)(#092)(OP-13-00267)

INTERLOCAL AGREEMENTS

Approval of Interlocal Agreement between twenty counties for bidding and receiving aerial photography and survey services. (Wallace, 7/31/2013)(#277)(OP-13-00287)

Approval of Interlocal Agreement between Choctaw County, Mississippi and Oktibbeha County, Mississippi regarding equipment and the labor of an operator of Oktibbeha County for the paving of streets and roads. (Wright, 7/23/2013)(#277)(OP-13-00272)

The Interlocal Cooperation Agreement between the Cleveland School District and the Town of Marigold for the establishment, operation and maintenance of a storm shelter is approved. (Nowell, 7/3/2013)(#277)(OP-13-00220)

Approval of 2013 Interlocal Agreement between Wayne County, Clarke County and Greene County and the Sheriff of each county, the City of Quitman and the Chief of Police of Quitman and the City of Waynesboro and the Chief of Police of Waynesboro establishing the South Mississippi Narcotics Task Force. (Pursell, 7/17/2013)(#277)(OP-13-00276)

Approval of Interlocal Security Agreement between Clay County and West Point School District providing for School Resource Officer. (Storey, 7/17/2013)(#277)(OP-13-00275)

MUNICIPALITIES

Proposed amendments to the City of Greenville's special charter would provide that, in the event of a special election to fill a vacancy in the office of mayor, the vice Mayor would receive the same rate of pay as the Mayor until the newly elected takes the oath of office. It would clarify the duties and authority of the Mayor and provide for a line of succession should the Mayor and Vice Mayor be unable to perform the required duties of the office of Mayor. The proposed amendments are consistent with the Constitution and laws of the United States and the Constitution of the State of Mississippi. (Wilson, 7/19/2013)(#139)(OP-13-00264)

Generally, the minutes of a public body are public record and any exhibit or attachment is a part of the minutes and as such is a public record. However, the public body is authorized to redact a copy of an exhibit or attachment to the minutes which is statutorily exempt from the public records act prior to making the minutes available for public examination. Although not available for public inspection, the original unredacted exhibit or attachment should remain on file with the municipality. (Butler, 7/26/2013)(#142)(OP-13-00274)

While there are no statutory provisions which specifically address allocated versus unallocated municipal funds, we direct your attention to Mississippi Code Annotated Section 21-35-25 regarding revisions to the municipal budget. (Custom, 7/26/2013)(#142)(OP-13-00260)

Municipality is not authorized under Section 21-37-21 to maintain a cemetery unless the cemetery is owned or controlled by the municipality. (Hollingsworth, 7/26/2013)(#142)(OP-13-00273)

A municipality is prohibited from accepting a discounted amount of a fee or from paying a credit card service charge, or any portion thereof. Without some adjustment on a case by case basis, a flat assessment of a percentage per transaction will result in an "overcharge" or an "undercharge", depending upon the amount of the credit card processing fee, and would be improper. (Baker, 7/26/2013)(#142)(OP-13-00228)

A municipality may not enter into a contract that would grant one entity use of municipal property to the extent that other similarly situated entities are denied equal access to the facility. (Malette, 7/5/2013)(#142)(OP-13-00214)

While the City of Laurel is not obligated to comply with the statutory provision of Section 21-31-1, et seq. by virtue of the fact that it meets the provisions of Sections 21-31-1 and 21-31-51, it has voluntarily subjected itself to its statutory provisions with respect to civil service coverage of its employees as a result of it opting to continue its civil service coverage, even after it was no longer required to do so. In municipalities where coverage for all employees is not mandated, the initial assessment of what positions will be included or excluded is made by the governing authorities by ordinance. Once the initial determination is made, covered positions may be changed to non-covered positions by the civil service commission in accordance with MCA Section 21-31-9. (Bassi, 7/12/2013)(#142)(OP-13-00244)

A municipality may waive its building permit fees and water and sewer tap fees, provided that such waiver is made under the authority of a properly drawn ordinance setting forth the conditions under which such a waiver might be granted. (Murdock, 7/26/2013)(#142)(OP-13-00249)

Consistent with its authority under Mississippi Code Annotated Section 47-1-39 and its home rule authority under 21-17-5, a municipality may provide meals to Mississippi Department of Corrections' inmates when said inmates are performing public service work within the municipality. (Trapp, 7/26/2013)(#142)(OP-13-00248)

NEPOTISM

As noted in Section 25-1-53 of the Mississippi Code, the nepotism statute" shall not apply to any employee who shall have been in said department or institution prior to the time his or her" relative came into their position. (McKee, 7/19/2013)(#151)(OP-13-00268)

Section 25-1-53 of the Mississippi Code, the general nepotism statute, does not apply to the hiring of a police officer, but only to the hiring of a police chief when a family member is on the board of aldermen. (McKee, 7/26/2013)(#151)(OP-13-00285)

OPEN/MEETINGS/OPEN RECORDS

Investigative reports, including an autopsy report and any other information created during the course an investigation of a death, that are in the possession of the county coroner or medical examiner are exempt from the provisions of the Mississippi Public Records Act and need not be released. (Thompson, 7/9/2013)(#272)(OP-13-00266)

PUBLIC DEFENDERS

Mississippi Code Section 25-32-5 prohibits a part-time public defender or part-time assistant public defender from engaging in the prosecution of criminal matters including those on behalf of a municipality. (Mills, 7/26/2013)(#059A)(OP-13-00269)

SEPARATION OF POWERS

Family masters exercise core powers of the judicial branch of government. Members of the Mississippi House of Representatives exercise core powers of the legislative branch of government. Sections 1 and 2 of the Mississippi Constitution prohibit one from serving in both capacities simultaneously. (Willis, 7/5/2013)(#271)(OP-13-00239)

One may not serve as a member of a municipal city council and as a city clerk of a neighboring municipality simultaneously. (Chambers, 7/12/2013)(#271)(OP-13-00235)

An alderman exercises core powers in the legislative branch of government. If an employee of the sheriff's department has law enforcement authority, the employee exercises core powers within the executive branch. If an employee exercises core powers in both branches, the employee would be in violation of the separation of powers doctrine. (Smith, 7/26/2013)(#271)(OP-13-00258)

STATE OFFICES & EMPLOYEES

Senate Bill 2625 applies to public employees hired on or after July 1, 2013. (Pickering, 7/12/2013)(#218)(OP-13-00251)

Senate Bill 2625 applies to public employees hired on or after July 1, 2013. SB 2625 does not prohibit the employment of persons whose criminal record has been expunged. (Currier, 7/12/2013)(#218)(OP-13-00234)

Senate Bill 2625 applies to public employees hired on or after July 1, 2013. (Chaney, 7/12/2013)(#218)(OP-13-00240)

SUPERVISORS

There is no authority for a county or its contractor for the collection of garbage to travel upon private roads. (Miller, 7/5/2013)(#220)(OP-13-00201)

The Board of Supervisors has the statutory authority to hire a county appraiser for reappraisal work or appraisal updates. However, it is implicit in 27-1-9 and additional relevant statutes that the tax assessor has the authority to hire appraisers in his office as deputies or employees to assist the tax assessor with the performance of the statutory duties of his office. (Shepard, 7/18/2013)(#220)(OP-13-00212)

Once the findings and determinations specified in Section 19-7-3(3) are made, the Board may convey or lease the property in question without advertising for bids. However, the conveyance or lease may not be for nominal consideration but must be for good and valuable consideration. (Shepard, 7/26/2013)(#220)(OP-13-00242)

Under Section 57-7-1, if land is found by the Board of Supervisors to not be needed for governmental purposes, the Board may lease or sell it for industrial purposes, including a sale to a private industry, upon such terms and conditions as the Board decides. (Power, 7/26/2013)(#220)(OP-13-00255)

Section 47-1-57(1) authorizes a board of supervisors to contract with a health services company to provide medical care to prisoners. The Sheriff must allow all medical treatment to be provided by the appropriate medical professionals employed by the health services company that is under contract with the Board of Supervisors. (Frederic, 7/19/2013)(#224)(OP-13-00256)

Funds may be paid from the Solid Waste Department into the general fund to reimburse the County for the actual costs paid for the Solid Waste Department's use of office space, utilities and supplies. (Munn, 7/19/2013)(#226)(OP-13-00238)

TAXES-HOMESTEAD EXEMPTION

A Board of Supervisors has no authority to allow an additional homestead exemption in prior years where the eligible homeowner did not file a proper written application in time. (Shepard, 7/5/2013)(#246)(OP-13-00229)

A Board of Supervisors has no authority to allow an additional homestead exemption in prior years where the eligible homeowner did not file a proper written application in time. (Shepard, 7/8/2013)(#246)(OP-13-00230)

If a factual determination is made that the subject property is "owner-occupied" (the applicant establishes that she is the child of the deceased owner and resides in the home), the Marion County Tax Assessor may grant Class 1 status to the property and assess the property at the rate of 10% rather than 15%.. (Shepard, 7/19/2013)(#246)(OP-13-00231)

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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