



# ATTORNEY GENERAL'S OPINION OUTLINE

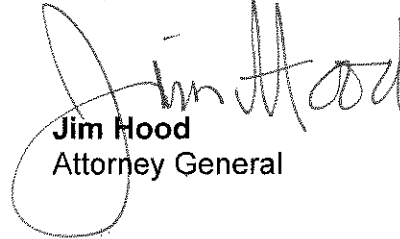
Volume 43, Number 7  
July 2014

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 July 01, 2014 through July 31, 2014. 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

## COUNTY EMPLOYEES

Pursuant to Mississippi Code Section 7-5-25, the Attorney General is authorized to issue official opinions only to designated public officials and agencies on questions of law relating to their respective offices. For informational purposes, we are enclosing copies of Mississippi Code Section 23-15-871, MS AG Op., Warren (February 11, 2000), and *Straughter v. Collins*, 819 So.2d 1244 (Miss. 2002) (Carmichael, 7/18/2014) (#053A) (OP-2014-00275)

## ELECTIONS-COMMISSIONERS

Each municipality in a county is required to enter an agreement with the county whereby the county election commissioners and registrar are to prepare the municipal registration books and the poll books and be paid by each municipality. (Diaz, 7/25/2014) (#064) (OP-2014-00266)

## INTERLOCAL AGREEMENTS

Approval of Interlocal Agreement establishing the South Mississippi Metropolitan Enforcement Team between the Board of Supervisors of Jackson County, City of Moss Point, City of Ocean Springs, City of Gautier, and the City of Pascagoula. (Williams, 7/2/2014) (#277) (OP-2014-00268)

The Interlocal Cooperation Agreement between the City of Brandon and Rankin First Economic Development Authority is approved. (Baker, 7/18/2014) (#277) (OP-2014-00290)

The Interlocal Cooperation Agreement between the City of Ridgeland and the City of Madison is approved. (Gabriel, 7/18/2014) (#277) (OP-2014-00278)

## MARRIAGE LAW

As long as non citizens of the United States file an application and secure a marriage license pursuant to Section 93-1-5 of the Mississippi Code, the justice court judge, pursuant to Section 93-1-17, may solemnize a marriage of these individuals. (Beech, 7/11/2014) (#110) (OP-2014-00276)

## MS. STATE DEPARTMENT OF HEALTH

Where a decedent has left no written instrument of final disposition, Section 73-11-58 allows, but does not require, a crematory or other funeral establishment to dispose of a decedent's remains in accordance with the authorization of a single relative listed in that Section. (Kenney, 7/7/2014) (#027) (OP-2014-00136)

## MUNICIPALITIES

The municipality, county and school district may enter into a formal interlocal agreement providing that the proceeds collected by the county tax collector are to be disbursed directly to the school district. However, the municipality remains ultimately responsible for proper payment being made to the school district. Any taxes, in addition to the taxes levied under Section 37-57-1, would be considered an additional tax levy, in accordance with Section 37-57-105, and would be handled as a separate levy. Section 37-57-105 specifically references "such levy" which indicates a single amount. The manner in which the levying authority calculates the millage rate, i.e., broken down into components, is a factual determination to be made by such authority. Any additional amount that is levied pursuant to Section 37-57-105(1) to cover anticipated delinquencies and costs of collection shall be excluded from the limitation of fifty-five (55) mills provided for in Section 37-57-104 and 37-57-1. Any penalties and interest on delinquent payments on the tax levy, excluding any penalties and interest paid on levies for costs of collection, may be paid to the school district. Penalties and interest paid on the levies for the cost of collection would be placed into the municipal general fund to defray costs of collection. (Edwards, 7/11/2014) (#142) (OP-2014-00217)

A municipality is authorized to publish an official visitors' guide, provided that the municipality is doing so for the purpose of advertising the resources of the municipality as contemplated in Section 17-3-1 et seq. It may fund such publication through the sale of advertisements, as long as said sale is not intended to generate excess revenue, or through competitively soliciting publication of the guide from a publisher. (Russell, 7/18/2014) (#142) (OP-2014-00249)

Any contract for professional services must be approved by the governing authorities, i.e., approval of city council and subject to veto of the mayor. For the provision of general legal services not related to defense of litigation, direct payment may be made to the professional provided that the contract for services was approved by the city council, the professional has submitted a proper claim for payment and the governing authorities have lawfully approved such claim for payment. With regard to legal fees related to the defense of litigation arising as a result of actions of the mayor, prior official approval of the city council would be required and a factual finding that the mayor was acting in his official capacity in order to pay for such services directly to the professional or via reimbursement to the mayor. (Bland, 7/18/2014) (#142) (OP-2014-00272)

The municipality may enact an ordinance that limits parking on residential property pursuant to its general police powers provided in Section 21-19-1, Section 21-19-15 and Section 17-1-3 and its home rule authority found at Section 21-17-5, provided that the municipal ordinance is reasonably related to protecting the public, is not oppressive, arbitrary, or discriminatory and passes constitutional muster. (Tindell, 7/18/2014) (#142) (OP-2014-00254)

Prior to any expenditure of municipal funds for the entertainment of businessmen, public officials or other persons by the City of Pascagoula pursuant to Senate Bill 3238, Chapter 955, Local and Private Laws, 1999, there must be a determination, consistent with the facts, that such expenditure is for the purpose of establishing, promoting, and developing tourism and economic development. Any expenditure of municipal funds must be made in strict accordance with Mississippi Code Annotated Section 21-39-17 (Revised 2007). The Community Development Director has no independent authority to make such expenditures. (Williams, 7/25/2014) (#142) (OP-2014-00263)

A municipality may not provide water services, at no charge, to a private individual regardless of the individual's financial status. A town may deny an individual water service because of a delinquent water bill with an outstanding amount at a previous address. A municipality may provide, by ordinance, that before any account may be "transferred" the account must be paid in full and may deny services until such time. Utility services may not be listed in the name of a deceased individual. A determination of the party responsible for demolishing a house containing asbestos is one that this office is not authorized to make as we are not authorized to provide opinions on issues of liability. (Custom, 7/25/2014) (#142) (OP-2014-00284)

A municipality, in its discretion, is authorized to enact an ordinance which permits, regulates and/or prohibits solicitations of monetary donations conducted on municipal streets. (Baum, 7/25/2014) (#142) (OP-2014-00277)

## NEPOTISM

The nepotism statute does not apply where the person holding the position "shall have been in said department or institution prior to the time his or her kinsman, within the third degree, became the head of said department or institution or member of said board." Under the facts as stated, the staff attorney was employed by the Youth Court for several years before her father was elected as a county supervisor, and for that reason, the nepotism statute is not implicated. (Teeuwissen, 7/7/2014) (#151) (OP-2014-00258)

The nepotism statute, Section 25-1-53, prohibits the Board of Commissioners of a Public Housing Authority from hiring a nephew of a member of the Board as Executive Director for the Public Housing Authority. (Walley, 7/7/2014) (#151) (OP-2014-00257)

Section 37-9-1 and Section 25-1-53 do not apply to prohibit a school board from hiring a sister of a superintendent as a counselor or principal in the school district. (Winfield, 7/11/2014) (#151) (OP-2014-00270)

## OTHER STATE AGENCIES, BOARDS & COMMISSIONS

It is the opinion of this office that paragraph 2 of Section 25-1-113 requires that covered entities, after July 1, 2014, not hire future employees and terminate existing employees "who ha[ve] been convicted or pled guilty in any court of this state, another state, or in federal court of any felony in which public funds were unlawfully taken, obtained or misappropriated in the abuse or misuse of the person's office or employment or money coming into the person's hands by virtue of the person's office or employment." Because of the language that remains in the statute regarding hiring prohibitions after July 1, 2013, it is our opinion that the statute's intent is to allow covered entities with employees that have proscribed felony records and who were hired prior to July 1, 2013, to remain employed through June 30, 2014, without liability on the part of the employing entity. (Pickering, 7/11/2014) (#218C) (OP-2014-00269)

## STATE PERSONNEL BOARD

Section 37-3-13 prevents MSPB from approving or processing personnel actions for salary increases as referenced in HB 1476 during the two year exemption period. Section 37-3-13 prevents the MSPB from processing "only those actions which reduce the projected annual cost and/or appropriation requirement" as referenced in HB 1476 during the two year exemption period. (Mosley, 7/18/2014) (#121A) (OP-2014-00251)

## SUPERVISORS-AUTHORITY

A county employee that works in a division of the tax assessor's office and whose salary is paid from the budget of the tax assessor, is under the direct authority of the tax assessor, which includes the authority of the tax assessor to terminate the county employee. (Shepard, 7/7/2014) (#220) (OP-2014-00256)

It is the opinion of this office that a county may not lease space in its office buildings for the placement of electronic message boards where the sole or primary purpose of the lease is to generate revenue through the sale of private advertisements. (Daugherty, 7/18/2014)(#220) (OP-2014-00279)

## TAXES-AD VALOREM

Facilities determined by the board of supervisors to have been acquired or constructed pursuant to the Federal Military Housing Privatization Initiative (10 USC 2871 et seq.) and operated in accordance with applicable agreements between eligible entities and the Secretary of Defense are exempt from ad valorem taxes. (Frederic, 7/7/2014) (#236) (OP-2014-00252)

It is the opinion of this office that the exemptions granted by Section 61-3-21 where applicable are mandatory when requested and cannot be withheld in the discretion of the local governing authority. This office cannot opine as to whether the exemption applies to various entities referenced in the opinion request since such a determination is a factual matter that must be determined by the local governing authority. It remains the opinion of this office that the exemption of Section 61-3-21 applies to school taxes. We reaffirm our 2002 Mitchell Opinion that the exemption of Section 61-3-21 applies to personal property as specified in the statute. (Sanders, 7/25/2014) (#236) (OP-2014-00282)

## TAXES-HOMESTEAD EXEMPTION

When an applicant is notified by the county of the Department of Revenue's homestead notice of adjustment, the applicant must object to the Board within thirty (30) days from the notice or the adjustment becomes final. There is no statute that requires income tax compliance by February 1 of the same year that the income taxes are due on April 15. Section 27-33-33(2)(d) provides that should an eligible property fail to be listed due to a clerical error, such application may be amended by the tax assessor on behalf of the applicant to list the eligible property prior to the last Monday in August the year following the roll year. There is no date requirement when amending a homestead application in circumstances where there is a change in ownership due to the death of an owner when the surviving spouse is still eligible for the homestead exemption. (Yancey, 7/25/2014) (#246) (OP-2014-00273)

Our website now offers a FREE  
searchable database of all Official  
Opinions issued since 1979.

1. Go to <http://www.ago.state.ms.us>
2. Scroll down to AGO Quick Links and click on OPINIONS SEARCH.
3. In the search box, enter the opinion number (ex. 2013-00367) and click SEARCH.