



# ATTORNEY GENERAL'S OPINION OUTLINE

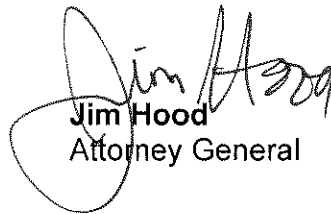
Volume 45, Number 9  
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The purpose of the Opinion Outline is to inform state, county and municipal officials and other interested persons of official opinions issued by the Attorney General's Office. This outline contains synopses of opinions issued from September 01, 2014 through September 30, 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.

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Very truly yours,

  
Jim Hood  
Attorney General

## BONDS

The Mississippi Development Bank Act controls the payment of fees to counsel which result from bonds issued pursuant to the Mississippi Development Bank Act. (Thompson,9/19/2014)(#034)(OP-2014-00360)

## CONSTABLE

The fact that the fee income of constables in Madison County is now subject to income tax and Social Security withholding does not alter the fact that State law requires constables to pay both the employee and employer PERS contributions on their net fee income, unless the board of supervisors has elected to pay the employer contributions as allowed under Section 25-11-106(1)(b)(iii). (Espy,9/26/2014)(#045)(OP-2014-00362)

## CRIMINAL LAWS

A felony with an enhanced penalty is expressly excluded from the definition of "nonviolent crime" in Section 47-7-3(1)(f). A person convicted of a felony with an enhanced penalty, after June 30, 1995 and before July 1, 2014, is not a "nonviolent offender" under Section 47-7-3(1)(g)(iii). Such person is not eligible for parole under Section 47-7-3(1)(g)(iii) due to the prohibitions contained in Section 47-7-3(1)(f), which remain fully applicable to certain convictions after June 30, 1995 and before July 1, 2014. (Pickett,9/19/2014)(#057)(OP-2014-00337)

Article 3 Section 29 of the Mississippi Constitution discusses bail and when bail may be denied. (Jefferson,9/26/2014)(#057)(OP-2014-00355)

## INTERLOCAL AGREEMENTS

Approval of the Interlocal Agreement between Lamar County, the Sheriff of Lamar County and the Lamar County Board of Education providing law enforcement assistance. (Norton,9/2/2014)(#277)(OP-2014-00356)

The Interlocal Cooperation Agreement between the City of Jackson and the Jackson Public School District regarding the installing of outdoor playground and recreation equipment is approved.  
(Johnson,9/5/2014)(#277)(OP-2014-00353)

Approval of the Interlocal Agreement between the City of Pascagoula and Jackson County providing for the housing of Pascagoula Municipal Inmates in the Jackson County Adult Detention Center.  
(Evans,9/18/2014)(#277)(OP-2014-00379)

Approval of the Interlocal Agreement between Leflore County, Mississippi and the City of Itta Bena, Mississippi for the collection of garbage.  
(Chiles,9/19/2014)(#277)(OP-2014-00371)

Approval of the Interlocal Agreement between Leflore County, Mississippi and the City of Itta Bena, Mississippi for police protection services.  
(Chiles,9/19/2014)(#277)(OP-2014-00372)

Approval of the Interlocal Agreement between the Clarke County Board of Supervisors, Clarke County Sheriff, City of Quitman and Chief of Police of City of Quitman creating the Clarke County Criminal Investigation Division.  
(Kramer,9/25/2014)(#277)(OP-2014-00389)

Approval of the Interlocal Agreement between the Cities and Chiefs of Police of Tupelo, Amory, Booneville, Fulton, and Okolona; and the Counties and Sheriffs of the Counties of Lee, Chickasaw, Itawamba, Prentiss and Tishomingo establishing the North Mississippi Narcotics Unit/2013-2014.  
(Bostick,9/8/2014)(#277)(OP-2014-00361)

Approval of the Interlocal Agreement between DeSoto County, Mississippi and the City of Hernando involving the development and redevelopment of the Hampton Inn TIF Project.  
(Stockton,9/10/2014)(#277)(OP-2014-00352)

The Interlocal Agreement between Hinds County and the Jackson Public School District regarding asphalt repair for Lanier High School is approved.  
(Teeuwissen,9/12/2014)(#277)(OP-2014-00365)

The Interlocal Cooperation Agreement between the City of Brandon and Rankin County involving an improvements project on Highway 80 is approved.  
(Baker,9/12/2014)(#277)(OP-2014-00357)

Approval of the Interlocal Agreement between Hinds County, Mississippi and the City of Edwards, Mississippi for the collection of ad valorem taxes.  
(McQuirter,9/15/2014)(#277)(OP-2014-00374)

Approval of the Interlocal Agreement between Hinds County, Mississippi and the Town of Utica, Mississippi for the collection of ad valorem taxes.  
(McQuirter,9/15/2014)(#277)(OP-2014-00375)

Approval of the Interlocal Agreement between Hinds County, Mississippi and the Town of Terry, Mississippi for the collection of ad valorem taxes.  
(McQuirter,9/15/2014)(#277)(OP-2014-00376)

## LEGISLATIVE

Mississippi dam safety laws found at Miss. Code Ann. Section 51-3-39 apply by their terms both to specified governmental entities and private landowners.  
(Home,9/10/2014)(#104)(OP-2014-00351)

## MARRIAGE LAW

It is the opinion of this office that where a judicial officer or other official authorized to solemnize marriages knows that a valid marriage cannot be performed because of the gender of the parties or for other reasons disqualifying such persons from marrying under State law, that officer should decline to perform the marriage ceremony. This reasoning would apply even if a marriage license had been granted but through accident, mistake or intent the license was issued to persons not authorized to marry under State law.  
(Palmer,9/14/2014)(#110)(OP-2014-00010)

## MISCELLANEOUS

The Pearl & Leaf Rivers Rails-to-Trails Recreational District may regulate open carrying of weapons on the District's property under state law. However, such regulations must be consistent with federal constitutional principles which would require that the area in which a firearms ban is imposed be properly designated as a "sensitive area." This office cannot opine on the past regulations passed by the District nor can it opine on the notice issues raised in the opinion request.  
(Cartlidge,9/18/2014)(#115)(OP-2013-00262)

## MISS. STATE BAR ASSOCIATION

Current Mississippi law does not prohibit a non-attorney from serving as an IDEA due process hearing officer. Further, a non-attorney serving as an IDEA due process hearing officer, in and of itself, does not constitute the unauthorized practice of law in the State of Mississippi.  
(Baria,9/26/2014)(#021A)(OP-2014-00380)

## MUNICIPALITIES

Individuals, even when acting in the capacity of a security guard, may carry a firearm, provided that it is not "concealed", in accordance with House Bill 2 (Laws of 2013, Regular Session). A municipality may not require a private business located within the municipality to carry a minimum amount of insurance based solely on the fact that the business employs armed security guards. Likewise, a municipality may not require armed security guards, working for a private business within the municipality, to undergo safety training and firearms instruction.  
(Watkins,9/18/2014)(#142)(OP-2013-00480)

Municipalities are authorized to regulate open carrying of weapons only in those places and events identified in Miss. Code Ann. Section 45-9-53(f). There are no state statutes authorizing municipalities to post signage regarding the open carrying of weapons at this time. The requestor should review H.B. 314 which was signed into law by the Governor. H.B. 314 specifically addresses authority of municipalities to post signs regarding carrying of weapons.  
(Ringer,9/18/2014)(#142)(OP-2013-00250)

Municipal vehicles may only be used for conducting municipal business and may not be used for personal use of an employee, as such would constitute an unlawful donation.  
(Welch,9/26/2014)(#142)(OP-2014-00368)

A municipality may set aside and lease or dispose of its surplus real property for industrial and commercial purposes upon such terms and conditions as the municipality may prescribe, in accordance with Mississippi Code Annotated Section 57-7-1.  
(Manley,9/10/2014)(#142)(OP-2014-00331)

Modifications to a municipal ordinance for the purposes of reducing the number of dogs permitted on a resident's property and establishing minimum animal enclosures or tethering specifications appear to be within the general police power of a municipality. A municipality may adopt/modify its ordinances for the purposes enumerated in Sections 21-19-1 and 17-1-3. In doing so, it must consider whether such amendment/modification constitutes an unlawful "taking" of private property as prohibited under the Takings Clause of the Fifth Amendment of the United States.  
(Sutton,9/12/2014)(#142)(OP-2014-00347)

It is the opinion of this office that the proposed ordinance violates Section 45-9-53(1)(f) in that it attempts to regulate the possession of firearms in municipal court and is beyond the scope of the City's authority. With regard to the application of the ordinance to deadly weapons other than firearms, it is generally within the regulatory authority of a municipality. Since a conclusive opinion regarding the enforceability of the ordinance would require us to interpret and apply the ordinance, such an opinion is beyond the scope of an official opinion issued pursuant to Section 7-5-25. Likewise, we cannot, by official opinion, specify how the ordinance should be drafted to comply with State law.  
(Tindell,9/18/2014)(#142)(OP-2014-00328)

## SCHOOLS-DISTRICTS

A concussion policy that addresses only those school athletic events as defined in the Mississippi Youth Concussion Law (MYCL) is in compliance with the MYCL. A school district does not have a duty to ensure that outside groups who use the school district's facilities comply with or adopt the school district's concussion policy. While the MYCL does not require that a school district's concussion policy address events outside the definition of a school athletic event, under Home Rule, a school district may choose to adopt a concussion policy that applies to additional extra-curricular activities, visiting teams and/or public recreation.  
(Hood,9/19/2014)(#180)(OP-2014-00348)

## SCHOOLS-MISCELLANEOUS

A school district, through its board, may contract with a temporary service to provide certain non-licensed workers, so long as doing so is permissible under district policy. The school district may pay an amount for such services that, in its best judgment, is appropriate for the benefit received. A school district may not assume responsibility for the conduct of employees of the temporary service or for claims against the temporary service. Payment of a placement fee or search fee, when not a preexisting contractual obligation, would be a donation prohibited by Article 4, Section 66 of the Mississippi Constitution.  
(Hemphill,9/26/2014)(#187)(OP-2014-00313)

## SCHOOLS-TAXES

The Forrest County Agricultural High School is a school district that is subject to certain special statutory treatment unique to agricultural high schools. Ad valorem tax levies for various agricultural high school operations are pursuant to Miss. Code Ann. Section 37-27-3, et seq. However, in the event of a budgetary shortfall, FCAHS may issue promissory notes in accordance with Miss. Code Ann. Sections 37-57-108 and 27-39-333, which may properly include an ad valorem tax levy by the county board of supervisors to repay any such note.  
(Pope,9/19/2014)(#193)(OP-2014-00319)

## SHERIFFS-AUTHORITY

A sheriff is not authorized to allow use of his office and phones to solicit advertisements for a privately published "sheriff's calendar" in return for a percentage of such advertisement fees being paid to the county.  
(Shepard,9/19/2014)(#213)(OP-2014-00366)

A sheriff is authorized to use state inmates for the purpose of assisting in the feeding of animals seized because of abuse or neglect of such animals.  
(Simmons,9/19/2014)(#213)(OP-2014-00369)

## SUPERVISORS-AUTHORITY

Pursuant to Section 25-15-101, a county is authorized to enter into a group health insurance policy. However, a county may not purchase individual health insurance policies for individual employees. (Seale,9/19/2014)(#220)(OP-2014-00359)

Pursuant to Section 25-15-101, a county is authorized to enter into a group health insurance policy. However, a county may not purchase individual health insurance policies for individual employees. (Vassel,9/12/2014)(#220)(OP-2014-00346)

## TAXES-AD VALOREM

The ultimate question of whether a property is eligible for an ad valorem tax exemption is a determination that must be made in the first instance by the local governing authorities subject to review by the State Tax Commission. Moreover, whether a particular property fits within an exception is a factual matter on which this office does not opine. (Dupont,9/10/2014)(#236)(OP-2014-00350)

## TAXES-ASSESSORS-TAX COLLECTORS

Pursuant to Section 27-1-51, a board of supervisors lacks the authority to select a candidate to attend the Mississippi Tax Collectors Education and Certification Program. The county tax collector or assessor-tax collector is authorized to make this selection. Under this program, a deputy who has received certification in all three levels and holds a valid certification shall have a total increase in salary of \$6,500. (Hemphill,9/10/2014)(#237)(OP-2014-00349)

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