



ATTORNEY GENERAL'S OPINION OUTLINE

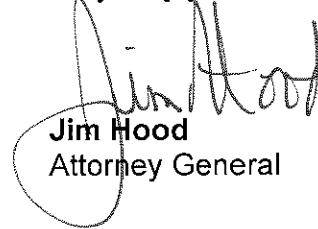
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The purpose of the Opinion Outline is to inform state, county and municipal officials and other interested persons of official opinions issued by the Attorney General's Office. This outline contains synopses of opinions issued from January 01, 2015 through January 31, 2015. When opinions are of state-wide application or interest, we will try to publish the entire opinion.

The following opinion outlines are based upon opinions that were issued 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 website at:
<http://www.agjimhood.com>

Very truly yours,



Jim Hood
Attorney General

COURTS

Pursuant to Sections 11-9-105 and 99-33-2 of the Mississippi Code, the authority to rotate both civil and criminal cases to the justice court judges is delegated to the justice court clerk.
(Roberts, 1/30/2015)(#056)(OP-2015-00017)

CRIMINAL LAW

Section 99-33-13 of the Mississippi Code provides that a grand jury may remand a case to Justice Court to be tried as a misdemeanor when the case originated in Justice Court.
(Martin, 1/16/2015)(#057)(OP-2015-00001)

DEPARTMENT OF EDUCATION

It is our opinion that Mississippi law does not authorize the use of the school van by the Noxubee County Retired Teachers' Association for the purposes set forth in your letter. We note that Mississippi State Board of Education Policy No. 7914, addressing the use of school buses, would not permit the use of school buses for such purposes.
(Mayfield, 1/16/2015)(#058)(OP-2014-00514)

ELECTIONS-QUALIFICATION OF CANDIDATES

There is no state prohibition against a county employee being a candidate for elective public office so long as such does not interfere with the prompt and efficient discharge of his duties in carrying out his present employment.
(Griffin, 1/30/2015)(#071)(OP-2015-00015)

HUMAN SERVICES

The definition of "account" found in Section 43-19-48 (10)(b) does not include cash value in a tax-qualified annuity.
(Berry, 1/23/2015)(#030)(OP-2015-00003)

INTERLOCAL AGREEMENTS

Approval of Interlocal Agreement between Lafayette County, Mississippi and the Lafayette County School District for the construction of a road on school property.
(O'Donnell, 1/12/2015)(#277)(OP-2014-00506)

Approval of Interlocal Cooperation Agreement between the Board of Supervisors of Winston County, Mississippi and the City of Louisville, Mississippi. The Agreement pertains to the provision of E911 services within Winston County, including the City of Louisville.
(Hathorn, 1/14/2015)(#277)(OP-2015-00009)

Approval of Interlocal Agreement between Pike County, Mississippi and the City of McComb, Mississippi for the creation and development of an industrial park.
(Dowdy, 1/23/2015)(#277)(OP-2014-00519)

Interlocal Agreement between Horn Lake Watershed Drainage District and Horn Lake Creek Basin Interceptor Sewer District for Erosion Control for Horn Lake Creek Interceptor Sewer Line is approved.
(Quimby, 1/23/2015)(#277)(OP-2015-00019)

Interlocal Agreement between Horn Lake Watershed Drainage District and the City of Southaven for Erosion Control for Horn Lake Creek Tributary "Lateral D" is approved.
(Quimby, 1/23/2015)(#277)(OP-2015-00020)

MUNICIPAL EMPLOYEES

Pursuant to Section 21-23-11 of the Mississippi Code, a police officer of the municipality may be the clerk of the court or a deputy clerk of the court.
(Jackson, 1/9/2015)(#149A)(OP-2014-00512)

MUNICIPAL OFFICERS

It is the opinion of this office that the separation of powers doctrine does not preclude an alderman from serving as a municipal school district employee in a position that does not have substantial policy making authority. Any issues arising from the alderman voting on tax levies or budgets for the school district should be addressed to the Mississippi Ethics Commission.
(Christopher, 1/9/2015)(#149)(OP-2015-00002)

MUNICIPALITIES

Should the municipality determine that the vendor is a "transient vendor" engaged in "transient business" as contemplated in Section 75-85-1, the vendor would be required to obtain a transient vendor license.
(Davis, 1/23/2015)(#142)(OP-2015-00005)

Reimbursement of insurance premiums paid by a re-employed retiree who elected to remain a member of the state health insurance plan by paying the entire cost thereof would violate Section 96, Mississippi Constitution of 1890 which prohibits the granting of extra compensation beyond the contract made.
(Hemphill, 1/23/2015)(#142)(OP-2015-00004)

A mayor has no authority to immediately re-suspend a municipal employee in response to a vote to reinstate said employee by the board of aldermen.
(Levingston, 1/23/2015)(#142)(OP-2015-00006)

Miss. Code Ann. Section 21-33-323 authorizes a municipality to invest surplus funds in certain securities described in the statute. If an investment agency agreement conforms to the investment requirements in the statute, the agreement would be authorized under the law.
(Flanagan, 1/30/2015)(#142)(OP-2015-00011)

A municipality may not restrict the use of emergency lights of privately-owned vehicles of firemen of volunteer fire departments that receive funds pursuant to Section 83-1-39, as provided in Section 63-7-19, as such would run afoul of the municipality's home rule authority. The privately-owned vehicle of a volunteer fireman is not an "authorized emergency vehicle" as contemplated in Section 63-3-103 and may be cited for violating traffic laws when responding to an emergency.
(Marx, 1/30/2015)(#142)(OP-2015-00013)

NEPOTISM

The appointment of a supervisor's wife to fill the vacancy in the office of county election commissioner would clearly violate the provisions of Mississippi Code Annotated Section 25-1-53 (the nepotism statute) and is, therefore, prohibited. While Section 23-15-215 authorizes a board of supervisors as a whole to perform the duties of the county election commission if there are no commissioners or if they fail to act, we find no authority for an individual supervisor to act as a member of an existing county election commission.
(Daughdrill, 1/30/2015)(#151)(OP-2015-00014)

RETIREMENT-PUBLIC EMPLOYEES

PERS may delay payments of benefits and refunds if such delay is reasonably determined by PERS to be necessary in order to avoid the payment of amounts in excess of that authorized by law.
(Robertson, 1/16/2015)(#170)(OP-2014-00509)

SCHOOLS-16TH SECTION LEASES, ETC.

Section 29-3-113 authorizes a school district to borrow sixteenth section principal funds to pay the costs of renovating and expanding field houses, renovating classrooms, and building a classroom which includes a band hall.
(Young, 1/30/2015)(#192)(OP-2015-00010)

SCHOOLS-MISCELLANEOUS

The school board has authority to contract with a nurse practitioner and to charge a fee for facility usage pursuant to its home rule authority under Miss. Code Ann. Section 37-7-301.1. Whether the school board chooses to charge a facility fee for allowing the nurse practitioner access to and use of the school facilities is a determination to be made by the school board and must be in accordance with the school board policies. Any policy adopted by the school board and the agreement between the school board and the nurse practitioner must also meet all statutory requirements applicable to public schools, including the requirement that the school day "be preserved for the purpose of teaching." Miss. Code Ann. Section 37-1-11. Accordingly, schools should make every effort to minimize disruptions to instructional time and, to the extent possible, schedule EPSDT services during non-instructional time.
(Mayo, 1/9/2015)(#187)(OP-2014-00448)

A political subdivision may not hire a person who is currently completing the conditional phase of a non-adjudication nor a person who has merely had the charges dismissed under the non-adjudication procedures. However, if such a person successfully completed the non-adjudication process and takes the further step of seeking and obtaining an expungement, the expungement would remove the employment bar of Section 25-1-113.
(Treadway, 1/16/2015)(#187)(OP-2014-00517)

SCHOOLS-TAXES

It is the modified opinion of this Office that the Sunflower County Consolidated School District should be considered a new school district effective July 1, 2014. Further, the Sunflower County Consolidated School District should be considered a taxing unit for the purpose of reimbursing school districts for annual tax losses. The Sunflower County Consolidated School District is county-wide for all purposes, including the calculation of homestead exemption reimbursement revenue, subject to the limitations provided in Miss. Code Ann. Sections 27-33-77 and 27-33-79. Based upon this modified opinion, the opinion to Richard G. Noble, Esquire dated August 22, 2014 is hereby withdrawn and replaced.
(Noble, 1/9/2015)(#193)(OP-2014-00291)

SCHOOLS-TRUSTEES

If the school board determines that the amount in question was required to be paid pursuant to school board policies without exception, then such payments may be lawfully made. If the policies authorize exceptions or variations in salaries at the discretion of the school board and such discretion was exercised in the approval of the contracts at issue, then such additional payments would be prohibited.
(Mayfield, 1/15/2015)(#211)(OP-2014-00393)

SHERIFFS-AUTHORITY

Section 45-33-57 states that "[t]he Department of Public Safety may adopt regulations to establish fees to be charged to registrants [sex offenders] for registration, re-registration, and verification or change of address." It is the opinion of this office that since the Legislature expressly gave this authority to the Department of Public Safety, a sheriff cannot impose such fees for registration related activities. A sheriff could collect fees if authorized by a regulation promulgated by the Department of Public Safety.
(Rinehart, 1/30/2015)(#213)(OP-2015-00023)

SUPERVISORS-AUTHORITY

A county cannot amend a zoning ordinance or rezone a piece of property by merely updating the official zoning map after providing the requisite notice in accordance with the applicable zoning ordinance.
(Quimby, 1/9/2015)(#220)(OP-2014-00493)

If a board of supervisors makes a finding, consistent with fact, that work must be performed in order to maintain and protect a county road or county right-of-way and damage occurs to private property in the course of this work, the board of supervisors is authorized to reimburse the landowner for the damages resulting from the work performed by the county or the county may take the necessary corrective actions to make repairs to the damaged property.
(Quimby, 1/23/2015)(#220)(OP-2014-00513)

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