



# ATTORNEY GENERAL'S OPINION OUTLINE

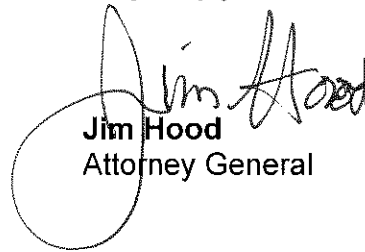
Volume 44, Number 8  
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The purpose of the Opinion Outline is to inform state, county and municipal officials and other interested persons of official opinions issued by the Attorney General's Office. This outline contains synopses of opinions issued from August 01, 2014 through August 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

## ARCHITECTURAL BOARD

Miss. Code Ann. Section 31-11-35 must be followed even if the Department of Finance and Administration (DFA) has not adopted ASHRAE 90.1-2010 rules and regulations. Unlike Miss. Code Ann. Section 57-39-21, Miss. Code Ann. Section 31-11-35 requires ASHRAE 90.1-2010 compliance even in the absence of adopted rules and regulations.  
(Wilkinson, 8/22/2014)(#014)(OP-2014-00159)

## CORONERS (MEDICAL EXAMINERS)

Pursuant to Section 41-61-63, a county coroner has the authority to release medical records to local law enforcement to aid law enforcement in its investigation of a death.  
(White, 8/8/2014)(#047)(OP-2014-00305)

## COUNTY ATTORNEY

County Prosecuting Attorneys cannot bring nor maintain civil suits against their county after being appointed. County Prosecuting Attorneys can handle civil, but not criminal matters, involving municipalities within their county. Attorneys associated in a firm with a County Prosecuting Attorney may handle criminal matters in any county other than the county in which the County Prosecuting Attorney serves. The extent to which attorneys in the County Prosecuting Attorney's firm can bring or maintain suits against the County must be determined by the Rules of Professional Conduct on which this Office does not opine.  
(Pittman, 8/29/2014)(#050)(OP-2014-00334)

## COUNTY EMPLOYEES

It is the opinion of this office that paragraph 2 of Section 25-1-113 requires that covered entities, from and after July 1, 2014, 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."  
(Smith,8/8/2014)(#053A)(OP-2014-00311)

## COURTS

Rule 2.14 of the Rules of Justice Court Procedure provides that, "unless authorized by law, no post-judgment action shall be instituted upon a judgment until expiration of ten (10) days after its entry". (Beech, 8/29/2014)(#056)(OP-2014-00339)

## CRIMINAL LAWS

A defendant charged with DUI 1st prior to October 1, 2014, may have his case nonadjudicated after October 1, 2014 if the plea or conviction, which requires both conviction and sentence, occurred after October 1, 2014.  
(Clark,8/15/2014)(#057)(OP-2014-00227)

In a criminal offense which occurred prior to July 1, 2014 and which was not resolved by plea or trial before July 1, 2014 the court should apply the lesser penalty provided in House Bill 585.  
(Mayfield,8/29/2014)(#057)(OP-2014-00247)

A defendant charged with DUI 1st prior to October 1, 2014 may have his case non adjudicated on or after October 1, 2014 if the plea or conviction, which requires both conviction and sentence, occurred on or after October 1, 2014. This would also apply to convictions entered on appeal in a trial de novo which occurred on or after October 1, 2014.  
(Cox,8/29/2014)(#057)(OP-2014-00271)

## DEPT. OF FINANCE & ADMIN.

Universities are not included within the meaning of "state agency or department" found in Sections 27-104-7(2)(c) and 29-5-2(c).  
(Upchurch,8/15/2014)(#037)(OP-2014-00301)

## ECONOMIC DEVELOPMENT DISTRICTS

It is the opinion of this office that Madison County Economic Development Authority is exempt from paying taxes on property owned by it that are assessed by a Public Improvement District under the authority of Section 19-31-33.  
(Clark,8/22/2014)(#266C)(OP-2014-00320)

## ELECTIONS-COMMISSIONERS

Elections must be held pursuant to the district and precinct lines most recently effectuated.  
(Kinnard,8/8/2014)(#064)(OP-2014-00298)

## HIGHWAY SAFETY PATROL

It is the opinion of this office that Mississippi law requires the recognition of a valid, unrevoked out-of-state concealed carry license properly issued to an individual 18 years or older under the law of another state. Additionally, it is the opinion of this office that out-of-state concealed license holders are not authorized to carry weapons in those places listed in Section 45-9-101(13), which is limited to enhanced license holders licensed under Section 45-9-101 with the enhanced carry rights granted under Section 97-37-7(2).  
(Easterling,8/1/2014)(#89)(OP-2014-00293)

## HOSPITALS-COMMUNITY

Section 27-105-365 should be interpreted to allow public and private hospitals to participate in a trust fund authorized in subsection (2)(g) if it also includes funds invested by a private hospital.  
(Brown,8/15/2014)(#092)(OP-2014-00285)

## INTERLOCAL AGREEMENTS

The Interlocal Cooperation Agreement between the City of Madison and Madison County involving the funding of certain street improvements is approved.  
(Hedglin,8/4/2014)(#277)(OP-2014-00300)

Approval of the Interlocal Agreement between Lamar County, Mississippi and the City of Hattiesburg involving tax redemption services to be provided by the Chancery Clerk on behalf of the City.  
(Ball,8/8/2014)(#277)(OP-2014-00318)

Approval of Interlocal Agreement between DeSoto County, Mississippi and the Town of Walls involving fire code inspection services.  
(Nowak,8/13/2014)(#277)(OP-2014-00299)

The Interlocal Cooperation Agreement between the Town of Marion and the Dalewood Sewer District involving the provision of wastewater treatment services is approved.  
(Welch,8/15/2014)(#277)(OP-2014-00326)

Approval of Interlocal Agreement between City of Pascagoula and Pascagoula School District concerning Safe Routes to School Program.  
(Sessoms,8/22/2014)(#277)(OP-2014-00345)

Approval of the 2014-2015 Interlocal Agreement between Pike, Walthall, and Lincoln Counties, the Sheriffs of Pike, Walthall, and Lincoln Counties; the Cities of McComb and Brookhaven; and the Chiefs of the McComb and Brookhaven Police Departments establishing the Southwest Mississippi Inter-Jurisdictional Narcotics Enforcement Unit.  
(Dye,8/27/2014)(#277)(OP-2014-00354)

## LAW ENFORCEMENT OFFICES

If a law enforcement officer is working for multiple agencies and is grossing a total of more than \$250.00 per week or \$1,075.00 per month, he is by definition a full-time law enforcement officer. He is required to receive additional training within a year to receive his full-time certificate. It is suggested that agencies hiring part-time officers monitor their status if they are employed by multiple agencies.  
(Drummond,8/15/2014)(#274)(OP-2014-00309)

## MUNICIPALITIES

A conviction of a public official is required before he can be involuntarily removed from office pursuant to Section 175 of the Mississippi Constitution.  
(Collins,8/8/2014)(#142)(OP-2014-00303)

A mayor may only issue a check for a claim that has been properly approved by the board of aldermen. The authority of the board of aldermen to approve claims of the municipality may not be delegated to the mayor. A board of aldermen has no authority to direct the daily activities of municipal employees or to become involved in the direction of a department or department head. Whether the actions of the members of the board of aldermen contained in your request rise to the level of "directing the daily activities of a municipal employee" is a factual determination to be made by the governing authorities, subject to review by a court of competent jurisdiction.  
(Mims,8/15/2014)(#142)(OP-2014-00304)

Section 21-9-29 gives the city manager broad administrative powers and, in our opinion, includes the authority to approve administrative policies such as police department protocol and procedures without city council approval.  
(Danos,8/15/2014)(#142)(OP-2014-00315)

Under its home rule authority, along with its broad authority to establish public parks, a municipality may enter into a contract and/or provide a method of fund-raising for its recreational/athletic leagues.  
(Danos,8/22/2014)(#142)(OP-2014-00316)

There is no authority which would authorize the city council to hire an internal auditor, either as a deputy clerk or as an independent advisor, who reports directly to the city council, unless such employee falls within the parameters of those employees specified in Mississippi Code Annotated Section 21-8-13.  
(Bradley,8/22/2014)(#142)(OP-2014-00317)

A municipality is authorized to hire a deputy clerk and assign him/her duties consistent with those of the city clerk, which include auditing duties. Such deputy clerk would report to the mayor as other municipal employees do.  
(DuPree,8/22/2014)(#142)(OP-2014-00343)

Municipal governing authorities under the municipal "home rule" statute may participate in a cell phone plan with the participating officers and employees paying the entire cost of the equipment and service. In order to accomplish this, an ordinance that provides for the payroll deduction of the proportionate cost of each participating employee is necessary. Also, as a safeguard against impermissible donations, it is necessary to execute written agreements that contractually obligate each participant to have the termination fee, final bill and any other costs associated with the cessation of the service deducted from their final paycheck upon leaving employment with the municipality.  
(Ballard,8/22/2014)(#142)(OP-2014-00329)

Barring explicit statutory authority, a municipality may not bind a successor board to a financing agreement with a banking institution.  
(Barton,8/1/2014)(#142)(OP-2014-00289)

Under the facts provided in your request, even though the police officer was acting in the course and scope of his employment, the municipality is not authorized to reimburse him for the loss of his personal property, absent a pre-existing lawful obligation to do so.  
(Austin,8/1/2014)(#142)(OP-2014-00296)

The question of whether a selectman has removed herself from the municipality she is serving is one of fact to be determined by the remaining members of the governing authority subject to judicial review.  
(McKenzie,8/1/2014)(#142)(OP-2014-00288)

In accordance with its authority found in Mississippi Code Annotated Section 21-17-1, a municipality may dispose of personal property or real property owned by it consistent with the provisions of Section 17-25-25. (Rogers,8/1/2014)(#142)(OP-2014-00283)

Senate Bill 3238 specifically authorizes the City of Pascagoula to expend general fund monies "to establish, promote and develop tourism and economic development within the city." The governing authorities may make a specific appropriation for such purposes. Whether a particular expenditure from such appropriation is authorized as one that has as its purpose the establishment, promotion and development of tourism and economic development is a question of fact that must be made on a case by case basis and must be consistent with the facts.  
(Williams,8/29/2014)(#142)(OP-2014-00330)

The right to hold a public office ceases upon the expiration of the term except when the incumbent is statutorily authorized to hold over in office until his or her successor is elected and qualified.  
(O'Reilly-Evans,8/29/2014)(#142)(OP-2014-00344)

## OTHER STATE AGENCIES, BOARDS & COMMISSIONS

A member of the Mississippi Fire Personnel Minimum Standards and Certification Board who has completed two consecutive terms may not be appointed to a third term until the completion of an intervening three year term.

(Berry,8/15/2014)(#218C)(OP-2014-00314)

## RETIREMENT-PUBLIC EMPLOYEES

Section 25-11-139 expressly prohibits the payment of benefits for any time period prior to the first of the month following the receipt of the application for such benefits by PERS.

(Robertson,8/29/2014)(#170)(OP-2014-00341)

## SCHOOLS-TAXES

Per Miss. Code Ann. Section 37-7-301.1, the "Home Rule" statute, the school board may request that the county board of supervisors levy an ad valorem tax in order to pay an installment payment of a duly-issued shortfall promissory note, even though any previous installment payment for the same promissory note was paid with school district funds derived from other sources. (Smith,8/22/2014)(#193)(OP-2014-00267)

The tax base for the Sunflower County Consolidated School District is county-wide for all purposes, including calculation of homestead exemption reimbursement revenue. Further, the Sunflower County Consolidated School District, as a county consolidated school district, does not meet the definition of a "taxing unit" set out in Miss. Code Ann. Section 27-33-11(b). Consequently, the limitation on reimbursement set out in Miss. Code Ann. Section 27-33-79 applies to the county as a whole, and not solely to the reimbursement revenue for the Sunflower County Consolidated School District. (Noble,8/22/2014)(#193)(OP-2014-00291)

## SEPARATION OF POWERS

A commissioner of a Rails to Trails Recreational District serves in the executive branch of government. A Sheriff also serves in the executive branch of government. Thus, it is the opinion of the office that a person serving both on a board of a Rails to Trails Recreational District and as a volunteer to a sheriff's office would not violate the separation of powers doctrine. (Winter,8/8/2014)(#271)(OP-2014-00312)

## SUPERVISORS-AUTHORITY

There is no authority for the Board of Supervisors to directly pay the utility bills incurred by a volunteer county fire department or a fire protection district. The self-limiting language of Section 19-5-95 on sums in excess of the avails of one-fourth mill does not apply to the provisions of Section 83-1-39. Pursuant to Section 83-1-39(3)(b), the Board of Supervisors may expend insurance rebate monies on improvements to fire protection equipment or improvements to property and buildings occupied by a voluntary fire department or a fire protection district. (Nowak,8/8/2014)(#220)(OP-2014-00280)

The Marshall County Board of Supervisors does not have the authority to levy a special public safety assessment to each parcel of real property in the County to provide additional funding to the sheriff's department or the county fire department. (Smith,8/22/2014)(#220)(OP-2014-00310)

It is the responsibility of the Board of Supervisors to determine whether it is obligated to pay an unbudgeted expense. However, it is not the province of this office to opine as to the validity vel non of an order of a court. When faced with a court order, the board of supervisors must either comply or take steps to challenge the order following the process provided by law. (Shepard,8/22/2014)(#220)(OP-2014-00322)

Pursuant to Section 19-7-1 and Section 65-7-91, the Leake County Board of Supervisors is authorized to purchase or lease grounds to be used by the county in storing and preserving road machinery, trucks or other county property. These sections also authorize the Board of Supervisors to obtain a license or temporary construction easement for these purposes. (Webb,8/29/2014)(#220)(OP-2014-00327)

## TAXES-ASSESSORS-TAX COLLECTORS

The Tax Assessor/Collector has the authority to fill a vacant deputy clerk position in his office and may do so without the approval of the Board of Supervisors. (Beech,8/29/2014)(#237)(OP-2014-00333)

## TREASURY (STATE)

The funds escheated to the State by virtue of Section 11-17-34 should be paid to the Office of the State Treasurer and deposited into the state general fund. (Wilson,8/29/2014)(#259)(OP-2014-00332)

UNIVERSITY OF MISSISSIPPI-MEDICAL  
CENTER

The governing authority of UMMC is authorized to determine when and the manner in which human remains located in the UMMC potter's field may be rearranged, disinterred and reinterred so long as it is done in accordance with the 1974 Act. We find no authority under the 1974 Act for UMMC to cremate disinterred human remains before reinterment.  
(Bounds,8/8/2014)(#260)(OP-2014-00262)

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