



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 January 01, 2014 through January 31, 2014. 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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Very truly yours,


Jim Hood
Attorney General

COUNTY ATTORNEY

Sections 19-23-3 and 19-23-5 of the Mississippi Code establish the methods used to provide for an elected county prosecuting attorney. The salary is provided in Section 25-3-9. (Harness, 1/31/2014)(#050)(OP-14-00032)

INTERLOCAL AGREEMENTS

Interlocal Agreement Between Hinds County and the City of Clinton to Jointly Resurface Southern Oaks Drive From Pinehaven Drive to St. Charles Place in the City of Clinton is approved. (Banks, 1/14/2014)(#277)(OP-14-00003)

Approval of Interlocal Agreement between Adams County, the Sheriff of Adams County, Natchez and the Chief of Police of Natchez establishing the Metro Narcotics Unit. (Slover, 1/21/2014)(#277)(OP-14-00030)

The Interlocal Cooperation Agreement between the Gulfport-Biloxi Regional Airport Authority and the City of Gulfport, Mississippi is approved. (Long, 1/24/2014)(#277)(OP-14-00019)

The Interlocal Cooperation Agreement between the City of Lumberton and Lamar County is approved. (Phillips, 1/24/2014)(#277)(OP-14-00005)

The Interlocal Cooperation Agreement between the City of Purvis and Lamar County is approved. (Phillips, 1/24/2014)(#277)(OP-14-00038)

The Interlocal Cooperation Agreement between the City of Purvis and Lamar County is approved. (Phillips, 1/24/2014)(#277)(OP-14-00039)

The Interlocal Cooperation Agreement between the City of Hattiesburg and Lamar County is approved. (Phillips, 1/24/2014)(#277)(OP-14-00040)

Approval of Interlocal Agreement between Hinds County Board of Supervisors and Jackson Public School Districts. (Banks, 1/27/2014)(#277)(OP-14-00026)

Approval of Interlocal Agreement between Hinds County Board of Supervisors and Jackson Public School Districts. (Banks, 1/27/2014)(#277)(OP-14-00006)

Approval of Interlocal Agreement between Hinds County Board of Supervisors and Jackson Public School Districts. (Banks, 1/27/2014)(#277)(OP-14-00043)

Approval of Interlocal Agreement between Choctaw County, Mississippi and Webster County, Mississippi and Montgomery County, Mississippi. (Wright, 1/27/2014)(#277)(OP-14-00018)

MISCELLANEOUS

Section 7-5-25 of the Mississippi Code allows the Attorney General's office to issue official opinions to only certain State and local officials. (Nunley, 1/24/2014)(#999)(OP-14-00037)

MUNICIPAL CONTRACTS & PURCHASES

The city is required to follow the bidding procedure in 31-7-13(c) in awarding a construction contract for the demolition of the building. In order to dispose of or sell the personal property associated with the demolition of the building, the governing authority must make a finding that the property has ceased to be used for public purposes or that a sale of the property would promote the best interest of the governing authority. In this case, the city must follow the notice requirements in Section 17-25-25(2) because the value of the personal property appears to exceed \$1,000.00. (Hahn, 1/24/2014)(#140)(OP-13-00490)

MUNICIPAL OFFICERS

An alderman of a municipality may serve in any non-elected position in another municipality that does not authorize him or her to exercise "core powers" in the executive or judicial branch of government as defined by the Mississippi Supreme Court without violating the doctrine of separation of powers. The specific positions that an alderman could legally hold in another municipality must be determined on a case by case basis. (Walker, 1/17/2014)(#149)(OP-14-00007)

MUNICIPALITIES

There is no exception to the general prohibition against the equipping of vehicles with red lights set forth in Section 63-7-19 for vehicles assigned to municipal mayors. (Dye, 1/10/2014)(#142)(OP-13-00505)

A municipality may not enact a policy that serves to remove the mandate of the submission of the receipts, as required by Section 25-3-41(5), in regard to travel advancements. It is clear that municipal officers or employees are required to submit receipts of transportation, lodging, meals, fees and any other expenses incurred during the travel, as provided in Mississippi Code Annotated Section 25-3-41(5). To permit a municipality to adopt an ordinance which provides otherwise would be in direct conflict with Section 25-3-41(5) and would result in a violation of Section 21-17-5 ("home rule statute"). (Turnage, 1/10/2014)(#142)(OP-13-00488)

The determination of whether a mayor is "temporarily absent" or "disabled", as contemplated in Mississippi Code Annotated Section 21-3-13, is a factual determination to be made by the board of aldermen, subject to judicial review. The removal of a public official from office as provided in Section 25-5-5 is limited to elective county officers and does not apply to municipal officers. However, any public officer, including municipal officers, may be removed from office for the willful neglect of duty, upon conviction, in accordance with Article 6, Section 175 of the Mississippi Constitution of 1890. The mayor pro tempore, when acting in that capacity, assumes all duties, powers and responsibilities of the mayor and may do all things that the mayor may do, including, but not limited to, the opening of municipal mail addressed to the mayor. (Graves, 1/17/2014)(#142)(OP-13-00494)

A municipality is authorized to pay its employees via electronic deposit, provided that the employee has agreed to the deposit being "subject to the systems and procedures established by the Department of Audit pursuant to Section 7-7-211." A municipality may not force its employees to be compensated via electronic deposit. (Lawrence, 1/17/2014)(#142)(OP-13-00510)

The duties and responsibilities of a mayor in a code charter municipality are generally established and prescribed by the Legislature in Mississippi Code Annotated Section 21-3-15. The mayor is the chief executive officer of the municipality and has superintending control, i.e., general oversight and supervision of municipal departments and employees, of all the officers, employees and affairs of the municipality. The authority to set salaries in a code charter municipality rests solely with the governing authorities, pursuant to Mississippi Code Annotated Section and such salary must be set in good faith and may not be arbitrary and unreasonable when considered with the municipal resources and duties of the office. (Pepper, 1/17/2014)(#142)(OP-14-00008)

A governing authority is authorized, in its discretion, to provide municipal officers and employees with mobile phones, or in the alternative, to reimburse municipal officers and employees for the use of their personal mobile phones in accordance with the governing authority's powers under Mississippi Code Annotated Section 21-17-5, provided that such use of a mobile phone is reasonable and necessary for the conduct of municipal business. (Custom, 1/31/2014)(#142)(OP-14-00028)

Assuming that there is no separation of powers issue and an employee is working for one entity at a time and is not being paid by both entities at the same hours, he/she may hold positions with two different public entities. The mayor's "superintending control" means that he/she has general supervisory oversight of municipal government, but he/she may not become personally involved in the daily operation of the municipal departments. (Gilmore, 1/31/2014)(#142)(OP-14-00024)

A mayor in a code charter municipality may not suspend an employee without pay, as this authority rests solely with the board of alderman. A mayor in a code charter municipality may not be delegated the authority to suspend without pay pending final approval of the board of aldermen, as the authority to suspend without pay rests solely with the board of aldermen. No authority exists which would authorize an action of the board of aldermen to suspend an employee without pay to be applied retroactively, thereby depriving the employee of his/her compensation and benefits during the period of suspension with pay. (St. Pe', 1/31/2014)(#142)(OP-14-00011)

NEPOTISM

The son of an alderman may be appointed as the superintendent of the public works department, provided that such individual will not be serving as the street commissioner. In addition, the son of an alderman may be employed as a maintenance manager and waste water operator without resulting in a violation of Mississippi Code Annotated Section 25-1-53. (Figgs, 1/17/2014)(#151)(OP-14-00002)

OPEN/MEETINGS/OPEN RECORDS

Less than a quorum of a public body may meet to hear complaints of employees without violating the Open Meetings Law. However, we strongly advise that the individuals who attend such meeting consider the admonitions of the Mississippi Supreme Court in *Hinds County Board of Supervisors v. Common Cause of Mississippi*, 551 So.2d 107, 116 (Miss. 1989). (Jones, 1/10/2014)(#272)(OP-13-00499)

It is the opinion of this office that, unless authorized or required by statute, information such as dates of birth, complete social security numbers, partial social security numbers, home addresses and driver's license numbers should not be made public by the Justice Court Clerk. Likewise, it is our opinion that prior to publishing documents online that contain such information, the Justice Court Clerk should redact the information. (Neyman, 1/31/2014)(#272)(OP-14-00029)

OTHER STATE AGENCIES, BOARDS & COMMISSIONS

When a conflict between general law and an appropriation bill exists on the same area of law, the general law will control. However, agencies that willfully ignore the express intent of the Legislature set out in statements of legislative intention in appropriation bills, do so at their peril. (Polles, 1/10/2014)(#218C)(OP-13-00503)

It is the opinion of this office that where a landowner prepays assessments pursuant to statutory authorization, a public improvement district may not exclude or delete a landowner from the public improvement district and likewise cannot strip a prepaying landowner from his or her voting rights. It is our opinion that any liens associated with assessments that have been paid or prepaid should be released. (Montgomery, 1/17/2014)(#218C)(OP-14-00009)

SCHOOLS-DISTRICTS

It is the opinion of this office that in order to give meaning to the two statutory provisions (Section 37-167-1(8) and Section 37-6-13) and prevent an absurd result, the reduction of pay as required by 37-167-1(8) applies to all school board members in school districts with failing schools whether they receive their compensation as an annual salary or per diem.

It is the opinion of this office that the one-half reduction of compensation for school board members beginning in November, 2013, is in compliance with the New Start School Program law.

This office has previously opined that there is no statutory deadline by which a school board member must elect to be paid a salary instead of per diem. However, if and when such an election is made, it is prospective in nature. MS AG Op., Bordis (November 1, 1996). Therefore, the election can take effect immediately. (Turner, 1/10/2014)(#180)(OP-13-00485)

The State Board has plenary authority to direct the actions of the existing school districts relating to the consolidation, including adopting policy and immediately administratively consolidating on its own motion the districts which do not voluntarily consolidate in order to enable the affected school districts to reasonably consolidate into two (2) school districts by July 1, 2014. The successor boards and the new superintendents have the authority to hire district level employees for the successor school districts. According to Section 37-7-104.1, the successor school boards have statutory duties that must begin prior to July 1, 2014 in order to effectuate the administrative consolidation of the school districts by July 1, 2014. Elected school board members of the consolidated school districts shall take the oath of office and be sworn in before performing necessary official acts prior to the formation of the successor school districts on July 1, 2014. The successor boards may direct district school personnel in setting up meetings and obtaining information to perform any of its statutory duties which occur prior to July 1, 2014. It is the opinion of this office that current school districts may pay for the statutory school board training for the successor board members, and any other necessary costs or fees prior to consolidation. The remaining board members may appoint a person to serve only until June 30, 2014. Based on the fact that the contract is between the employee and an abolished school district, the contract is null and void on June 30, 2014 and the successor school districts have no legal obligation with regard contracts with licensed employees of the current school districts with multi-year contracts extending past the consolidation date. (Wright, 1/31/2014)(#180)(OP-13-00507)

SCHOOLS-MISCELLANEOUS

Pursuant to Section 37-28-7(9), an individual considered for the position of executive director and general counsel for the Mississippi Charter School Authorizer Board must be licensed to practice law in the State of Mississippi upon the date of employment. (Cardin, 1/24/2014)(#187)(OP-14-00012)

SCHOOLS-TRUSTEES AUTHORITY (CITY)

A local school board is authorized to employ a secretary and to fix the duties and compensation of such person provided that the superintendent has recommended the assignment of duties and the person to be hired. A local school board may establish a district policy requiring adequate administrative, clerical and other support for board functions, and it is the superintendent's responsibility to take the appropriate personnel action to comply with such policy. (Lee, 1/10/2014)(#209)(OP-13-00422)

SUPERVISORS-AUTHORITY

A member of a board of supervisors may participate telephonically in a properly noticed and called board meeting that enters into an executive session. The board would have to take appropriate steps to ensure that persons not authorized to attend the executive session were not allowed to listen in on the meeting with the supervisor participating by telephone. (Guice, 1/10/2014)(#220)(OP-13-00516)

The removal of a county seat to a municipality that is further from the center of the county than the existing county seat can only be done when two-thirds of all qualified electors of the county affirmatively vote for such removal. (Meek, Jr., 1/10/2014)(#220)(OP-13-00506)

A board of supervisors cannot expend public funds to provide internet service to a private home of the county coroner, unless the Board finds, consistent with fact and spread upon the minutes, that such are necessary to the performance of her duties or to conduct public business of the county. Such findings would be subject to review by the State Auditor, as well as by a court of competent jurisdiction. (Shepard, 1/10/2014)(#220)(OP-13-00502)

DeSoto County may not contract (via lease or otherwise) with a private company to install signage where the primary purpose of the contract is for profit rather than a governmental purpose of providing useful information to citizens as well as advertising and promoting the resources of the county under Section 17-3-1. (Nowak, 1/17/2014)(#220)(OP-14-00004)

A Board of Supervisors has the sole authority to employ an appraiser to accomplish a reappraisal or appraisal update for the county, which is a project separate and distinct from the normal operation of the tax assessor's office. However, when a board of supervisors makes a determination to proceed with reappraisal or appraisal updates pursuant to subsection (2)(c), a county employee employed to work on the reappraisal or appraisal update is nonetheless under the direct supervision of the tax assessor. (Shepard, 1/31/2014)(#220)(OP-13-00487)

A county may enter into an agreement with the Mississippi Association of Supervisors to perform bidding services, including a reverse auction, in order for the county to make certain make purchases of certain frequently used materials, commodities and equipment at the lowest cost to the county. (Moseley, 1/27/2014) (#220)(OP-13-00474)

TAXES-MOBILE HOME ADVALOREM TAXES

When a taxpayer fails to pay ad valorem taxes on a mobile home, a county may gain possession and control in compliance with Section 27-41-101 through 27-41-107. (Leggett, 1/31/2014)(#250)(OP-14-00016)

TAXES-REFUND

Where a taxpayer has paid through error or otherwise a sum in excess of that which was properly due, the tax collector is authorized, on order of the board of supervisors, to refund such erroneous tax payment. (Holleman, 1/24/2014)(#254)(OP-13-00515)

TORT CLAIMS BOARD

The Mississippi Tort Claims Board may extend coverage of the plan for liabilities arising under federal law; however, the Board is not required to do so. (McElroy, 1/24/2014)(#278)(OP-13-00500)

WATER DISTRICTS

It is the opinion of this office that the question of whether the Pearl River Valley Water Supply District may lease for residential purposes lots reserved in subdivision plats as common areas must be answered by reference to the subdivision plat, restrictive covenants and subdivision regulations. To protect itself, the Pearl River Valley Water Supply District could use the process set out in Miss. Code Ann. Section 19-27-31 for amending subdivision plats. (Sigman, 1/10/2014)(#266)(OP-13-00511)

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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