



# ATTORNEY GENERAL'S OPINION OUTLINE

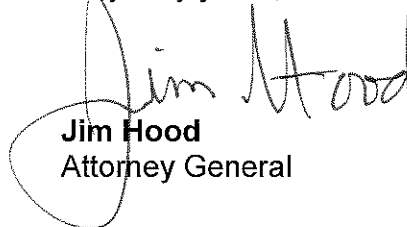
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The purpose of the Opinion Outline is to inform state, county and municipal officials and other interested persons of official opinions issued by the Attorney General's Office. This outline contains synopses of opinions issued from June 01, 2014 through June 30, 2014. When opinions are of state-wide application or interest, we will try to publish the entire opinion.

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Very truly yours,

  
**Jim Hood**  
Attorney General

## AIRPORTS

If the Tunica Airport Commission appropriately determines that a vehicle is necessary and appropriate for use in airport operations, then it is the opinion of this office that the Tunica Airport Commission could acquire a vehicle for use as a crew car. (Dulaney, 6/27/2014)(#002)(OP-2014-00222)

## BONDS

The surplus funds in the bond and sinking interest fund may be transferred to the general fund or to other funds in accordance with Section 27-105-367. (Latimer, 6/13/2014)(#034)(OP-2014-00215)

## COURTS

The responsibility to oversee the everyday administrative duties of the justice court clerk lies with the board of supervisors. (Cook, 6/27/2014)(#056)(OP-2014-00243)

## CRIMINAL LAWS

Amendments to traffic tickets should be liberally allowed. (Robertson, 6/27/2014)(#057)(OP-2014-00186)

In a new shoplifting case which occurs prior to July 1, 2014 and is not resolved by plea or trial before July 1, 2014, the court should apply the lesser penalty provided in House Bill 585. (Smith, 6/4/2014)(#057)(OP-2014-00185)

A district attorney may contribute all or a portion of funds that are received by the district attorney's office pursuant to Section 41-29-181 of the Mississippi Code as a result of a drug forfeiture to a drug court. (Buckley, 6/4/2014)(#057)(OP-2014-00187)

An individual convicted of careless driving is subject to a fine of not less than \$5.00 or more than \$50.00 and state and local assessments. (Joyner, 6/13/2014)(#057)(OP-2014-00226)

## DEPARTMENT OF MARINE RESOURCES

In accordance with the statutory language, we are of the opinion that the Commission's charter boat operator member is required to be a licensed charter boat operator who operates a licensed vessel for hire guiding sports fisherman for a fee. (Gollott, 6/26/2014)(#268)(OP-2014-00223)

Senate Bill 2579 exempts the executive director of the MS Dept. of Marine Resources (MDMR) from the MS State Personnel Board (MSPB) procedures for a six month period after its passage in order to reorganize the department. The executive director may make personnel changes without MSPB approval including termination and reorganization of staff and salary adjustments. The executive director is not required to follow the MSPB's salary recommendations when making personnel salary adjustments during the six month exemption period. We find no authority in SB 2579 for MSPB to reverse personnel decisions made by MDMR during the exemption period; however, actions taken by the executive director are subject to review by a court of competent jurisdiction. (Miller, 6/6/2014)(#268)(OP-2014-00206)

## HOSPITALS-COMMUNITY

A conviction of a violation of the United States Internal Revenue Code does not disqualify one from holding public office. (Guice, 6/27/2014) (#092)(OP-2014-00224)

## INTERLOCAL AGREEMENTS

Approval of Amendment to Interlocal Agreement between the Mississippi Transportation Commission and the Industrial Development Authority of Marshall County, Mississippi for the purpose of accelerating the completion date of scheduled highway construction projects. (McGrath, 6/2/2014)(#277)(OP-2014-00209)

Interlocal Agreement between Alcorn County and City of Farmington for Control of Vicious Animals is approved. (Davis, 6/26/2014)(#277) (OP-2014-00246)

Amended Interlocal Cooperation Agreement between the City of Starkville, Mississippi and Oktibbeha County, MS in Support of the Cotton Mill Marketplace Project is approved. (Walker, 6/26/2014) (#277)(OP-2014-00216)

Approval of Amendment to Interlocal Agreement between the Mississippi Transportation Commission and Desoto County, Mississippi for the purpose of accelerating the completion date of scheduled highway construction projects. (McGrath, 6/6/2014)(#277)(OP-2014-00210)

Approval of Interlocal Agreement between Choctaw County and Ackerman concerning law enforcement assistance. (Null, 6/20/2014)(#277) (OP-2014-00248)

Approval of Interlocal Agreement between Lamar County, Mississippi and the City of Lumberton involving tax redemption services to be provided by the Chancery Clerk on behalf of the City. (Ball, 6/4/2014)(#277)(OP-2014-00220)

Approval of Interlocal Agreement between Lamar County, Mississippi and the City of Purvis involving tax redemption services to be provided by the Chancery Clerk on behalf of the City. (Ball, 6/4/2014)(#277)(OP-2014-00232)

Approval of Interlocal Agreement between Lamar County, Mississippi and the City of Sumrall involving tax redemption services to be provided by the Chancery Clerk on behalf of the City. (Ball, 6/4/2014)(#277)(OP-2014-00233)

Interlocal Agreement between Webster County and the City of Eupora for the Repair of Waterworks Road and the Removal of Trees behind the White's Creek Lake Levee to Meet DEQ Requirements is approved. (Turner, 6/9/2014)(#277)(OP-2014-00225)

Approval of First Amendment to Amended Interlocal Agreement of 2009 between the City of Greenville, Washington County and the Sheriff of Washington County providing for the housing of Greenville inmates in the Washington County Correctional Facility. (Alexander, 6/9/2014) (#277)(OP-2014-00228)

The Interlocal Cooperation Agreement between the City of Gulfport, the City of Biloxi, the City of Pass Christian, and the City of D'Iberville is approved. (Murdock, 6/18/2014)(#277)(OP-2014-00245)

The Interlocal Cooperation Agreement between the City of Vicksburg and Warren County is approved. (Thomas, 6/18/2014)(#277)(OP-2014-00229)

Approval of Interlocal Agreement between Lowndes County and Columbus concerning 2014 Byrne Justice Assistance Grant. (Turnage, 6/20/2014)(#277) (OP-2014-00238)

Approval of Interlocal Agreement between Desoto County and Southaven and Olive Branch concerning 2014 Byrne Justice Assistance Grant. (Manley, 6/20/2014)(#277)(OP-2014-00237)

## JUVENILE COURTS (YOUTH COURT)

If a person serving as a Youth Court intake unit is not already a salaried public employee, the salary of such person shall be fixed on order of the youth court judge as provided in Sections 41-21-115 and 41-21-123 of the Mississippi Code. (Shoemake, 6/6/2014)(#101) (OP-2014-00212)

## LEGISLATIVE

One who has a felony conviction of forgery in a court of the State of Mississippi and has not received a full pardon is not eligible to serve on a political party executive committee. (Martinson, 6/26/2014)(#104)(OP-2014-00240)

## MOTOR VEHICLE COMMISSION

The Motor Vehicle Commission has broad authority to issue reasonable rules and regulations that are reasonable and necessary to carry out the Motor Vehicle Law. Whether regulations are justified under the law involves a two prong reasonableness inquiry. The Commission would first need to make the factual determination that subject rules or regulations are necessary to carry out the law. At that point, the Commission would have to make a second factual determination that any proposed regulations are reasonable. (Nelms, 6/27/2014)(#128)(OP-2014-00221)

## MUNICIPALITIES

There is no statutory authority for a municipal housing authority commissioner to hold over in office until his or her successor is appointed. (Perkins, 6/27/2014)(#142)(OP-2014-00235)

The provisions of Section 25-3-93 set forth the allowable credit for personal leave for employees and appointed officers of the State of Mississippi and are not applicable to municipal employees and officers. However, Section 25-11-103 (l) limits the amount of accrued leave that can be considered as creditable service for retirement purposes. The Attorney General does not by official opinion, interpret municipal ordinances or policies. Therefore, whether the current leave policy provides for the accrual of vacation/personal leave for part-time department heads or part-time employees generally is a matter left to the interpretation and discretion of the governing authorities. (McCaughn, 6/27/2014)(#142)(OP-2014-00242)

Upon a finding, consistent with the facts, that a proposed expenditure is for the purpose of carrying out programs and activities which are designated by the governing authorities and designed to attract conventions and tourists to the City, the proceeds of the Tourist and Convention Tax may be lawfully used for such proposed purpose. (Manley, 6/13/2014)(#142)(OP-2014-00213)

## NEPOTISM

Assuming that the person to be appointed to a municipal utilities commission is not related to the council member in question within the third degree of kinship, there would be no violation of the nepotism law should the council member in question vote for such appointment. (Turnage, 6/4/2014)(#151)(OP-2014-00194)

## SCHOOLS-COMMUNITY AND JUNIOR COLLEGES

The superintendent of the Natchez-Adams School District may resign as College trustee and the vacancy resulting from the resignation may be filled by the Adams County Board of Supervisors. (Henley, 6/26/2014)(#172)(OP-2014-00231)

## SCHOOLS-DISTRICTS

A school board may adopt a policy to offer and pay certain incentives to its employees, including teachers, provided that such incentives are contracted for prior to the date when services are to be performed, are determined in accordance with objective standards of measurement and are earned by personal services performed by the employee. (Nettles, 6/26/2014)(#180)(OP-2014-00111)

A superintendent may reassign noninstructional employees to lateral positions within the district, subject to review by the school board upon the request of the affected employee. The superintendent should make a factual determination that the reassignment is indeed lateral, and not a promotion. If the reassignment constitutes a promotion for the affected employee, the superintendent should make his recommendation to promote the employee to the school board, which would then either accept or reject the recommendation. Any personnel action must be in accordance with duly-adopted district policies. (Bridgforth, 6/26/2014)(#180)(OP-2014-00161)

Miss. Code Ann. Section 37-167-1 is remedial in nature, and thus is to be liberally construed to accomplish the intent of the Legislature, which is to improve public education in the State of Mississippi. School districts already under the restrictions imposed by subsections (7) and (8) should remain so until such time as the affected schools are no longer in failing status. HB 455 (2014) amends Section 37-167-1 to establish the 2013-2014 school year as the first year to be considered in determining if a particular school must be transformed into a new start school by the Mississippi Recovery School District, but not for any remedial measures that may be required of the school district. (Wright, 6/6/2014)(#180)(OP-2014-00211)

The West Bolivar Consolidated School District Board of Trustees may employ an interim superintendent of schools if the Board determines in its best judgment that an interim appointment is needed leading up to consolidation pursuant to Miss. Code Ann. Section 37-7-104.1. Further, the current school districts of West Bolivar, Benoit and Shaw may pay any costs or fees determined to be necessary for the consolidation process, including costs related to employment of an interim superintendent for the new consolidated district. (Griffin, 6/13/2014)(#180)(OP-2014-00104)

## SCHOOLS-MISCELLANEOUS

The procurement of the subject laptops and tablet computers may be made using the proceeds of bonds issued pursuant to Section 37-59-1 et seq. and the proceeds of notes issued pursuant to Section 37-59-101 et seq., provided that the school district has concluded that the procurement of laptops and tablet computers is for the purpose of equipping school buildings and the laptops and tablet computers constitute equipment for school buildings. The school district may lease-purchase the subject laptops and tablet computers in accordance with the authorization provided in Section 31-7-10(e). Additionally, the school district may lease-leaseback the laptops and tablet computers, assuming that such lease-leaseback is done for the purpose of carrying out the local education needs of the school district. With regard to permitting teachers and students to take the referenced equipment home, possession of the laptops and tablet computers may be retained by teachers and students during the school year, provided that such equipment is necessary for the conduct of school business. Greenlee, 6/6/2014)(#187) (OP-2014-00202)

## SCHOOLS-PRINCIPALS

Pursuant to Section 37-9-17, an assistant principal's employment is recommended by the principal to the superintendent who then may recommend the employment to the school board. (Tyner, 6/27/2014)(#202A)(OP-2014-00234)

## SEPARATION OF POWERS

A member of the city council of a mayor-council municipality may not also serve on a statutorily created commission that exercises executive powers and reviews the actions of the city council. (Blanchard, 6/6/2014)(#271)(OP-2014-00207)

## SUPERVISORS-AUTHORITY

Under Miss. Code Ann., Section 19-5-93, a county may make a donation to a patriotic organization, including a private, non-profit foundation for veterans, but the funds may only be utilized for defraying the costs of memorials for veterans. (Slover, 6/27/2014)(#220)(OP-2014-00255)

An assistant public defender may be compensated in an amount determined and authorized by the board of supervisors. However, in no case may an assistant public defender receive compensation in an amount greater than that received by the public defender. A county may employ a full-time public defender and part-time public defender or a combination of full-time and part-time assistant public defenders. (Teeuwissen, 6/27/2014)(#220)(OP-2014-00250)

Only those employees participating in and making contributions to the self-insured plan may be considered when determining if the 125 employee requirement in Section 25-15-101 is met. Any county electing to become a self-insurer with respect to all or any portion of group life, salary protection, health, accident and hospitalization benefits falls within the purview of Section 25-15-101. (Palmer, 6/6/2014)(#220)(OP-2014-00204)

If a Board of Supervisors makes a factual finding spread upon the minutes that property casualty insurance maintained for the E911 Building is a necessary administrative cost for building and operational requirements of the E911 District, then it may apply excess funds to pay the premiums for such property casualty insurance. (Nowak, 6/13/2014)(#220)(OP-2014-00219)

The Lauderdale County Board of Supervisors may not donate a laptop computer to the Toomsaba Headstart Center. Section 31-7-13(m)(iv) is not applicable to the Toomsaba Headstart Center operated by the Mississippi Action for Progress, as it is not a "governing authority" as defined by the statute, but rather is a non-profit corporation. Section 17-25-25 must be followed by a county when disposing of surplus personal property. (Thaggard, 6/13/2014)(#220)(OP-2014-00230)

## TAXES-ROAD & STREET

The Diamond Lakes Utilities and Improvements District is without authority to levy and collect an ad valorem tax or special assessment for the purpose of repairing and maintaining roadways that were dedicated to and accepted by Tunica County. (Hibbler, 6/13/2014)(#255)(OP-2014-00214)

The preceding 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.

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