



ATTORNEY GENERAL'S OPINION OUTLINE

Volume 33, Number 9
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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 September 01, 2013 through September 30, 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

AUDITOR OF PUBLIC ACCOUNTS

It is lawful for the State to pay claims electronically. (Pickering, 9/27/2013)(#017)(2013-00367)

BONDS

Pursuant to Section 21-45-3(b), the county is authorized to reimburse the developer from TIF bond proceeds for infrastructure improvements. Regarding the privately owned convention center, a county is not authorized to reimburse a developer from TIF bond proceeds for improvements that cannot be undertaken by the county under the authority found in the law. (Ladner, 9/13/2013)(#034)(2013-00310)

COURTS

A county has no authority to provide a local assessment to fund drug courts. (Houston, 9/6/2013)(#056)(2013-00327)

CRIMINAL LAWS

Once the original affidavit is filed with the court the judge may rely upon a scanned image of the filed affidavit when issuing an arrest warrant. (Nowak, 9/6/2013)(#057)(2013-00263)

DEPARTMENT OF EDUCATION

The decision whether data including Social Security Numbers and information from personnel and professional applications can be disclosed to the State Longitudinal Data System will depend, at least in part, on factual determinations and on regulations, practices and/or policies adopted by the Governing Board. At this time, our understanding is that the Governing Board has not developed any provisions regarding the transfer of data to the State Longitudinal Data System. Accordingly, it is the opinion of this office that because this predicate act has not occurred, Mississippi Department of Education is not obligated nor authorized under Sections 37-154-1 and 37-154-3 to transfer the information discussed in your letter request. (House.

ELECTIONS-QUALIFICATION OF CANIDATE

Previous school board members are not eligible to serve on a new school board elected pursuant to Section 37-7-104. (McWilliams, 9/20/2013)(#071)(2013-00383)

INTERLOCAL AGREEMENTS

Approval of Interlocal Agreement between Rankin County and Pearl River Valley Water Supply District regarding enforcement of County ordinances on District land within the County. (Slay, 9/10/2013)(#277)(2013-00348)

Approval of Interlocal Agreement between Harrison County, Mississippi and the City of D'Iberville, Mississippi for Emergency Communications including 911 Services. (Holleman, 9/19/2013)(#277)(2013-00372)

Approval of 2013-2014 Interlocal Agreement between Pike, Walthall and Lincoln Counties; the Sheriffs of Pike, Walthall and Lincoln Counties; the Cities of McComb and Brookhaven; and the Chiefs of the McComb and Brookhaven Police Departments establishing the Southwest Mississippi Inter-Jurisdictional Narcotics Enforcement Unit. (Dye, 9/17/2013)(#277)(2013-00373)

Approval of Interlocal Agreement between Webster County, Mississippi and Clay County, Mississippi for use of equipment and labor for paving of public roads. (Berry, 9/25/2013)(#277)(2013-00377)

Approval of Interlocal Cooperation Agreement between the City of Natchez and Adams County for the provision of fire protection services is approved. (Slover, 9/24/2013)(#277)(2013-00370)

MISCELLANEOUS

A State Senator may accept an educational ride provided by a railroad company which is for the sole purpose of educating public officials without violating the provisions of Section 188 of the Constitution or Section 77-9-15 where the ride is not for the purposes of transportation but solely for the purpose of educating officials on the railroad industry. (Simmons, 9/6/2013)(#115)(2013-00358)

MUNICIPALITIES

We find no "holdover" authority that would allow the previously appointed election commissioners to continue to serve beyond June 30, 2013, which was the last day of the term of office of the Mayor who made the appointments and the City Council that confirmed those appointments. (Bradley, 9/6/2013)(#149)(2013-00350)

A municipality may only use municipal funds to maintain a cemetery if it is determined that the municipality "owns" or "controls" the cemetery, as contemplated in Section 21-37-21. (Hollingsworth, 9/6/2013)(#142)(2013-00336)

All municipalities are required to have a municipal court. (Baker, 9/20/2013)(#142)(2013-00363)

A municipality has the authority to do what is necessary on public property, including street rights of way and easements, to correct unsafe conditions which were directly caused by the manner in which the municipality has drained its streets. Such authority to perform work is limited to the municipality's effort to mitigate damages, as opposed to providing a service to the land owner. While we do not find that a future obligation to maintain/repair arises as a result of work performed by the municipality in the past, the municipality would continue to have the obligation to maintain streets in a manner which does not create unsafe conditions or health hazards through erosion or flooding. (Manley, 9/6/2013)(#142)(2013-00324)

The notice provision of Section 21-19-11 provides that notice by U.S. mail is to be mailed to the address of the subject property and to the address where the ad valorem tax notice for such property is sent by the office charged with collecting ad valorem tax. A municipality must take reasonable precautions to prevent the destruction of the value of personal property, but may dispose of the personal property, if it is determined to be abandoned, in accordance with Section 21-39-21. A certified copy of the resolution adjudicating the costs and penalties associated with the clean-up of the property would be sufficient to enroll a lien against the subject property. In the event that a land owner cleans the property prior to the municipality beginning its actual clean-up efforts, we find no authority which would authorize the municipality to assess any costs, expenses or penalties against the land owner. (Miller, 9/20/2013)(#142)(2013-00347)

A county tax deed takes priority over a municipal tax deed, including a municipal deed that was obtained at a tax sale conducted pursuant to Section 21-19-11. A county tax deed does not "extinguish" a municipal tax deed issued as a result of a tax sale conducted pursuant to Section 21-19-11. The municipality, pursuant to Section 11-7-189(2), should endorse on the judgment roll the extent of the satisfaction of the judgment and should sign an entry showing any amount previously paid. (Lawrence, 9/20/2013)(#142)(2013-00364)

Municipal governing authorities may not grant a retroactive salary increase to the City Marshal. (Barton, 9/6/2013)(#142)(2013-00343)

The adoption of an ordinance relating to the operation of off-road vehicles on municipal streets would not be within the limited authority granted under Section 63-3-209 and would not be authorized under "home rule." (Miller, 9/20/2013)(#142C)(2013-00333)

OTHER STATE AGENCIES, BOARDS & COMMISSIONS

The Mississippi Department of Wildlife Fisheries and Parks and Commission has statutory authority to regulate wildlife enclosures that restrict the free ingress and egress of white-tailed deer. (Polles, 9/19/2013)(#218C)(2013-00245)

SUPERVISORS

A board of supervisors is authorized pursuant to Section 41-19-39 and Section 29-1-15 to convey real property to a mental health commission for the use of a hospital or other public use, such as a regional health facility. 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. The conveyance or lease may not be for nominal consideration, but must be for good and valuable consideration. (Nowak, 9/20/2013)(#220)(2013-00351)

The chancery clerk should maintain a book of the garbage liens and include any information determined to be needed for recording and indexing the liens. A garbage lien becomes effective on the date that the fees or charges become due and payable. (Russell, 9/13/2013)(#220)(2013-00323)

Although a board of supervisors may not deduct an unlawful expenditure from the payroll or future mileage reimbursement of a supervisor, it may file suit against the supervisor in order to recover the unauthorized expenditure. (Sanders, 9/6/2013)(#223)(2013-00334)

Section 19-4-1 and Section 19-4-7 authorize a board of supervisors to delegate to the county administrator the authority to administer all county affairs falling under the control of the board and carry out the general policies of the board, including the duty to approve travel by county employees and supervisors. (Brooks, 9/20/2013)(#227)(2013-00346)

TAXES-AD VALOREM

A policy requiring the filing of written objections prior to or at the commencement of the first Monday meeting of August would, in our opinion, be in compliance with Section 27-35-93. The board of supervisors may refuse to hear and may reject a written objection that is filed after the first Monday meeting of August. (Nowak, 9/27/2013)(#236)(2013-00376)

If the increase in dollars submitted in the school district's order was not properly advertised pursuant to Section 27-39-207(1), the amount must be excluded when setting the millage rate to fund the school board's budget. (Sanders, 9/4/2013)(#236)(2013-00355)

If the increase in dollars submitted in the school district's order was not properly advertised pursuant to Section 27-39-207(1), the amount must be excluded when setting the millage rate to fund the school board's budget. (Gibson, 9/4/2013)(#236)(2013-00356)

UTILITY DISTRICTS

Entities exempted from rate regulation by the Public Service Commission pursuant to Section 77-3-5(c) are nonprofit corporations or associations created pursuant to the Mississippi Nonprofit Corporation Act found in Section 79-11-101 et seq. Since the Tunica County Utility District was created pursuant to local and private legislation which specifically subjects its rates and charges to "review or regulation by the Mississippi Public Service Commission", the statutory exemptions from such regulation in Section 77-3-5(c) do not apply to said district. (Dulaney, 9/13/2013)(#266A)(2013-00349)

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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