



# ATTORNEY GENERAL'S OPINION OUTLINE

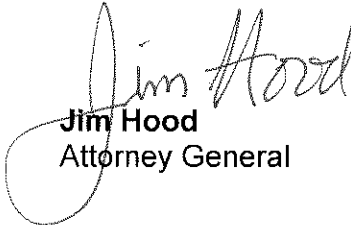
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The purpose of the Opinion Outline is to inform state, county and municipal officials and other interested persons of official opinions issued by the Attorney General's Office. This outline contains synopses of opinions issued from December 01, 2014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

A regional airport authority may substitute one holiday in accordance with Section 3-3-7; however, there is no authority for the Airport Authority to close its offices in further observation of existing holidays. (Faneca, 12/12/2014)(#002)(OP-2014-00489)

## CORONERS (MEDICAL EXAMINERS)

In instances where the deceased is suitable for organ and/or tissue donation, the medical examiner's authority is subject to the procedures found in Section 41-39-143. (Harkins, 12/1/2014)(#047)(OP-2014-00454)

## COUNTIES-CLASSIFICATIONS

The DeSoto County Convention and Visitors Bureau may establish an incentive program for its executive director and sales personnel so long as the incentives are contracted for prior to the date services are to be performed, are determined objectively, and are earned by personal services performed by the employee. (Willoughby, 12/19/2014)(#049)(OP-2014-00486)

## COURTS

Since there is no statutory definition of a victim impact panel as referenced in Section 63-11-30(2)(a) of the Mississippi Code, it remains a question of fact for the court to determine its use of a particular entity as a victim impact panel. However, Section 99-19-155 of the Mississippi Code provides some guidance in its definition of victim impact statements. (Edwards, 12/19/2014)(#056)(OP-2014-00497)

## CRIMINAL LAW

Pursuant to Section 99-33-13 of the Mississippi Code, a circuit court grand jury may remand a case to justice court to be tried as a misdemeanor after finding that the felony charge presented should be remanded with its bond to justice or municipal court to be tried as a misdemeanor. (Turnage, 12/1/2014)(#057)(OP-2014-00466)

Prior to forfeiture of seized gambling proceeds, there must first be a criminal conviction and forfeiture order or plea agreement authorizing the forfeiture of the money. (Hammack, 12/12/2014)(#057)(OP-2014-00481)

## DISTRICT ATTORNEYS

If a board of supervisors makes a factual determination that the legal work to be concluded by the assistant district attorney comes within the exception of Section 25-31-36, it has the authority to pay its former board attorney for work performed in concluding her position.  
(Lauderdale, 12/1/2014)(#059)(OP-2014-00457)

### E-911

If an E-911 commission finds, consistent with fact, that a new phone system for the county jail is necessary to carry out the purposes of the E-911 law, then E-911 funds may be expended for its purchase. If only a portion of the new phone system is necessary for E-911 purposes, then only that prorated portion of the system may be paid for with E-911 funds.  
(Powell, 12/19/2014)(#062C)(OP-2014-00496)

### ELECTIONS-NEW REFERENDUM

The signatures of qualified electors on an initiative petition page that is not signed by the person who circulates it may not be counted toward determining the sufficiency of the petition. Statutory provisions specifying the measurements of initiative petition pages are directory rather than mandatory. Each page of an initiative petition must contain the full, true and correct copy of the proposed measure. Circuit clerks are not required to certify signatures by congressional district. The Secretary of State may determine the congressional district of the signers of an initiative petition by the use of the Statewide Election Management System.  
(Turner, 12/4/2014)(#072A)(OP-2014-00456)

### ELECTIONS-PRIMARY

A convicted felon is not eligible to serve on a political party executive committee. Section 25-1-115 provides that a convicted felon who serves on a party executive committee is guilty of a misdemeanor.  
(Phillips, 12/19/2014)(#070)(OP-2014-00500)

### INTERLOCAL AGREEMENTS

Second Amendment to Interlocal Cooperation Agreement between Jackson County and the City of Ocean Springs providing for the collection of City and School District Taxes by Jackson County is approved.  
(Edwards, 12/8/2014)(#277)(OP-2014-00483)

Approval of Interlocal Agreement between Town of Puckett and Rankin County School District concerning Athletic Facilities.  
(Baker, 12/11/2014)(#277)(OP-2014-00498)

Interlocal Agreement between City of Laurel and Town of Sandersville regarding Small Animal Control is approved.  
(Bassi, 12/24/2014)(#277)(OP-2014-00516)

## LEGISLATIVE

There is no specific prohibition against an attorney, who has not provided legal representation or services for an entity under the jurisdiction of the PSC even if another attorney in the same law firm has provided such representation or services, to make a campaign contribution to a candidate for Public Service Commissioner. Whether that person has an interest as owner, agent or representative of such entity or has acted "in any respect" for an owner, agent or representative of such entity is a question of fact that cannot be addressed in an opinion of this office. If, as a matter of fact, an attorney in a multi-state law firm has an interest as owner, agent or representative of a subsidiary of the regulated entity or has acted "in any respect" for an owner, agent or representative of such subsidiary, he would be prohibited from making a campaign contribution to a candidate for Public Service Commissioner. The spouse of an attorney who has represented an entity under the jurisdiction of the PSC may contribute to a candidate for the PSC provided it is not at the behest of the attorney. An attorney who has represented an entity under the jurisdiction of the PSC may contribute to an independent political committee provided there is no subterfuge to route money to a candidate for the PSC.  
(Brown, 12/30/2014)(#104)(OP-2014-00461)

## MS. DEPARTMENT OF CORRECTIONS

Pursuant to Section 47-5-931 of the Mississippi Code, the Department of Corrections, in its discretion, may contract with counties or regional facilities to provide housing, care, and control of offenders who are in the custody of the State of Mississippi.  
(Simmons, 12/12/2014)(#156A)(OP-2014-00488)

## MUNICIPAL CHARTERS

Proposed amendment that would authorize the Mayor to terminate or suspend any city employee, except appointive officers, with or without pay subject to review by the City Council is consistent with the Constitution and laws of the United States and the Constitution of the State of Mississippi.  
(Snyder, 12/23/2014)(#139)(OP-2014-00511)

## MUNICIPAL OFFICERS

It is the opinion of this office that the separation of powers doctrine precludes an alderman from serving as a chief of police for another municipality.  
(Ferguson, 12/5/2014)(#149)(OP-2014-00478)

## MUNICIPALITIES

Governing authorities may not reimburse the mayor for legal expenses that were previously incurred in the defense of the election contest, due to the fact that the mayor did not get official approval prior to incurring the expenses and the defense of the claim was not brought against the mayor as a result of the mayor's actions while acting in the capacity as mayor. Governing authorities may employ counsel to defend the election contest in state court under its general authority found at Section 25-1-47, provided that it is doing so in defense of claims made or brought against a municipal officer or employee as a result of his actions while acting in his official capacity. In addition, it may employ legal counsel in accordance with its home rule authority, found at Section 21-17-5, when it has determined that it has an interest in an election contest.

(Brock, 12/1/2014)(#142)(OP-2014-00475)

The investment agency agreement between a municipality and the agent or broker must conform to the investment requirements found in Section 21-33-323. Any fees or compensation paid to agent or broker should be reasonable and commensurate with such services.

(Flanagan, 12/5/2014)(#142)(OP-2014-00465)

ATVs and riding lawn mowers [unless the mower qualifies as an implement of husbandry as defined in Section 63-21-5(d)] are "motor vehicles" and, in order for them to be lawfully operated on public roads they are required to have tags (Section 27-19-1 et seq.), inspection stickers (Section 63-13-1 et seq.), proper equipment (Section 63-7-1 et seq.) and insurance (Section 63-15-1 et seq.) Regarding bicycles, we have previously opined that an individual riding a bicycle on a public road has the same rights and duties as an individual operating a motor vehicle. Regarding "Hover Round Chairs", Section 63-3-103(b) defines "motor vehicle" and specifically excludes electric personal assistive mobility devices. However, Section 63-3-103(h) defines "electric assistive mobility device" to mean "a self-balancing two-tandem wheeled device, designed to transport only one (1) person, with an electric propulsion system that limits the maximum speed of the device to fifteen (15) miles per hour." We are unable to determine whether the particular "device" in question meets the definition of an "electric assistive mobility device" and is, therefore, exempt from the definition of a "motor vehicle" required to have a tag, inspection sticker, insurance and proper equipment in order to be lawfully operated on public roads.

On an unrelated question, the Town would have responsibility only if the pumping station in question was acquired by the town as a part of the overall purpose and plan of providing utility service to the general public.

(Jones, 12/12/2014)(#142)(OP-2014-00482)

A municipality may discontinue water service to a customer upon a determination that said customer has failed to complete the installment payments on his "tap fee" in accordance with the agreement between the municipality and customer and after appropriate notice and opportunity to be heard on the matter have been given the customer.

(Murdock, 12/11/2014)(#142)(OP-2014-00476)

Upon proper findings by the governing authorities that a certain level of physical fitness is required in order for an employee of the fire department to perform his job duties as established by the governing authorities, physical fitness standards may be enacted as a prerequisite to obtaining or maintaining a position as an employee of the fire department. Likewise, a municipality may require, as a prerequisite to obtaining or maintaining a position with the municipality, that its employees undergo a medical examination in advance of a physical fitness test, provided that the requirement is tied to the fitness level of the employee and it has made the requisite factual findings that a certain level of physical fitness is required in order to perform the job duties.

(Murdock, 12/12/2014)(#142)(OP-2014-00480)

A municipality must strictly comply with the provisions of Mississippi Code Annotated Section 21-19-11 when cleaning private property that is in such a state of uncleanness as to be a menace to the public health, safety and welfare of the community. Personal property removed from private property pursuant to Section 21-19-11 is distinct from "lost, stolen, abandoned or misplaced personal property" as contemplated in Section 21-39-21 and may not be disposed of as such at any time, whether during or after the clean up process.

(Miller, 12/18/2014)(#142)(OP-2014-00477)

In the event that the court determines that there are no heirs capable of inheriting the property, the property would escheat to the state in accordance with Mississippi Code Annotated Section 89-11-1.

(Miller, 12/19/2014)(#142)(OP-2014-00484)

## OTHER STATE AGENCIES, BOARDS & COMMISSIONS

It is the opinion of this office that accrued leave should be paid to a beneficiary at the salary rate existing at the time of the death of the employee and that this requirement cannot be modified by agency policy.

(Belue, 12/19/2014)(#218C)(OP-2014-00494)

## STATE PERSONNEL BOARD

The Mississippi State Personnel Board (MSPB) is prohibited from processing actions requested by the DMR that do not "reduce the projected annual cost" of personal services, as required in House Bill 1485; the MSPB is prohibited from processing actions requested by the DMR which do not involve costs and/or are cost-neutral as required in House Bill 1485; and any requests made by the DMR after the exemption period has expired would be subject to existing legislative requirements.  
(Mosley, 12/1/2014)(#121A)(OP-2014-00452)

## SUPERVISORS-AUTHORITY

Board of Supervisors cannot directly contract with a non-profit organization to administer and manage a first-time homebuyer and rehabilitation program with county funds pursuant to Section 19-3-40. To do so would directly conflict with the statutory authority granted Section 43-33-1, et seq., which provides for the method in which a county and/or municipality may utilize public money to establish a public housing program.  
(Dunn, 12/5/2014)(#220)(OP-2014-00446)

After making the appropriate findings on its minutes in accordance with Section 19-5-92.1 and consistent with the facts, a county may repair or replace a drainage structure and, if necessary, make repairs to damaged property or reimburse landowners for the cost of damages resulting from work performed by the county. If any of the work will be performed on private property, the county must follow all the requirements outlined in subsection (2) of Section 19-5-92.1.  
(Quimby, 12/5/2014)(#220)(OP-2014-00458)

A board of supervisors can remove an old building that has fallen in and clean up a hazardous condition around a convenience store that has burned provided the procedure set forth in Mississippi Code Annotated Section 19-5-105 (Revised 2012) is followed.  
(Shoulders, 12/5/2014)(#220)(OP-2014-00467)

If a hospital is deemed a leased facility pursuant to Section 41-13-10(e), its conveyance would not be subject to the requirements of Section 41-13-15. The Board of Supervisors may convey the property in the manner provided for in Section 19-7-3.  
(Dowdy, 12/19/2014)(#220)(OP-2014-00485)

Board of Supervisors is lawfully authorized under Section 19-9-97 to contribute funds to a private hospital, pursuant to a contract with the hospital whereby the hospital agrees to provide certain defined services or benefits to the citizens of the county in furtherance of the public health. In order to financially support a project, a Board of Supervisors must find and spread upon the minutes, consistent with fact, that the project advertises and brings into favorable notice the opportunities, possibilities, and resources of the county, and, further, that such advertisement will be helpful toward advancing the "moral, financial and other interests" of the county.  
(Webb, 12/19/2014)(#220)(OP-2014-00487)

## TAXES-AD VALOREM

Ad valorem property taxes for the newly annexed area will be due in the 2015 tax year and payable in January of 2016. Motor vehicle ad valorem taxes are to be collected by the city as of the effective date of the annexation.  
(Andrews, 12/12/2014)(#236)(OP-2014-00469)

## YOUTH COURT

A youth court judge or his/her designee has the legal responsibility to administer the youth detention facility including the carrying out of responsibilities of personnel administration pertaining to the employees of the youth detention facility.  
(Sanders, 12/1/2014)(#101)(OP-2014-00441)

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