



ATTORNEY GENERAL'S OPINION OUTLINE

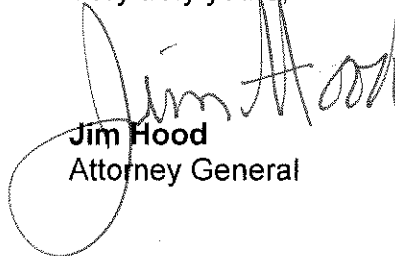
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The purpose of the Opinion Outline is to inform state, county and municipal officials and other interested persons of official opinions issued by the Attorney General's Office. This outline contains synopses of opinions issued from May 01, 2014 through May 31, 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

BOARD OF PHARMACY

Records in the possession of an agency which has as one of its principal functions the investigation of criminal activity, even if those records involve only unlawful, but not criminal, activity, are exempt under the Public Records Act. Therefore, documents and "complaints" in the possession of the Mississippi Board of Pharmacy pursuant to its investigation of unlawful activity are exempt. (Gammill, 5/23/2014)(#029)(OP-14-00173)

CRIMINAL LAWS

Section 63-9-21 of the Mississippi Code requires that DUI citations be issued on the form prescribed by the Commissioner of Public Safety and the Attorney General. The last forms were approved in July 2009. (Cobb, 5/2/2014)(#057)(OP-13-00442)

A municipality is responsible for a municipal inmate's medical bills while housed in a county detention facility until such time as the inmate waives his right to preliminary hearing or is bound over to the grand jury. (Barton, 5/16/2014)(#057)(OP-14-00196)

INTERLOCAL AGREEMENTS

The Amended and Restated Interlocal Cooperative Agreement between the Mississippi Department of Transportation and the City of Madison, Mississippi is approved. (McGrath, 5/2/2014)(#277)(OP-14-00182)

Interlocal Agreement between the City of Madison and Madison County regarding street repair and resurfacing is approved. (Hedglin, 5/7/2014)(#277)(OP-14-00164)

Approval of Interlocal Agreement between Warren County and Vicksburg concerning 2014 Edward Byrne Memorial Justice Assistance Grant. (Thomas, 5/13/2014)(#277)(OP-14-00197)

Approval of Interlocal Agreement between Hancock County Board of Supervisors and the Diamondhead Water and Sewer District of Hancock County for the exchange of services. (Yarborough, 5/19/2014)(#277)(OP-14-00162)

Approval of Interlocal Agreement between Lauderdale County, Mississippi, the Lauderdale County Economic Development District and the City of Meridian, Mississippi, for the construction of improvements and application for and administration of a Community Development Block Grant. (Thaggard, 5/20/2014) (#277)(OP-14-00178)

The Interlocal Cooperation Agreement between the City of Mendenhall and Simpson County is approved. (Broadhead, 5/23/2014)(#277)(OP-14-00203)

MISCELLANEOUS

Restructuring the 1997 bonds in conjunction with issuance of the new 2014 bonds constitutes a "renewal" of the 1997 indebtedness under the L&P Act. Therefore, the fifty percent pledge remains in effect until the renewal bonds are retired. (Keyes, 5/30/2014)(#115)(OP-14-00184)

MISS. DEVELOPMENT AUTHORITY

MDA is authorized to enter into the Intercreditor Agreement which contains terms of grants and loans made pursuant to Section 57-1-221. (Christensen, 5/27/2014)(#010)(OP-14-00205)

MS. STATE DEPARTMENT OF HEALTH

The question of whether a proposed project requires a CON is one which is left to the sound discretion of the Department of Health and the State Health Officer, based upon a thorough review of the facts, upon their expertise in the area of health care, and upon their knowledge of their own regulations as well as applicable federal law and regulations. (Moak, 5/16/2014)(#027)(OP-14-00150)

MUNICIPAL EMPLOYEES

Mayors of code charter municipalities have authority to suspend employees with pay and subsequent payment by the municipality for the time the employee was suspended with pay does not constitute an impermissible donation of public funds. A governing body charged with authority to terminate or suspend without pay may not delegate that authority to a mayor or department head. (Robbins, 5/2/2014)(#149A)(OP-14-00170)

MUNICIPALITIES

A municipality is authorized to enter into contracts, which include lease agreements, and to assign such contracts in accordance with its general power under Mississippi Code Annotated Section 21-17-5, provided that such contracts, and corresponding assignments, do not result in a direct conflict with any other statute or provision of the Mississippi Constitution. A municipality must receive financial consideration for the value, if any, of the assignment of its interests, unless it is relying on specific statutory authority to donate such interests. A municipality may require compensation in whatever form it deems necessary when entering into contractual arrangements, as long as such does not result in an unlawful donation. There is no legal obligation of the municipality to notify its citizens of its intent to assign its interests in a lease agreement, other than the notification provided to the public in a properly called meeting of the municipality. (Morris, 5/15/2014)(#142)(OP-14-00169)

Whether rejection by the city council of the mayoral appointments was based on good cause is a fact-intensive determination that this office is not authorized to make as we are limited to interpretations of state law in accordance with Mississippi Code Annotated section 7-5-25. We are not of the opinion that a lawful rejection of a mayoral appointment results in a circumvention of the hold over authority of the subject commissioners. (DuPree, 5/16/2014) (#142)(OP-14-00167)

An affirmative vote of a majority of aldermen to close an open meeting for a preliminary determination of whether or not to declare an executive session is not subject to a mayoral veto. The veto authority of a mayor of a code charter municipality is limited to ordinances, orders and resolutions adopted by the board of aldermen. (Moore, 5/23/2014) (#142)(OP-14-00193)

A motion to enter an order which results in the termination of a municipal employee would, by necessity, be required to evidence an intent to terminate the employee. (Page, 5/23/2014)(#142)(OP-14-00177)

OTHER STATE AGENCIES, BOARDS & COMMISSIONS

MDWFP may enter into a contract with a vendor to provide access to online license and service purchases where the vendor is compensated through the sales of advertisements on a smart phone app provided that no advertisements appear on any webpages or smart phone apps owned by MDWFP. (Polles, 5/23/2014)(#218C)(OP-14-00195)

SCHOOLS-BONDS

We are of the opinion that the District may issue general obligation refunding bonds pursuant to Section 31-15-1 et seq. to refinance the District's sixteenth section loans. While there is no express threshold for required savings in the General Refunding Law of 1934, we remain of the opinion that the refunding of bonds should result in either a substantial savings to the district or provide some other benefit to the District. (Greenlee, 5/9/2014)(#175)(OP-14-00176)

SCHOOLS-DISTRICTS

According to state law, Coahoma Agricultural High School (CAHS) is not restricted from enrolling students who live in the southern half of Coahoma County or in the Clarksdale Public School District. The entire county contributes to the support of the CAHS, including Clarksdale. Based on the fact that all property is taxed in Coahoma County for the support of the agricultural high school, it is the opinion of this office that students who reside in Coahoma County may attend the agricultural high school located on the campus of Coahoma Community College subject to the eligibility of students as established by the board of trustees pursuant to Section 37-27-23. This office does not opine on federal desegregation cases. (Brandon, 5/2/2014)(#180)(OP-14-00015)

SCHOOLS-TEACHERS MISCELLANEOUS

A salary supplement for an employee who meets the qualifications of more than one subcategory under Section 37-19-7(2)(a) is limited to \$6,000.00 per year. (Wright, 5/2/2014)(#206)(OP-14-00157)

SHERIFFS-DEPUTY

The sheriff is authorized to assign deputies throughout the county for law enforcement purposes. However, there is no authority for the Sheriff's office to assign a deputy to provide security full-time to a private hospital (or other private entity). The private hospital could hire an off-duty deputy to act as security. The deputy could be authorized by the sheriff to wear the official uniform and official firearm pursuant to Section 17-25-11 of the Mississippi Code. (Faneca, 5/1/2014)(#214)(OP-14-00096)

STATE PERSONNEL BOARD

Section 83-1-5 allows the Mississippi State Personnel Board to exempt both new and existing employees from the provisions of Section 25-3-39 so long as the Personnel Board makes the appropriate factual findings consistent with the requirements of House Bill 532. (Mosley, 5/16/2014)(#121A)(OP-14-00175)

SUPERVISORS-AUTHORITY

A foreclosure does not release a garbage lien from the lien book. The generators and owners will remain jointly and severally liable until the lien is paid pursuant to Section 19-5-22. If the circuit clerk receives an acknowledgment from the bankruptcy court discharging the garbage debt, the circuit clerk needs to notify the chancery clerk so that a notation may be recorded in the lien book of the discharge of the debt owed to the county. (Russell, 5/2/2014)(#220)(OP-14-00117)

The Board of Supervisors of Desoto County may not prohibit the public from using electronic cigarettes in a county building pursuant to Section 29-5-161. However, pursuant to its Home Rule authority, Desoto County may adopt an ordinance prohibiting the use of electronic cigarettes where it is not already regulated by state law. Such ordinance must clearly describe the prohibited conduct. (Neyman, 5/2/2014)(#220)(OP-14-00153)

This office is of the opinion that, as a general matter, Sharkey County may not maintain a road that is located within Yazoo County and Humphreys County. For one local governmental entity to provide use of equipment or funds for maintenance within another local governmental entity, there must be specific statutory authority. One or more statutory exceptions that potentially could apply to the instant facts can be found in Miss. Code Ann. Section 65-7-77. However, because we do not know the particular facts regarding the subject road, we cannot state whether any of these statutory provisions would have any applicability. (Woodard, 5/16/2014)(#220)(OP-14-00183)

If a board of supervisors makes a factual finding spread upon its minutes that a concrete wall, either impedes the county's ability to maintain the right-of-way, obstructs the right-of-way, adversely affects the right-of-way, or constitutes a safety hazard on the right of way, the board of supervisors may request the landowner remove the portion of the wall that is adversely affecting the right-of-way at his own expense. If the landowner fails to comply with the request, the board of supervisors shall remove the object from the road and the landowner shall pay the expenses for removal. (Snowden, 5/23/2014)(#220)(OP-14-00189)

TAXES-AD VALOREM

Pursuant to Section 41-13-15, the county may sell a hospital with such terms and conditions as may be agreed upon by both parties, including an agreement by the purchaser to prepay an estimate of county and city ad valorem taxes, in addition to other consideration paid by the purchaser. A county does not have statutory authority to immediately expend early payments of future ad valorem taxes. A county may, at such time as the ad valorem taxes become lawfully due and payable, transfer the owed amount from the specially dedicated account holding these early payments of ad valorem taxes and credit the taxpayer and parcel. Neither Section 19-3-40 nor Section 21-17-5 provides statutory authority to immediately expend ad valorem taxes that have been collected prior to years owed. However, sale proceeds, including the prepayment of ad valorem taxes, may be utilized to retire the bond indebtedness if approved and ordered by the Bankruptcy Court. (Slover, 5/14/2014)(#236)(OP-14-00140)

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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