



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 June 01, 2013 through June 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

CRIMINAL LAWS

A sheriff's office may legally enter information on an unserved capias with the MJIC when the indicted subject has not been located. (Rigel, 6/14/2013)(#057)(OP-13-00199)

The reference in Section 63-3-519 of the Mississippi Code prohibiting the use of any type of radar includes any speed detection device including VASCAR and LASER. (Waggener, 6/14/2013)(#057)(OP-13-00200)

HB 2 which amends Section 97-37-1 of the MS Code provides in part that a person may carry a loaded or unloaded pistol upon the person in a sheath, belt or shoulder holster if the sheath or holster is wholly or partially visible. (Lance, 6/13/2013)(#057)(OP-13-00114)

ELECTIONS-CONTESTS

While personal service remains the best and preferred method of service for the notice specified in Section 23-15-911, alternate means of service, i.e., service by email and by posting at a candidate's residence, will satisfy the notice requirement in Section 23-15-911, when personal service is impossible or overly burdensome. (Myers, 6/17/2013)(#063B)(OP-13-00221)

INTERLOCAL AGREEMENTS

The Interlocal Cooperation Agreement involving the joint participation in the HOME Investment Partnership Program between the City of Moss Point and Jackson County is approved. (St. Pe', 6/7/2013)(#277)(OP-13-00204)

Conditional approval of Interlocal Agreement with Section 2 of the Agreement being amended to state that title to the right of way shall be obtained in the name of Clarke County. (Ruffin, 6/14/2013)(#277)(OP-13-00209)

Interlocal Agreement between the City of Vicksburg and Warren County to jointly apply for FY2013 Edward Byrne Memorial Justice Assistance Grant to be administered by the City of Vicksburg is approved. (Thames, 6/26/2013)(#277)(OP-13-00210)

Approval of Interlocal Agreement between Webster County and the City of Eupora for the use of the Eupora City Hall Building by the Webster County Circuit Court. (Meek, 6/7/2013)(#277)(OP-13-00184)

Interlocal Agreement between East Oktibbeha Wastewater District, City of Starkville and Mississippi State University whereby the District will utilize the City and University's Facilities for the Transportation and Disposal of Wastewater is approved. (Fox, 6/19/2013)(#277)(OP-13-00211)

Approval of Interlocal Agreement between Lauderdale County, Mississippi and the Meridian Public School District for the construction and maintenance of the recreational facilities. (Barry, 6/21/2013)(#277)(OP-13-00189)

JUSTICE COURT JUDGES

A justice court judge could accept a position of motorcycle instructor with the county sheriff without violating the separation of powers doctrine and could be paid for both jobs so long as he avoids the prohibition against being paid by both jobs for the same hours worked. (Neyman, 6/14/2013)(#100)(OP-13-00203)

MISCELLANEOUS

The local and private legislation creating the Stone County Economic Development Partnership contemplates that it is to be a public corporation. (Courtney, 6/7/2013)(#115)(OP-13-00176)

MISS. DEVELOPMENT AUTHORITY

Section 57-10-601(3)-(4) of the Code authorizes and empowers the MDA to (a) "take any action necessary to establish and implement a state program that meets all the requirements of the [A]ct" and (b) "administer funds transferred to the [S]tate under the [A]ct". The MDA has established the SBLGP under such authority of the Code. The federal government has approved the SBLGP as a state program (as defined in the Act) and the terms of the guarantee pursuant. The guarantee will be made to induce the Lender to make the Loan to the Borrower pursuant to the SBLGP. (Christensen, 6/7/2013)(#010)(OP-13-00190)

MEDICAID

The Governor may not recreate an agency expressly repealed by the Legislature or shift functions delegated to a repealed agency to another existing agency or to other personnel within the Office of the Governor. Likewise, the Governor may not expend funds not appropriated by the Legislature unless one of four enumerated exceptions is applicable. (Brown, 6/19/2013)(#124)(OP-13-00192)

MUNICIPALITIES

A municipality may enter into discussions only with the lowest and best bidder for a construction contract and, is allowed to enter into a construction contract with the lowest and best bidder for the construction for an amount lower than the lowest and best bid as long as there is not alteration or change in the specifications. (Harper, 6/7/2013)(#140)(OP-13-00188)

Incumbent alderman who did not seek re-election may hold over in office until his successor is elected and qualified. Conflict of interest questions must be addressed by the State Ethics Commission. (Wiggins, 6/28/2013)(#149)(OP-13-00226)

While it is well settled that governing authorities of a municipality may not bind their successors in office to a contract which takes away the rights and powers conferred by law, a current board may do so when there is express statutory authority to do so. In accordance with Section 31-8-1 et seq. and 21-33-315, the subject lease agreement and corresponding issuance of certification of participation bonds would be binding on the successor board. (Perkins, 6/14/2013)(#142)(OP-13-00187)

Real property leased by IHL to a nonprofit corporation under a long term lease is subject to reasonable municipal zoning ordinances. (Jacks, 6/28/2013)(#142)(OP-13-00195)

OTHER STATE AGENCIES, BOARDS & COMMISSIONS

The Pearl River Basin Development District has statutory authority to enter into an agreement with the Rankin-Hinds Pearl River Flood and Drainage Control District wherein the Rankin-Hinds District would assume the continuing maintenance obligations of the Pearl River District regarding a flood control project. (Rayner, 6/14/2013)(#218C)(OP-13-00194)

SCHOOLS

There is no statutory provision preventing a public school district from protecting its name or logo through trademark law. A school district also has the authority to adopt a school board policy prohibiting the use of the school district name in certain situations. Any money received by a school district from a third party authorized to use the school district's name or logo must be accounted for in accordance with statutory law and established procedures for the receipt, distribution, allotment and disbursement of funds by a school district. (Logan, 6/21/2013)(#187)(OP-13-00169)

The authority of a school district to provide insurance to its employees is limited to providing group insurance policies or group self-insurance benefits. (Turner, 6/28/2013)(#209)(OP-13-00207)

The municipal governing authorities make the interim appointment to fill a vacancy on a municipal separate school district board of trustees. The interim appointee will serve until a trustee is elected to serve the remainder of the term at the next general election. The Commission must indicate on the ballot that the persons whose names appear on the ballot are candidates for the unexpired term. The person elected will assume the office immediately upon certification of the results and will serve until January, 2016. (Hood, 6/14/2013)(#210)(OP-13-00197)

SUPERVISORS-AUTHORITY

A board of supervisors may, pursuant to Section 55-9-1 and 17-1-3, adopt an interlocal agreement with a municipal school district to provide gravel for parking lot areas of the football stadium complex owned by the municipal school district for use by the municipal school, county school and all citizens of the county. Additionally, Section 19-3-42(4) authorizes a county board of supervisors to assist in graveling the parking lot of the football stadium provided the board of supervisors shall first spread upon its minutes the written request of the school board for such work and the written approval of the board including the specific location of the parking lot to be worked. (Vassel, 6/7/2013)(#220)(OP-13-00193)

A county may remove trees from within the right of way in order to maintain the roadway. Additionally, the county may sell the timber as surplus property of the county pursuant to Section 17-25-25 (Brooks, 6/14/2013)(#220)(OP-13-00206)

TAXES-HOMESTEAD EXEMPTION

Pursuant to Section 27-33-31(1)(a), a surviving spouse is not required to file a new application for homestead exemption if proof of continued eligibility of homestead exemption has been provided to the tax assessor. Pursuant to Section 27-33-19(b), the amount of a homestead tax exemption for a family group joint owner is based upon the proportion of the total assessed value of all the property, equal to his fractional interest. (Nowak, 6/21/2013)(#246)(OP-13-00177)

UTILITY DISTRICTS

Subject to compliance with the applicable Ethics in Government Law, an employee of the West Jackson County Utility District could serve as a board member on the Jackson County Utility District. (Hannah, 6/14/2013)(#266A)(OP-13-00205)

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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