



# 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 issued by the Attorney General's Office. This outline contains synopses of opinions issued from October 01, 2013 through October 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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**Jim Hood**  
Attorney General

## COURTS

A municipal court may only assess costs statutorily authorized, including those provided in Section 21-23-7(11). (St.Pe, 10/25/2013)(#056)(OP-2013-00423)

## CRIMINAL LAWS

An individual who qualifies pursuant to the terms of Section 99-19-71 may receive an expungement under paragraph (2)(a) and a separate expungement under paragraph (2)(b). (Williamson, 10/18/2013)(#057)(OP-2013-00414)

There is no authority for placing an "investigative hold" on an individual. Generally, an individual cannot be taken into custody for a crime unless there is probable cause to believe that a crime has been committed and the suspect committed it. He is then entitled to an initial appearance pursuant to Rule 6.03 of the Uniform Circuit and County Court Rules. (Adam, 10/4/2013)(#057)(OP-2013-00374)

Rule 6.08 of the Uniform Circuit and County Court Rules provides that justice court may use interactive audiovisual equipment when an appearance of a defendant or counsel is required in proceedings other than trials, probation violation hearings and sentencing hearings. The court should maintain a copy of the audiovisual recording as a record of the proceeding. It is not necessary to have the proceeding transcribed. (Phillips, 10/4/2013)(#057)(OP-2013-00365)

## ELECTIONS

Neither Section 37-5-9 nor any other statute authorizes or requires a runoff in a special or regular election of a member or members of a county board of education. (Haskey, 10/28/2013)(#067)(OP-2013-00395)

The effect of the passage of HB 877 (Chapter 470, Laws of 2009) and the subsequent partial preclearance and partial objection by Department of Justice, is that the election of candidates for membership on county boards of education and boards of trustees of special municipal separate school districts continues to be by a plurality vote as opposed to a majority vote.

With the additional passage and preclearance of Senate Bill 2074 (Chapter 516, Laws of 2012), the election of candidates for membership on the boards of trustees of municipal separate school districts with added territory are to be conducted by the appropriate county election commission. Runoffs are required if no candidate receives a majority of the votes, but such runoffs are now to be conducted three (3) weeks after the election instead of two (2) weeks as previously provided. (Turner, 10/30/2013)(#067)(OP-2013-00433)

A county superintendent of education is required to be a resident and qualified elector of the county from which he or she is elected. An interim superintendent appointed pursuant to Section 37-5-75 is required to meet the same qualifications as an elected superintendent. (Mord, 10/4/2013)(#071)(OP-2013-00392)

Absent a confirmation in writing from the registrant that the registrant's residence has changed to a location outside of the county, the election commission must follow the "confirmation card" process prescribed by the National Voter Registration Act in order to remove a voter from the voter roll. (Glaskox, 10/11/2013)(#074)(OP-2013-00405)

## HIGHWAY SAFETY PATROL

The authority to establish and collect fees pursuant to Section 45-1-21 is limited to the actual cost of furnishing records on file with the Department of Public Safety generated from the performance of various services and does not authorize the Department to create additional fees not provided for in Section 45-9-101 (Warren, 10/25/2013)(#089)(OP-2013-00415)

Section 45-1-21 does not authorize the Department of Public Safety to create additional fees not provided in section 45-9-101. There is no authority for a state agency to charge fees in excess of the statutory fees set by the Mississippi Legislature. (Santa Cruz, 10/25/2013)(#089)(OP-2013-00424)

## INTERLOCAL AGREEMENTS

Approval of Interlocal Agreement between Lamar County, the Sheriff of Lamar County and the Lamar County Board of Education providing law enforcement assistance. (Norton, 10/23/2013)(#277)(OP-2013-00443)

Approval of Interlocal Agreement between the City of Canton, Mississippi and Madison County, Mississippi regarding actions taken pursuant to the TIF Act. (Walker, 10/24/2013)(#277)(OP-2013-00426)

Approval of Interlocal Agreement between Webster County, Mississippi and Clay County, Mississippi for use of equipment and labor for paving of public roads. (Marshall, 10/2/2013)(#277)(OP-2013-00419)

Approval of Interlocal Agreement between the Town of Scooba, Mississippi and Kemper County, Mississippi for the construction of a walking path in the city park. (Wiggins, 10/25/2013)(#277)(OP-2013-00444)

Approval of Interlocal Cooperation Agreement between the City of Madison and Madison County for the rebuilding and overlay of the Cedarport Subdivision Entryway. (Hedglin, 10/25/2013)(#277)(OP-2013-00427)

Approval of Interlocal Agreement between East Central Harrison County Public Utility Districts Nos. 1, 2, and 3, and Northeast Harrison Water and Sewer District for the provision of water and sewer services. (Holleman, 10/15/2013)(#277)(OP-2013-00385)

## MUNICIPALITIES

A municipality may accept the donation of real property, provided that the donation does not conflict with public policy, does not result in an economic detriment to the municipality or does not constitute an unlawful donation. Once a municipality acquires the real property, and ad valorem tax liens or assessments are extinguished. However, such extinguishment does not relieve the previous owner of any personal liability that may have accrued for any unpaid taxes and assessments. A municipality may, as a part of a purchase contract or lease agreement, agree to pay an amount equal to the current year's taxes, or in the case of delinquent taxes, a certain amount of money, up to the fair market value, to offset the land owner's tax personal liability. (Hollingsworth, 10/11/2013)(#142)(OP-2013-00369)

Any employee, other than a part time employee, may enjoy the protections of civil service coverage, as provided in Section 21-31-1 through 21-31-27 and Sections 21-31-57 through 21-31-75, in certain qualified municipalities, regardless of whether they are paid monthly, weekly, yearly or hourly. (Seals, 10/11/2013)(#142)(OP-2013-00388)

Since the Section 4 formula in the Voting Rights Act has been struck down, there is no Section 5 preclearance requirement. (Carby, 10/11/2013)(#142)(OP-2013-00407)

A municipality may not donate the use of municipal real property to a private not-for-profit corporation without specific statutory authority to do so, as such may result in an unlawful donation. Any funds collected for the use of its facilities would be deposited into the municipal treasury to be used like other municipal funds. Municipal fees charged for the use of its facilities should be reasonably tailored to compensate the municipality for expenses directly related to the use of the property by the organization, group or individual and not for the purpose of making a profit. Barring specific statutory authority, no authority exists which would authorize the municipality to engage in private enterprise/business nor in a profit-making venture. A municipality is not authorized to use public funds, equipment or labor for the purpose of making improvements to private property, even when the municipality is compensated for such use of municipal resources. In accordance with Section 15-1-51, statutes of limitation run in favor of a municipality. (Satcher, 10/11/2013)(#142)(OP-2013-00387)

The municipal governing authorities may donate funds, equipment or in-kind services to the Vicksburg Warren County School District, pursuant to the authority granted in Section 21-19-49. In addition, the municipality may waive its facility rental fee for other governmental entities, including, but not limited to, school districts. (Thomas, 10/18/2013)(#142)(OP-2013-00408)

Municipal governing authorities may convey municipal buildings and municipal real property to a school district, in accordance with Section 21-19-49(1). (Trapp, 10/25/2013)(#142)(OP-2013-00420)

The governing authorities of the City of Lexington may grant additional personal leave days in lieu of a salary increase, as long as any additional leave time that exceeds the amounts provided in Section 25-3-91 et seq. is not reported to PERS and is not considered when determining creditable service and retirement benefits. (Riley, 10/4/2013)(#142)(OP-2013-00396)

Section 21-27-19 (Revised 2007) precludes a utility commission created pursuant to Section 21-27-13 from loaning money to the municipality it serves. (Sanders, 10/11/2013)(#142)(OP-2013-00390)

Whether the financial cash incentive falls within the parameters of House Bill 1740 (Laws of 1995) is a factual determination to be made by the governing authorities, subject to judicial review. (St. Pe, 10/18/2013)(#142)(OP-2013-00409)

The maintenance of municipal rights of way is the responsibility of the municipality. We find no authority for a municipality to force an adjacent property owner to maintain a municipal right of way, or any portion thereof. (Murdock, 10/18/2013)(#142)(OP-2013-00401)

A municipality is authorized to perform work to prevent erosion and flooding on private property, with the permission of the land owner, to correct unsafe conditions or flooding, provided that it makes the appropriate factual findings and such work is done for the purpose of mitigating damages. A municipality may take whatever measures it deems necessary, which may include the purchase of property to develop a detention area, to resolve street flooding and to prevent erosion and flooding on private property, provided that is not being made to benefit the sole land owner. Naturally, any purchase of real property by the municipality would have to comply with the pertinent statutory provisions concerning the acquisition of real property. (Cashion, 10/4/2013)(#142)(OP-2013-00379)

## OPEN/MEETINGS/OPEN RECORDS

The staff and employee meetings within the Division of Medicaid are not subject to the Open Meetings Act and the newly enacted notice requirement found in Section 25-41-13(3). (Dzielak, 10/4/2013)(#272)(OP-2013-00393)

To the extent the Division of, Bureau of Program Integrity investigates criminal activities, it can be classified as a "law enforcement agency" for purposes of the Public Records Act. For this reason, the Bureau can avail itself of the statutory exemption for investigative reports to the extent that such documents are properly characterized as investigative reports under the statutory definition. (Dzielak, 10/3/2013)(#272)(OP-2013-00394)

## OTHER STATE AGENCIES, BOARDS & COMMISSIONS

Because it is a factual determination, this office cannot answer the ultimate question of whether the Mississippi Department of Wildlife, Fisheries, and Parks can impose a blanket restriction upon its sworn officers from accepting outside law enforcement employment. MDWFP would have to determine whether, within the constraints of Section 7.5.13 of the State Personnel Board Policies and Procedure Manual, such a prohibition is appropriate. (Polles, 10/18/2013)(#218C)(OP-2013-00404)

The Department of Agriculture and Mississippi Fair Commission can restrict the concealed carrying of weapons by regular permit holders by posting the statutorily authorized signage, other signage that provides actual notice or otherwise providing actual notice to persons entering onto the subject properties. With regard to restrictions on the open carrying of firearms, the Department and MFC are authorized under state law to regulate the open carry of weapons on a person onto properties such as the Mississippi Farmer's Market, the Mississippi Agriculture and Forestry Museum the Mississippi State Fairgrounds Complex, if the responsible entity determines that such a prohibition is necessary to secure the properties and to ensure the safety of the public. However, such restrictions on open carry would have to comply with federal constitutional requirements, and such a determination is beyond the purview of this office's authority to opine by official opinion. (Smith, 10/23/2013)(#218C)(OP-2013-00215)

## SCHOOLS

The school district may enter into interlocal agreements with the cities of Pascagoula and Gautier to provide matching funds for the Safe Routes to School Program grants, and that Sections 37-7-301.1 and 37-7-301 do provide authority for the school district to enter into interlocal agreements for such purposes. (Rodolfich, 10/11/2013)(#180)(OP-2013-00398)

While a school district may pay contracted employees their salaries in twelve (12) monthly installments over the contract period, the Mississippi Constitution prohibits paying any person for work not actually performed. Thus, a school district may only pay an employee for the actual worked performed in any month, including the first month of the employee's contract. (Fairburn, 10/11/2013)(#180)(OP-2013-00322)

Persons with enhanced carry licenses may enter onto school facilities without violating the concealed weapons statutes and may enter onto the public areas of those schools without being subject to a possible charge of trespass. School districts may bar persons, including persons with enhanced carry permits, from areas of the school to which the general public is not allowed. (Cantrell, 10/1/2013)(#187)(OP-2013-00023)

Hiring and non-renewal procedures for school staff and principals are set out by statute. These statutes do not provide for a reapplication process, and for this reason, we do not believe that a superintendent has any authority to require an employee to reapply. (Taplin, 10/11/2013)(#198)(OP-2013-00402)

Hiring and non-renewal procedures for school staff and principals are set out by statute. These statutes do not provide for a reapplication process, and for this reason, we do not believe that a superintendent has any authority to require a principal to reapply. (Taplin, 10/11/2013)(#198)(OP-2013-00403)

## SHERIFFS-AUTHORITY

It is lawful for a sheriff to allow inmates in his custody to purchase electronic cigarettes from an inmate commissary. (Rasco, 10/11/2013)(#213)(OP-2013-00309)

## SUPERVISORS

The Leflore County Board of Supervisors may issue and county employees may accept a thirteenth payroll check as a result of a policy requiring the time of payment be changed from the first day of the month to the last day of the month, if a determination has been made that there are no excess monies paid above the salaries or wages set by the Board. (Chiles, 10/11/2013)(#220)(OP-2013-00406)

A county may enter into a contract with a third party, including a rural water association, for the billing and/or collection of the garbage fees of its customers. A county also has the authority to enter into an interlocal agreement with the municipality for the billing and/or collection of the garbage fees of its customers. (McNeal, 10/11/2013)(#220)(OP-2013-00389)

Board of Supervisors may not abolish previously created board of commissioners of a utility district or replace commissioners with supervisors as individual terms expire. (Dulaney, 10/11/2013)(#220)(OP-2013-00375)

A county board of supervisors has the authority, pursuant to. Section 19-3-40 to modify or rescind any existing order. (Brooks, 10/18/2013)(#220)(OP-2013-00397)

A member of the Board of Supervisors cannot be appointed as a park commissioner under Section 55-9-81. The park commission exercises core executive power. Such an appointment would be precluded under the separation of powers doctrine and would cause the supervisor to forfeit his office as supervisor. (Guice, 10/18/2013)(#220)(OP-2013-00421)

Claim against county that accrued almost two decades ago is barred by the statute of limitation. (Sanders, 10/18/2013)(#220)(OP-2013-00400)

A Board of Supervisors has the authority pursuant to, Section 19-3-40, to pass an ordinance regulating the use of county roads so long as the ordinance is not in conflict with state law. It is entirely within the discretion of the Noxubee County Board of Supervisors, pursuant to, Section 65-7-43 and Section 65-7-45 and Section 63-5-51, to determine the specific public roads or bridges, or any section or length of any public road, or any particular bridge in the county it will regulate. (Hemphill, 10/4/2013)(#231)(OP-2013-00381)

### TAXES-AD VALOREM

Pursuant to Section 19-3-40, the board of supervisors has discretionary authority to adopt an order allowing installment payments of garbage fees levied as a special assessment. If a board of supervisors has adopted such an order, and a separate order allowing installment payments of the special assessment, both payments would be collected in accordance with the schedule set forth in Section 27-41-1. (Slover, 10/25/2013)(#236)(OP-2013-00425)

### UTILITY DISTRICTS

The use of a right-of-way belonging to the State or a county by the Sebastopol Natural Gas District is contingent upon the consent of the owner of such right-of-way. (Stribling, 10/18/2013)(#266A)(OP-2013-00382)

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.

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