



ATTORNEY GENERAL'S OPINION OUTLINE

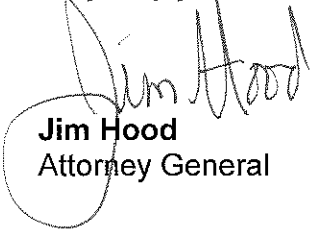
Volume 32, Number 8
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The purpose of the Opinion Outline is to inform state, county and municipal officials and other interested persons of official opinions issued by the Attorney General's Office. This outline contains synopses of opinions issued from August 01, 2013 through August 31, 2013. When opinions are of state-wide application or interest, we will try to publish the entire opinion rather than a synopsis. Unless otherwise indicated, all section numbers refer to sections of the Mississippi Code.

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Very truly yours,


Jim Hood
Attorney General

CORONERS (MEDICAL EXAMINERS)

Pursuant to Section 41-61-79, a vehicle utilized by a coroner in the performance of his duties is deemed to be an "emergency vehicle". (Scott, 8/9/2013)(#047)(2013-00288).

COUNTY

An action for constructive criminal contempt constitutes a criminal prosecution in this State. Under the wording of Section 19-23-13, a county prosecuting attorney is prohibited from defending a criminal prosecution in the name of the state or county in which he resides. A county attorney could not defend a criminal contempt matter involving non-compliance with an order of the Chancery Court in which the county attorney serves. (Moore, 8/2/2013)(#050)(2013-00281)

CRIMINAL LAWS

Pursuant to Section 99-15-53 of the Mississippi Code a prosecutor may not enter a nolle prosequi without the consent of the judge. (Roberts, 8/2/2013)(#057)(2013-00282)

ELECTIONS-GENERAL

A voting precinct may include portions of three supervisor districts. In accordance with Mississippi law, the precinct shall have only one polling place. Furthermore, precincts must be drawn in compliance with the provisions found in Miss. Code Ann. Sections 23-15-281 and 23-15-285. (Berry, 8/1/2013)(#067)(2013-00299)

HOSPITALS-COMMUNITY

The procedures proposed by the Board of Supervisors in its Sale Resolution concerning the conduct of the sale of its community hospital, the subsequent evaluation as set forth in said Resolution and the Request for Proposals using the "stalking horse" process are in compliance with the purposes and requirements of Section 41-13-15(10). (Brown, 8/27/2013)(#092)(2013-00303)

INSTITUTIONS OF HIGHER LEARNING

The IHL Board is not authorized to enter into employment contracts with one or more new or existing employees which provide, in part, that a portion of the compensation to be paid the employee shall be paid in the form of deferred compensation under an arrangement separate and apart from the deferred compensation program administered by PERS. (Bounds, 8/23/2013)(#094)(2013-00223)

INTERLOCAL AGREEMENTS

Approval of Interlocal Agreement between Jefferson Davis County, Mississippi and Town of Bassfield for providing police protection and law enforcement services. (Daughdrill, 8/6/2013)(#277)(2013-00293)

Approval of Interlocal Agreement between Attala County and Kosciusko providing for the housing of Kosciusko inmates in the Attala County Jail. (Pickle, 8/12/2013)(#277)(2013-00315)

Approval of Interlocal Agreement between the City of Senatobia and the Senatobia Municipal School District concerning School Resource Officers. (Callicott, 8/20/2013)(#277)(2013-00320)

Approval of Interlocal Agreement between Attala County and Kosciusko providing for an emergency communication district. (Pickle, 8/12/2013)(#277)(2013-00317)

Approval of Interlocal Agreement between Holmes County, Mississippi and City of Durant, Mississippi for the use of Holmes County equipment and the labor for the removal of debris and undergrowth from the ditches and waterways on city owned property. (Clark, 8/12/2013)(#277)(2013-00318)

Approval of Interlocal Agreement between the City of Laurel and the City of Ellisville for the sheltering of small domestic animals. (Bassi, 8/16/2013)(#277)(2013-00330)

Approval of Interlocal Agreement between the Cities and Chiefs of Police of Tupelo, Pontotoc, Amory, Booneville, Fulton, and Okolona; and the Counties and Sheriffs of the counties of Lee, Chickasaw, Monroe, Pontotoc, Prentiss and Tishomingo establishing the North Mississippi Narcotics Unit/2013-2014. (Bostick, 8/21/2013)(#277)(2013-00337)

Approval of Interlocal Agreement between the City of Southaven, Mississippi and the City of Olive Branch, Mississippi for the use of Justice Assistance Grant funds for promoting crime control and prevention. (Dye, 8/28/2013)(#277)(2013-00332)

Approval of Interlocal Agreement between the City of Columbia, Mississippi and the Lampton Sewer District for the joint use of the City treated effluent discharge line and for related purposes. (Hahn, 8/28/2013)(#277)(2013-00314)

Approval of Interlocal Agreement between Desoto County and Marshall County providing for Desoto County housing Marshall County Prisoners. (Nowak, 8/21/2013)(#277)(2013-00326)

Approval of Interlocal Agreement between Holmes County, Mississippi and City of Tchula, Mississippi for equipment and the labor for the removal of dilapidated structures. (Clark, 8/6/2013)(#277)(2013-00292)

Approval of Interlocal Agreement for Drainage Construction Project at Cow Pen Creek between City of Horn Lake and Horn Lake Creek Watershed Drainage District. (Neyman, 8/27/2013)(#277)(2013-00339)

Approval of Interlocal Agreement between DeSoto County, Mississippi and the Horn Lake Watershed Drainage District for entering into a join project to reduce the flooding impact within the Hallum Estates Subdivision. (Neyman, 8/28/2013)(#277)(2013-00341)

JUVENILE COURTS (YOUTH COURT)

Pursuant to the Uniform Rules of Youth Court Practice, Rule 29, a child must be personally served with a summons or waive process for a permanency hearing in Youth Court. (Haney, 8/9/2013)(#101)(2013-00208)

LEGISLATIVE

Senate Bill 2837 (2013) cannot be effectuated under Section 5 of the Voting Rights Act, so it is silent as to when it takes effect. Based on Section 75 of the Mississippi Constitution, we are of the opinion the bill took effect on the date the U.S. Supreme Court handed down its decision in Shelby County v. Holder or sixty days from the bill's passage (the date it was signed by the Governor)-whichever occurred later. (Campbell, 8/14/2013)(#104)(2013-00296)

MISS. DEPARTMENT OF CORRECTIONS

Offenders who were convicted under Section 97-17-23 are parole eligible unless there was a person present in the dwelling at the time of the burglary. Any individual convicted of non-residential burglary or burglary of a dwelling that is unoccupied at the time of the offense would be eligible for parole. (Scott, 8/23/2013)(#156A)(2013-00253)

MISS. DEVELOPMENT AUTHORITY

A county may not borrow funds from a planning and development district without specific statutory authority. See MS AG op., McKenzie (January 10, 1997). The "Home Rule" statute, Section 19-3-40, may not be utilized to borrow money from a planning and development district as there are specific statutes regarding a county's authority to borrow funds. The same is true for the lending of funds. There exists no statutory authority for the county to either borrow or lend funds in the manner presented. (Daughdrill, 8/9/2013)(#010)(2013-00222)

MUNICIPALITIES

A 1916 amendment to the City of Okolona's special charter removed the veto power of the mayor. (Gates, 8/16/2013)(#139)(2013-00278)

The Okolona City Council has the authority to appoint a qualified individual of its choice as municipal judge. The Mayor has no veto authority. The Mayor may not act as municipal judge. If a municipal judge pro tempore is not appointed or is absent or unable to serve, a duly appointed municipal judge may appoint any justice court judge of the county or municipal judge of another municipality to serve as judge pro tempore. The Mayor may not, "acting in concert" with the municipal judge, appoint a substitute judge. (Barton, 8/16/2013)(#139)(2013-00279)

An individual that serves as a vice president of a community college and is the second-in-command at the college may not simultaneously serve as an alderman under the separation of powers doctrine. Where no qualified elector qualified in a called special election, the board of aldermen should continue its efforts to find a qualified individual to appoint to the vacant position. In the interim, the town should operate with its current four-member board. With regard to any questions concerning Section 109 of the Constitution or the Ethics in Government Law, those questions should be addressed to the Mississippi Ethics Commission. (Wiggins, 8/30/2013)(#149)(2013-00345)

With respect to the authority of a municipality to join a group which would entitle it to discounts on the purchase of automobiles, we find no direct prohibition and are of the opinion that the municipality may do so under its home rule authority found at Section 21-17-5. However, we find no statutory provision which would authorize the acquisition of the proposed equipment outside the parameters of the public purchasing statutes found at Section 31-7-1 et, seq. (Mitchell, 8/8/2013)(#142)(2013-00270)

A municipality may contract with a third party to solicit and manage contracts involving the use of municipal property for the placement of antennas. Absent specific statutory authority, a contract having a term which exceeds the term of the current board is not void, but is voidable at the discretion of the following board. (Logan, 8/23/2013)(#142)(2013-00302)

The two percent (2%) franchise fee paid to municipalities by electric power associations is based on sales to residential and commercial customers. It does not include sales to industrial customers. (Butler, 8/23/2013)(#142)(2013-00307)

The exemption from municipal utility rate regulation by the Public Service Commission only applies to utility services provided within the municipal corporate limits and within one (1) mile outside the corporate limits. (McKee, 8/2/2013)(#142)(2013-00286)

A municipality may restrict the waiver of its building permit fees and sewer and water tap fees to certain geographic areas, certain types of businesses and projects of a certain size, provided that all persons or entities within a particular class of customers are being treated equally and the waiver is not arbitrary and capricious. (Murdock, 8/16/2013)(#142)(2013-00297)

A municipality is authorized to donate funds for the purpose of supporting social and community service programs, in accordance with Section 21-19-65. Such donation may be made in the form of cash or in-kind services performed by the municipality, which may include the use of municipal employees, municipal equipment and/or resources, provided that the in-kind donation can be directly determined and matched to the value of the existing matching funds. In addition, a municipality may contribute funds, and in-kind services to organizations for the purpose of advertising and bringing into favorable notice the opportunities, possibilities and resources of the municipality, pursuant to Sections 17-3-1 and 17-3-3. (Williams, 8/30/2013)(#142)(2013-00325)

Fire department deputies are not authorized to issue citations for misdemeanors. Only law enforcement officers are authorized to issue citations or warrants for misdemeanors. (Malette, 8/23/2013)(#143)(2013-00213)

SCHOOLS

The language of the bond resolutions adopted by the Board of Trustees is sufficiently broad to include repairs and improvements to the Northwest Middle School project. (Turner, 8/9/2013)(#175)(2013-00291)

A school district may request appropriate proof of the legal guardianship of a child for any legal purpose related to such child's enrollment in a particular school, subject to any applicable confidentiality requirements. (Jacks, 8/2/2013)(#180)(2013-00202)

Pursuant to Section 37-15-29(5), qualified military members or personnel have the discretion to enroll their children in a school district adjacent to the school district of residence, provided that the parent or guardian's choice of school district does not violate the thirty mile rule. (House, 8/30/2013)(#187)(2013-00301)

A school district does have the authority to donate land to the county for the purpose of building a public road if the school district complies with the statutory requirements outlined in Section 37-7-471 et seq. Pursuant to 'home rule' and other express statutory authority, a school district may pay a county for material used in construction of a new road, regardless of whether that road is on school property, if the school board finds that the relocation of said road would serve the best interests of the school and any expenditures are in accordance with statutory requirements for the use of public funds. (Burton, 8/9/2013)(#190)(2013-00277)

STATE PERSONNEL BOARD

Lists compiled by the Mississippi State Personnel Board from applications for employment that contain information pulled from the applications and to be provided to hiring agencies are exempt from disclosure under the Public Records Act. (Mosley, 8/23/2013)(#121A)(2013-00319)

SUPERVISORS-AUTHORITY

The only potential problem with the employment of a county election commissioner to work in the same county's road department lies in the ethics statutes found in Article 3, Chapter 4, Title 25, Mississippi Code of 1972. Opinions on those statutes are issued by the Mississippi Ethics Commission. (Russell, 8/30/2013)(#220)(2013-00321)

The Hinds County Board of Supervisors is legally obligated to pay the expenses enumerated in Section 23-15-301 and incurred in the September 24, 2013 primary elections to be conducted by the Democratic and Republican parties to determine nominees for the November 5, 2013 Special Election to fill two (2) vacancies on the Board. The manner in which those expenses are to be paid is to be determined by the Board. (Gaylor, 8/7/2013)(#220)(2013-00304)

The Hinds County Board of Supervisors is statutorily obligated to pay the expenses of the September 24, 2013 primary elections set by the Democratic and Republican parties. (Graham, 8/7/2013)(#220)(2013-00305)

A county, upon agreement of the vendor authorizing the third party processor to act as the authorized receiver of funds owed, may make payments to a third party processor by electronic transfer, subject to the systems and procedures established by the Department of Audit pursuant to Section 7-7-211. (Kellar, 8/23/2013)(#220)(2013-00312)

A county board of supervisors is not authorized to appropriate funds or grant a donation for the benefit of a non-profit corporation providing food to the poor without specific statutory authority. (Slover, 8/23/2013)(#220)(2013-00313)

The unavailability of the courthouse due to extensive repairs justifies the designation of a temporary courthouse for conducting annual tax sales in accordance with Section 27-41-45. (Reynolds, 8/23/2013)(#220)(2013-00300)

If the Board makes the factual determinations as set forth in Section 19-7-3(3), the real property in question may be conveyed to a private company provided the additional determination is made that the real property received by the county in the exchange of real property constitutes good and valuable consideration. (White, 8/23/2013)(#220)(2013-00290)

There is no specific statutory authority for donations by a county to a non-profit providing transportation services to the elderly. However, if the county can determine that a non-profit receives federal funds and is involved in an assistance program to the elderly which is approved or sponsored by the MS Council on Aging, a donation could be made. (Dowdy, 8/23/2013)(#227)(2013-00308)

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.

Complete opinions are also available on our internet web site at: <http://www.ago.state.ms.us>

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