



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 March 01, 2013 through March 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

COUNTY COURTS

The youth court judge may release the records to the parents of a child if the court finds "compelling circumstances affecting the health or safety of a child and that such disclosure is in the best interests of the child." (Alfonso, 3/8/2013)(#051)(OP-13-00017)

COURTS

When a clerical error is found after service of civil process, there is no additional fee payable to the constable for the reissued process. When a writ of garnishment is being served on an employer in a county other than where the judgment is filed, the writ must be mailed to the justice court clerk of the county where the garnishment is to be served on an employer with process to be served by the constable of the employer's county. (Davis, 3/8/2013)(#056)(OP-13-00065)

Our commitment statutes do not require chancery courts or clerks to report to any entity when an individual is committed for mental evaluation. (Brame, 3/8/2013)(#056)(OP-13-00053)

CRIMINAL LAWS

A generic affidavit, not a Uniform Traffic Ticket or Uniform Traffic Ticket-Implied Consent Law, should be used for a violation of Section 63-11-31 (12)-Child Endangerment. (Lawrence, 3/8/2013)(#057)(OP-13-00059)

An individual with an enhanced weapon permit issued pursuant to Section 97-37-7(2) may carry a weapon on elementary or secondary school facilities if not prohibited by the terms of the school employment contract or Federal law. (Pennington, 3/1/2013)(#057)(OP-13-00026)

DEPT. OF FINANCE & ADMINISTRATION

While Mississippi Code Section 41-97-9 authorizes state agencies to adopt health-related incentives, including flexibility in work schedules to allow for exercise and coordination of discounts for gym memberships, we do not believe the statute authorizes DFA or the Health Management Board to allow for financial incentives to be paid to state employees who participate and complete certain wellness activities. (Moak, 3/22/2013)(#037)(OP-13-00055)

ELECTIONS

The circuit clerk is the custodian of the voter registration records and poll books and is responsible for inputting accurate data into the Statewide Elections System (SEMS). This includes the information provided by the county election commission resulting from the commission's statutory purging duties. We find nothing in the statutes governing SEMS that changes our long held position that it is the exclusive duty and responsibility to the circuit clerk or his or her designee to enter data into the computerized voter registration records. One or more county election commissioners may be designated by the circuit clerk to enter such data. (Glaskox, 3/8/2013)(#064)(OP-13-00064)

Pursuant to SB 2074, trustee elections for municipal separate school districts with added territory will take place on the first Monday in November of each year. (Rodolfich, 3/1/2013)(#067)(OP-13-00061)

Municipal separate school district trustees elected from the added territory currently holding office will continue serving until those elected in November of each respective election year take office on the first day of January following their election. (Atkinson, 3/8/2013)(#068)(OP-13-00062)

The city may not enforce a (2) year residency requirement for candidates for municipal office. The proper residency requirement would be thirty days in accordance with Section 23-15-11. (Shorter, 3/8/2013)(#071)(OP-13-00073)

INTERLOCAL AGREEMENTS

Interlocal Agreement between Jackson County and the City of Moss Point for the use of county owned voting devices in municipal elections is approved. (Broun, 3/6/2013)(#277)(OP-13-00079)

Interlocal Agreement between Jackson County and the City of Gautier for the use of county owned voting devices in municipal elections is approved. (Broun, 3/6/2013)(#277)(OP-13-00078)

Interlocal Agreements between Jackson County and the City of Pascagoula for the use of county owned voting devices in municipal elections is approved. (Broun, 3/6/2013)(#277)(OP-13-00080)

Approval of Interlocal Agreement between Webster County, Mississippi, and Webster County School District regarding the use of board room. (Meek, 3/11/2013)(#277)(OP-13-00082)

Approval of Interlocal Agreement between Yazoo County, Mississippi, and the City of Yazoo City, Mississippi, related to Ad Valorem and Special Assessment Taxes (O'Reilly-Evans, 3/11/2013)(#277)(OP-13-00090)

Approval of Interlocal Agreement between Madison County, City of Ridgeland and Pearl River Valley Water Supply District concerning collection of solid waste and recyclables. (Gabriel, 3/21/2013)(#277)(OP-13-00074)

Approval of Interlocal Agreement between DeSoto County, Mississippi, and DeSoto County School District for Construction of Confidence Training Course on school grounds. (Nowak, 3/21/2013)(#277)(OP-13-00096)

The Interlocal Agreement between the City of Booneville and Prentiss County for the participation of the county's emergency notification system is approved. (Pounds, 3/15/2013)(#277)(OP-13-00101)

Approval of Interlocal Agreement between Holmes County, Mississippi, and the City of Tchula, Mississippi, for the collection of household and light commercial waste. (Clark, 3/26/2013)(#277)(OP-13-00111)

Approval of Interlocal Agreement between Pearl River County, Mississippi and the City of Poplarville, Mississippi, to provide jail facilities and services for city prisoners. (Montgomery, 3/26/2013)(#277)(OP-13-00103)

Approval of Interlocal Agreement between Lafayette County, Mississippi, and the City of Oxford for widening and improving portions of highway. (Malette, 3/21/2013)(#277)(OP-13-00095)

Approval of Interlocal Agreement between Holmes County, Mississippi, and the City of Lexington, Mississippi, for the collection of household and light commercial waste. (Clark, 3/26/2013)(#277)(OP-13-00110)

LIQUOR LAWS

Section 67-1-14, in clear and unambiguous language, only authorizes municipalities which are county seats of counties which have voted against coming out from under the dry laws to conduct a referendum to permit the sale, etc. of alcoholic beverages. (Taylor, 3/8/2013)(#109)(OP-13-00072)

MISS. ARTS COMMISSION

The Commission may provide food and items at "Arts Day" if the Commission makes a determination consistent with the facts that providing food and items at the event is necessary and appropriate to perform its statutory duties. (Killebrew, 3/22/2013)(#117)(OP-13-00091)

MUNICIPALITIES

The City may contract with a third party to provide management and maintenance services that are currently provided by an in-house recreation department. (Bassi, 3/22/2013)(#140)(OP-13-00093)

The civil service provisions of Mississippi Code Ann. Sections 21-31-1 through 21-31-27 apply to unsworn employees of a covered municipality's police and fire departments. (Turnage 3/8/2013)(#149A)(OP-13-00067)

The matching provisions of Section 21-19-65 are applicable to funds received by a municipality under a state grant and thereafter donated to a non-profit corporation. (Carby, 3/8/2013)(#141)(OP-13-00071)

Upon a determination, consistent with the facts, that the financial support of a municipal police department promotes tourism and parks and recreation, the expenditure of funds generated by a tourism tax to supplement the town's police budget would be lawful. (John, 3/1/2013)(#142)(OP-13-00052)

Municipalities may use the Votamatic Punch Card voting machines in municipal elections. The machines must be tested for accuracy prior to the start of the counting of the ballots. (Austin, 3/15/2013)(#142)(OP-13-00086)

There is no authority for the municipality to sell or lease the alley. The municipality is authorized to close and vacate the alley in accordance with Mississippi Code Annotated Section 21-37-7. Once closed and vacated, the alley would revert to the land owner of the adjoining property, which, in this case, is the developer. With regard to the temporary closure of a street or alley, no authority exists which would authorize a municipality to reserve the right to reopen or "revisit the closure of the alley at the end of a specific term". (Jacks, 3/15/2013)(#142)(OP-13-00076)

Barring specific authorization, via local and private legislation, a municipality may only donate funds, generated from gaming revenues, to a school district in accordance with Mississippi Code Annotated Section 21-19-49(4). (Alexander, 3/22/2013)(#142)(OP-13-00087)

The mayor, in accordance with Mississippi Code Annotated Section 21-3-5, is required by law to enforce lawfully enacted ordinances, resolutions and orders of the board of aldermen. With respect to the mayor's general authority to expend municipal funds in the absence of a direct order of the board, the mayor may decide how municipal funds are to be spent once the board of aldermen has a properly approved budget that appropriates an amount of funding to a municipal department that has not been designated for a specific purpose. (St.Pe, 3/22/2013)(#142)(OP-13-00088)

Municipal governing authorities may, in their discretion, contract with certain professionals when they determine that such a contract is necessary and is in the best interest of the municipality. (Alexander, 3/1/2013)(#142)(OP-13-00057)

OPEN/MEETINGS/OPEN RECORDS

The applicable provisions of the Open Meetings Act mandate that executive sessions "shall be limited" to only those exceptions contained in the statute. Accordingly, a public body cannot enter into executive session in order to keep information confidential and to encourage an open discussion by the public body without public participation. (Dzielak, 3/1/2013)(#272)(OP-13-00066)

When producing justice court records pursuant to the Public Records Act, the social security number and date of birth should be redacted prior to production. (Berryman, 3/22/2013)(#272)(OP-13-00077)

PUBLIC PURCHASES CONTRACTS AND BIDDING

No authority exists which would permit a public entity to request additional sealed bids, even when bids are identical and are considered "equal" by the public entity. (Price, 3/22/2013)(#280)(OP-13-00089)

SUPERVISORS-AUTHORITY

The project board of commissioners for a recreational district has the authority to enter into contracts, subject to the requirements of Miss. Code Ann., Section 31-7-101 et seq. and Section 31-5-1, et seq. The commission also has the authority to lease facilities or tracts of realty for an authorized project. However, Section 55-9-32 clearly states that the project board of commissioners is answerable to the governing authorities of the political subdivision(s) that authorized the recreational district. Consequently, a board of supervisors may require the project board of commissioners to submit all contracts and leases to the board for approval and execution. (Nowak, 3/1/2013)(#220)(OP-13-00025)

A Board of Supervisors' allocation and payment to the recreational district authorized in Section 55-9-37 may be in the form of monetary payments from the general fund or may take the form of providing personnel and equipment belonging to the county to mow grass and maintain the grounds on the county parks and recreational areas. However, any use of road personnel and equipment must be reimbursed to the road fund from the county general fund or other lawful sources. (Neyman, 3/8/2013)(#220)(OP-13-00070)

Upon the request of the school district, a county board of supervisors may approve the maintenance of a private road that has previously been designated a school bus turnaround in compliance with Section 19-3-42. (White, 3/15/2013)(#220)(OP-13-00083)

A board of supervisors may not classify other license individuals as professional service providers in order to enter into a contract pursuant to Section 19-3-69. (Gaylor, 3/22/2013)(#220)(OP-13-00102)

TAXES-HOMESTEAD EXEMPTION

Section 27-33-31 provides that, in the event changes have occurred in the status of the homestead in the property description, ownership, use or occupancy since January 1 of the preceding year, the owner shall file a new application and provide all the information required under this section as for the initial application. (Espy, 3/8/2013)(#246)(OP-13-00046)

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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