



# ATTORNEY GENERAL'S OPINION OUTLINE

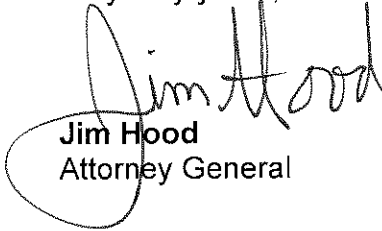
Volume 52, Number 4  
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The purpose of the Opinion Outline is to inform state, county and municipal officials and other interested persons of official opinions issued by the Attorney General's Office. This outline contains synopses of opinions issued from April 1, 2015 through April 30, 2015. 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

## CONSTABLE

A constable is entitled to his fee if he serves process in a civil case filed by the county to collect a delinquent payment even if the defendant is unable to pay the delinquent bill.  
(Sanders, 4/17/2015)(#045)(OP-2015-00084)

## COURTS

A municipal court does not have jurisdiction to hear a civil violation of the texting law pursuant to House Bill 389 of 2015 effective July 1, 2015.  
(Thompson, 4/10/2015)(#056)(OP-2015-00069)

## ELECTIONS-COMMISSIONERS

When a county election commission has a written agreement with a county party executive committee to perform the duties of said committee, the days the commissioners are employed in the conduct of a primary election are treated the same as days the commissioners are employed in the conduct of other elections.  
(Taylor, 4/3/2015)(#064)(OP-2015-00067)

## HIGHWAY DEPARTMENT-DEPARTMENT OF TRANSPORTATION

Section 27-19-81(4) of the Mississippi Code limits the materials hauled under a harvest permit to "owners or operators of vehicles hauling sand, gravel, wood chips, wood shavings, sawdust, fill dirt, agricultural products or unprocessed forestry products".  
(McConnell, 4/3/2015)(#087)(OP-2015-00068)

## INTERLOCAL AGREEMENTS

The Interlocal Cooperation Agreement between the City of Brandon and the Richland Creek Watershed Drainage District is approved.  
(Baker, 4/10/2015)(#277)(OP-2015-00093)

The Interlocal Cooperation Agreement between the City of Meridian and Lauderdale County is approved.  
(Hammack, 4/10/2015)(#277)(OP-2015-00074)

The First Amendment to Interlocal Cooperation Agreement between the City of Columbus and Lowndes County for TIF Project (Multi-use development including hotels and restaurants) is approved.  
(Fairbank,4/13/2015)(#277)(OP-2015-00095)

The Interlocal Agreement between Pontotoc County and the City of Pontotoc for the assignment and transfer of CDBG Project #1131-14-302-ED01 from the County to the City so as to allow the City to apply for grant funds to be utilized in said Project is approved.  
(Tutor,4/20/2015)(#277)(OP-2015-00110)

Approval of Interlocal Agreement between the City of Byram, Mississippi and Hinds County, Mississippi for the resurfacing of city roads.  
(Teeuwissen,4/22/2015)(#277)(OP-2015-00087)

Approval of Interlocal Cooperation Agreement between the Gulfport-Biloxi Airport Authority and the City of Gulfport, Mississippi related to the purchase of a monument sign at the intersection of Airport Road and Three Rivers Road in Gulfport, Mississippi.  
(Long,4/23/2015)(#277)(OP-2015-00100)

Approval of Interlocal Agreement between the City of New Albany, Mississippi and Union County, Mississippi regarding the application and use of CAP loan funds to purchase real property and make improvements to said property for the purpose of economic/industrial development.  
(Mueller,4/23/2015)(#277)(OP-2015-00113)

Approval of Interlocal Agreement between the Mayor and Board of Aldermen and Chief of Police of the Town of Marion and Board of Supervisors and Sheriff of Lauderdale County establishing joint, cooperative law enforcement in the Town of Marion and Lauderdale County.  
(Thaggard,4/24/2015)(#277)(OP-2015-00119)

Approval of Interlocal Agreement between the Long Beach School District and the Harrison County School District for the purpose of providing an ROTC program and choral program to students in each district.  
(Hamilton,4/29/2015)(#277)(OP-2015-00115)

Addendum to Interlocal Agreement for erosion control measures for Horn Lake Creek Interceptor Sewer Line between the Horn Lake Creek Watershed Drainage District and The Horn Lake Creek Basin Interceptor Sewer District to provide for the Sewer District to make written requests for reimbursement of engineering expenses once construction begins as opposed to the original agreement which provided for such requests to be made after the project was completed is approved.  
(Quimby,4/29/2015)(#277)(OP-2015-00109)

## MUNICIPALITIES

A municipality may donate its surplus personal property to a nonprofit corporation as a match to any state, federal or private funding, provided that the municipality determines that such funding is for any program administered by the State of Mississippi, the United States government or any nonprofit organization that is exempt under 26 USCS Section 501(c)(3) from paying federal income tax, pursuant to Section 21-17-1(8). In accordance with Section 17-25-25, the municipality may donate its surplus personal property to the non-profit corporation, assuming that it has determined, in its minutes consistent with fact, that the fair market value of such property is zero and that the donation is appropriate and in its best interest. According to your factual scenario, the proposed "transfer" of personal property does not constitute an "intergovernmental transfer" as contemplated in Section 31-7-13(m)(vi), and the municipality may not rely on Section 31-7-13(m)(vi) to authorize such action.  
(Dye,4/10/2015)(#142)(OP-2015-00064)

The municipality is authorized to make appropriations to the planning and development district pursuant to Section 17-19-1 for expenditures within the district's authority. MS AG Op., Benson (March 14, 1990). The municipality may place reasonable conditions on the use of those funds or otherwise earmark their use. The municipality is authorized to undertake urban renewal projects pursuant to Section 43-35-1 et seq. and to contract with the district for the performance of administrative services relating thereto or relating to other unrelated municipal functions. The municipality is not authorized to make grants directly to private developers to redevelop privately owned properties under Section 17-19-1 or the urban renewal statutes in Section 43-35-1 et seq., except as specifically authorized in Section 43-35-15(f) in accordance with the Housing and Community Development Act of 1974, as amended.  
(Moran,4/10/2015)(#142)(OP-2015-00043)

A municipality has no authority to enforce penalties against a property owner, who owns property outside of the municipal limits and fails or refuses to connect to the municipal sanitary sewer system.  
(Murdock,4/10/2015)(#142)(OP-2015-00073)

Aldermen are entitled to reasonable access, without charge, to information required to perform their duties of office, regardless as to the approval of the mayor, and should insist on access to any records or information which are necessary in carrying out the duties of office of an alderman.  
(Bailey,4/24/2015)(#142)(OP-2015-00090)

## NEPOTISM

To avoid a violation of Section 25-1-53, a proposed appointee to a municipal school board who is married to a member of the city council of the appointing municipality must waive any salary, per diem or reimbursement for any expenses associated with the duties of being a school board member.  
(Hammack,4/10/2015)(#151)(OP-2015-00086)

## OTHER STATE AGENCIES, BOARDS AND COMMISSIONS

The Mississippi Blues Commission may license its logos, trademarks, and/or name for use on beer bottles and cans and other related merchandise. This opinion assumes that the Commission has properly determined, and has the decision(s) reflected on its minutes, to enter into this or any similar licensing agreement, that the Commission owns and possesses all relevant rights, including both the copyright and trademark rights, in and to the IP rights it wishes to license, and that the Commission determines and obtains the fair market value for such licensure of rights.

This opinion does not address specific matters including, but not limited to, the propriety of the use of the Mississippi Blues Commission's logo(s) or trademark(s), or its name on a logo, for such purpose or the collaboration with Yalobusha Brewing Company, or any brewer, to brew beer or more specifically "to brew . . . beer . . . for drinking on the Mississippi Blues Trail", as the logo presented indicates that the Commission has done, is doing now, or will do in the future.  
(Poole,4/17/2015)(#218C)(OP-2015-00085)

## PLANNING & DEVELOPMENT DISTRICTS

The Gulf Regional Planning Commission created pursuant to Section 17-1-29 is an instrumentality of the local governmental units which created said commission.  
(Estes, III,4/17/2015)(#167A)(OP-2015-00089)

## PUBLIC PURCHASES, CONTRACTS AND BIDDING

Should a public entity determine, consistent with fact, that an item is only available from one source, it may declare it a single source item, as contemplated in Mississippi Code Annotated Section 31-7-13(m)(viii), provided that a certification of the conditions and circumstances are filed with the appropriate authorities.  
(Slay,4/17/2015)(#280)(OP-2015-00080)

## PUBLIC SERVICE COMMISSION

The "reasonable" period of time specified in Section 25-61-9, as opposed to the 14 day period of Section 25-61-5, is the controlling period for disclosure of documents requested under a public records act and where the documents were provided by a third party and contain trade secret or otherwise protected information. Section 25-61-9 requires disclosure in a reasonable period unless a court order is "obtained" and not simply requested.  
(Shurden,4/10/2015)(#167)(OP-2015-00082)

## REGIONAL ECONOMIC DEVELOPMENT ALLIANCES

Approval of the Regional Economic Development Act Agreement between the City of Oxford, Mississippi and Lafayette County, Mississippi, dated November 6, 2014.  
(Fairbank,4/2/2015)(#277A)(OP-2015-00070)

## SCHOOLS-COMMUNITY AND JUNIOR COLLEGES

A community college may enter into a long-term lease with a private developer for the purpose of constructing dormitories on property leased to the developer by EMCC, pursuant to Mississippi Code Annotated Sections 37-29-131 and 37-29-135. Section 37-29-139 specifically exempts lease agreements authorized under Sections 37-29-131 through 37-29-139 from laws concerning the "acquisition, construction and drawing of buildings or facilities" which include competitive bidding requirements.  
(Marshall,4/24/2015)(#172)(OP-2015-00077)

## SCHOOLS-DISTRICTS

If the board determines, consistent with the facts, that its leave policy existed prior to the date the absences occurred and contemplated the increase of personal leave days, then the board may increase the number of personal leave days to compensate employees for days missed due to inclement weather. If the policy was not in place prior to the weather related absences, leave granted for this purpose would be in violation of Sections 66 and 96 of the Mississippi Constitution.  
(Keith,4/3/2015)(#180)(OP-2015-00079)

Pursuant to Section 7-5-25 of the Mississippi Code, we are unable to respond to your questions by way of official opinion. Your issue relates to the duties of another governmental entity.  
(Greenlee,4/17/2015)(#180)(OP-2015-00076)

A leave policy providing for paid weather related absences must be in place prior to the absences in order to avoid a violation of Sections 66 and 96 of the Mississippi Constitution.  
(Davis, Jr.,4/24/2015)(#180)(OP-2015-00088)

### SCHOOLS-MISCELLANEOUS

A school district may enter into an agreement with a private vendor to install kiosks on school property where the primary purpose is for the promotion of school events and providing useful educational information to its students, as well as advertising sold by the private vendor to third party retailers.  
(Hemphill,4/3/2015)(#187)(OP-2015-00066)

### SEPARATION OF POWERS

Simultaneously holding the positions of alderman and trustee of a county-owned hospital would violate the separation of powers doctrine.  
(McPhail,4/3/2015)(#271)(OP-2015-00075)

### SHERIFFS-AUTHORITY

A sheriff may dispose of a vehicle it received in a forfeiture proceeding pursuant to the provisions of Section 41-29-181(7) of the Mississippi Code.  
(Rinehart,4/24/2015)(#213)(OP-2015-00097)

Pursuant to Section 19-3-81 of the Mississippi Code, inmate canteen funds may be used for any educational related expenses for the benefit of the inmates.  
(Wright,4/24/2015)(#213)(OP-2015-00098)

### SUPERVISORS-AUTHORITY

If a county passes a resolution spread upon the minutes to be responsible for the employer contribution on the net fee income of its constables, then the county may determine the portion that constitutes the employer contribution of the 11%, which is required to be paid by the constables, and pay this employer portion monthly to PERS. If it is determined that a constable has paid any part of the employer contribution, the county may refund this amount to the constable.  
(Houston,4/3/2015)(#220)(OP-2015-00056)

There is no authority for a county board of supervisors to use county equipment and employees for the benefit of a non-profit corporation, i.e. food bank, which provides food to charities or the poor.  
(White,4/10/2015)(#220)(OP-2015-00072)

### UTILITY DISTRICTS

Section 49-17-741 does not specifically include the adoption of the annual budget as an action that requires a unanimous vote of all members of the board. Therefore, it becomes a question of fact as to whether the adoption of the annual budget affects rates, bonds or capital improvements. The members of the board will have to make that determination subject to judicial review.  
(Hornsby,4/24/2015)(#266A)(OP-2015-00096)

### YOUTH COURT

Youth Court jurisdiction of a child (a person who has not reached his eighteenth birthday) in a cause shall attach at the time of the offense and shall continue thereafter for that offense until the child's twentieth birthday.  
(Alfonso,4/24/2015)(#101)(OP-2015-00101)

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