



ATTORNEY GENERAL'S OPINION OUTLINE

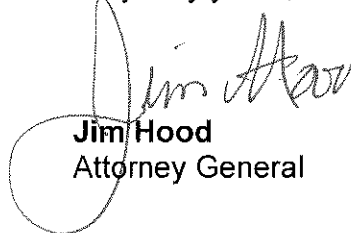
Volume 46, Number 10
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The purpose of the Opinion Outline is to inform state, county and municipal officials and other interested persons of official opinions issued by the Attorney General's Office. This outline contains synopses of opinions issued from October 01, 2014 through October 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

AIRPORTS

It is the opinion of this office that Miss. Code Ann. Section 61-3-13 authorizes the payment of per diem compensation to a commissioner provided the authority makes a determination, consistent with the facts, that attendance at the meeting or conference was necessary in the performance of the official duties of the authority.
(Walker, 10/24/2014)(#002)(OP-2014-00406)

DEPARTMENT OF MARINE RESOURCES

It is within the discretion of the Commission on Marine Resources to determine how much oversight of the Director it feels is necessary to effectively manage the operations of the agency.
(Gollot, 10/24/2014)(#268)(OP-2014-00395)

ELECTIONS-GENERAL

A member of a county party executive committee should resign from the committee prior to qualifying as a candidate for any office that would disqualify him from serving on the committee.
(Barton, 10/3/2014)(#067)(OP-2014-00382)

ELECTIONS-NEW REFERENDUM

Neither Section 23-15-911 nor any other statute gives opponents and supporters of a referendum the authority to examine the contents of ballot boxes.
(Creekmore, 10/30/2014)(#072A)(OP-2014-00443)

ELECTIONS-QUALIFICATION OF CANDIDATE

There is no legal requirement that the offices of Secretary of State, County Circuit Clerks and State Party Executive Committees be open on Saturday, February 28, 2015 or Sunday, March 1, 2015 for the purpose of accepting qualifying papers and applicable fees. Therefore, since Sections 23-15-299 and -359 provide that no qualifying papers and applicable fees may be filed or paid prior to January 1 of the year of the elections, potential candidates will have access to those offices to file the necessary qualifying papers and pay any applicable fees on each business day from January 1, 2015 to 5 p.m. on February 27, 2015 unless, in the case of county circuit clerks, their offices are normally open on Saturdays pursuant to an order of their board of supervisors as authorized by Section 25-1-99.
(Turner,10/16/2014)(#071)(OP-2014-00390)

GOVERNOR

The prohibitions contained in Section 45 of the Mississippi Constitution of 1890 prohibiting legislators from accepting appointments to offices of profit pertain to offices created or emoluments increased during the current term for which the legislator was elected.
(Waites,10/17/2014)(#085)(OP-2014-00392)

INTERLOCAL AGREEMENTS

Interlocal Agreement between the counties of Attala, Bolivar, Holmes, Leake, Leflore, Marshall, Panola, Sunflower, Tippah, Tishomingo, and Union to collectively seek bids for and acquire aerial photography services for tax assessment purposes is approved.
(Wallace,10/7/2014)(#277)(OP-2014-00397)

Approval of Interlocal Agreement between Jefferson Davis County, Mississippi and the Town of Prentiss, Mississippi for the collection of ad valorem taxes.
(Daughdrill,10/9/2014)(#277)(OP-2014-00400)

Approval of Interlocal Agreement between Gulfport-Biloxi Regional Airport Authority and the City of Gulfport providing for Airport Police Protection.
(Faneca,10/15/2014)(#277)(OP-2014-00403)

Interlocal Agreement between Hinds County and the Town of Edwards regarding the funding for the Construction of a Community Center in the Town of Edwards, Mississippi is approved.
(Teeuwissen,10/30/2014)(#277)(OP-2014-00429)

Interlocal Agreement between Hinds County and the City of Jackson regarding the City of Jackson streets and park improvements is approved.
(Teeuwissen,10/30/2014)(#277)(OP-2014-00430)

LAW ENFORCEMENT OFFICERS

The employing authority under Section 25-3-93 must make the factual determination as to whether any state law enforcement officer referenced in Section 25-3-93(5) is injured by wound or accident in the line of duty.
(McGrath,10/3/2014)(#274)(OP-2014-00373)

MS. STATE DEPARTMENT OF HEALTH

Body parts from a research facility, in or out of state, may not be commingled in a Mississippi crematory retort, unless either the Board of Funeral Services (or the Board of Health for tissue used in medical examinations) has adopted regulations specifically authorizing same. Family members or others may not consent to the commingling and cremation of human remains, unless, either the Board of Funeral Services or the Board of Health has adopted regulations specifically authorizing same. If a decedent has given to the funeral establishment a written instrument authorizing the manner of disposal of his/her remains, whether in a preneed contract or any other written instructions, the funeral establishment must follow those directives (so long as the manner of disposal is otherwise lawful).
(Kenney,10/10/2014)(#027)(OP-2014-00292)

MUNICIPAL CHARTERS

The proposed amendment to the City of Natchez's Charter to convert the position of City Clerk from an elected position to an appointed position effective July, 2016 is consistent with the Constitution and laws of the United States and the Constitution of the State of Mississippi.
(Snyder,10/21/2014)(#139)(OP-2014-00417)

MUNICIPAL CONTRACTS & PURCHASES

Municipal governing authorities may contract with the local Boys & Girls Club to assist in the development of the youth development programs and to administer and manage the programs utilizing Club employees without bidding or requesting proposals for the programs provided the value of the services received by the City is reasonable in relation to the amount of money paid to the Club thereby avoiding what would amount to a donation that must be counted against the limit on such donations in Section 21-19-67.
(Hammack,10/17/2014)(#140)(OP-2014-00402)

MUNICIPAL EMPLOYEES

Section 25-1-113 does not apply to non-employee contractors of a municipality. The provisions of Section 25-1-113 would apply to employees convicted of a felony in which money comes in the employee's hands through the use of the employee's employment in a criminal manner such as accepting a bribe.
(Hines,10/10/2014)(#149A)(OP-2014-00398)

MUNICIPALITIES

One who has been convicted or pled guilty in any court of this state, another state, or in federal court of a felony in which public funds were unlawfully taken, obtained or misappropriated in the abuse or misuse of the person's employment may not be employed as a grant writer.

(Austin,10/10/2014)(#142)(OP-2014-00364)

Transacting or conducting business of the municipality outside of a properly called meeting, which includes a telephone vote of the members of the board of aldermen, is a violation of the Open Meetings Act.

(Rogers,10/10/2014)(#142)(OP-2014-00378)

Assuming that the governing authorities have made the requisite factual determinations outlined in Section 21-33-326, the municipality may borrow funds from the local planning and development district for the purpose of making repairs to municipal buildings. Any authority to borrow funds in accordance with Mississippi Section 21-33-326 is limited to the amount of the anticipated grant funds.

(McDonald,10/17/2014)(#142)(OP-2014-00384)

A lawful veto of an action of the board of aldermen by the mayor, in accordance with Mississippi Code Annotated Section 21-3-15, must be recognized by the governing authorities, even if such veto is made prior to the minutes of the meeting being formally approved. In the event that the mayor fails to properly submit his veto, in accordance with the provisions of Section 21-3-15, within ten (10) days after he has received the ordinance, he loses his statutory authority to veto, even if he has previously declared his intention to veto. A municipal attorney represents the municipality in its entirety, rather than individual municipal officers and employees and, as such, may not represent the mayor, alone, in an action against the board of aldermen nor vice versa. Whether a veto is valid or not is a factual determination to be made by a court of competent jurisdiction. (St. Pe',10/17/2014)(#142)(OP-2014-00385)

A municipal board of aldermen may declare the office of mayor vacant and call a special election to fill that vacancy provided it determines, consistent with the facts, that the mayor has abandoned his residence in Lambert in favor of another with no intent to return. Prior to any such declaration, the mayor must be given an opportunity to be heard on the matter.

(Griffin,10/24/2014)(#142)(OP-2014-00410)

While a municipality may hold land subject to restricted land usage, it has no duty or authority to pay homeowners' association dues on property being used for a public purpose, such as a pump station for the treatment of wastewater, regardless of how the property was acquired.

(Manley,10/31/2014)(#142)(OP-2014-00420)

A municipality is not authorized to donate surplus equipment to a private volunteer fire company even when it has entered into an agreement with such company to provide fire fighting services. However, it may permit the use of its fire fighting equipment by a municipal volunteer fire department, provided that such use is restricted to municipal fire protection services and the municipality retains ownership of its equipment. Alternatively, the municipality could dispose of the equipment in a manner consistent with the provisions of Section 17-25-25, provided that the personal property is determined to be surplus.

(Ringer,10/31/2014)(#142)(OP-2014-00414)

NEPOTISM

A violation of the nepotism statute (25-1-53) would occur if a deputy clerk were promoted to the position of city clerk while her sister is a member of the Board of Aldermen. This would be true regardless of whether the sister recuses herself from any votes on the matter.

(Ausbern,10/10/2014)(#151)(OP-2014-00383)

OTHER STATE AGENCIES, BOARDS & COMMISSIONS

It is the opinion of this office that the State Board of Animal Health has authority to resolve alleged regulatory violations and resulting fines imposed in an order by the State Veterinarian as a reviewing officer under Section 69-15-53. The Board is the ultimate regulatory authority in these matters and is expressly authorized to accept, modify or reject such findings.

(Watson,10/31/2014)(#218C)(OP-2014-00422)

SCHOOLS-COMMUNITY AND JUNIOR COLLEGES

A community college is authorized to make electronic payments to its vendors through the college's bank as long as (1) such payments are lawfully authorized; (2) the process is consistent with systems and procedures established by the Department of Audit; and (3) vendors have authorized the bank to act as the vendors' authorized receiver of funds.

(Marshall,10/17/2014)(#172)(OP-2014-00401)

SCHOOLS-PROPERTY

It is the opinion of this office that the District cannot use Section 7-7-43 to withhold a paycheck until such time as a determination is made that an indebtedness exists. Whether or not a lawful debt exists that can be setoff under the statute is a matter that must be first determined by the governmental authority.

(Jacks,10/31/2014)(#190)(OP-2014-00416)

SUPERVISORS-AUTHORITY

A board of supervisors may not now choose to opt out of the code requirements imposed under Section 17-2-1, by utilizing subsection (3) of Section 17-2-4. (Gibson, 10/17/2014)(#220)(OP-2014-00391)

There is no authority for a county board of supervisors to directly pay the utility bills incurred by a volunteer fire department or fire protection district. This is true whether the county owned building is used only as a fire station, or if it is also utilized for other public needs. However, pursuant to Miss. Code Ann., Section 83-1-39(3)(d), a volunteer fire department or fire protection district can use the proceeds of its fire protection contract for its operation, which may include the payment of the utility bills of the department or district. If private property, the Board of Supervisors, by order spread upon the minutes, should determine what amount constitutes a reasonable rental for the use of the private property and make a finding that the amount to be paid for utilities does not exceed the reasonable rate. The fire protection services contracts may then be increased to include this amount. (Nowak, 10/31/2014)(#220)(OP-2014-00415)

SUPERVISORS-ROADS & BRIDGES

Section 65-7-121 would allow a county to abandon a section of road if it is in the public interest or convenience to do so and it complies with the public notice and hearing requirements of the section. (Gibson, 10/10/2014)(#231)(OP-2014-00388)

If a county accepts a donation of a right-of-way, the county acquires full jurisdiction over the same, and thereby acquires certain obligations to its maintenance as a public road including the minimum standards set forth in Sections 65-7-1 and 65-7-3. (Slover, 10/31/2014)(#231)(OP-2014-00419)

TAXES-AD VALOREM

If a board of supervisors finds consistent with fact that the tax sale was void, by order spread upon the minutes, the purchaser at the tax sale would then be entitled to a refund of the purchase price paid at the tax sale, but not payment of interest, except that portion of the purchase price that represented interest due on the taxes prior to the tax sale. (Shepard, 10/3/2014)(#236)(OP-2014-00381)

TAXES-MOBILE HOME AD VALOREM TAXES

Pursuant to Section 27-35-1, Section 27-41-11 and Article 4, Section 100 of the Mississippi Constitution, a lien on personal property for delinquent taxes includes mandatory penalties and interest and survives a foreclosure. (Lewis, 10/3/2014)(#250)(OP-2014-00370)

TAXES-ROAD & STREET

A county that has not had a road and bridge assessment in the previous three years is not limited by Section 27-39-305(2). A county should follow Section 27-39-305(4) in instances where the county wants to set a road and bridge levy without an election. The amount of gaming revenue collected and expended on roads and bridges in the previous fiscal year(s) is not considered when looking at the calculations or limitations set forth in 27-39-305. (Pittman, 10/17/2014)(#255)(OP-2014-00386)

YOUTH COURT

The youth court judge or his designee appoints youth court personnel. After the youth court budget has been approved pursuant to Section 43-21-123 of the Mississippi Code, the youth court or youth court judge may employ persons as provided in the budget. (Steckler, 10/24/2014)(#101)(OP-2014-00407)

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