



ATTORNEY GENERAL'S OPINION OUTLINE

Volume 54, Number 6
June 2015

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 June 1, 2015 through June 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.

Complete opinions are also available on our internet website at:
<http://www.agjimhood.com>

Very truly yours,


Jim Hood
Attorney General

COUNTIES-CLASSIFICATIONS

The Neshoba County Board of Supervisors may authorize payment of election commissioners' meal expenses resulting from travel to a seminar even if the seminar did not require an overnight stay. In order to do so, the Board must make a determination, consistent with fact, that the meal expenses were incurred while performing official duties.
(White,6/26/2015)(#049)(OP-2015-00208)

CRIMINAL LAW

A criminal offense in a justice court having two judicial districts must be tried in the district where the offense occurred. Therefore, if a traffic ticket is filed in the wrong district, the court should dismiss the ticket without prejudice and the officer should file a new ticket in the proper district.
(Ross,6/19/2015)(#057)(OP-2015-00181)

A justice court judge may dismiss an old case if the court determines there was simply a lack of prosecution. It is suggested that the court discuss each case with the prosecutor prior to dismissal.
(Wilson,6/19/2015)(#057)(OP-2015-00141)

A defendant may waive a probable cause hearing in cases where there is a warrantless arrest on a felony charge.
(Mason,6/26/2015)(#057)(OP-2015-00152)

DEPARTMENT OF WILDLIFE, FISHERIES AND PARKS

Section 49-7-26 specifically provides for the establishment of a tagging and reporting program for deer harvested by nonresidents. Accordingly, we conclude that the Legislature intended to exclude residents from the program.
(Polles,6/12/2015)(#269)(OP-2015-00157)

ELECTIONS-COMMISSIONERS

County Election Commissions must follow the boundaries as are contained in the Census 2010 Tiger/Line Shapefiles that were released November 2010. If there is a discrepancy between the description of a district set out in Resolutions Numbers 1 (House) or 201 (Senate) and the maps of the House and Senate Districts developed by the Standing Joint Legislative Committee on Reapportionment, the maps will control. (Cochran,6/19/2015)(#064)(OP-2015-00193)

ELECTIONS-PRIMARY

Write-in votes are allowed due to the death of a qualified candidate even though the candidate died prior to the printing of the ballots. The phrase "candidate duly substituted" refers to the name of the write-in candidate chosen by each individual voter. (Cole,6/19/2015)(#070)(OP-2015-00207)

ELECTIONS-QUALIFICATION OF CANDIDATES

If a candidate submits a petition or petitions signed by 100 qualified electors of each of the "old" five congressional districts with an affirmation under the penalties of perjury that each signer is a qualified elector of the state, such petition would be sufficient for said candidate to gain access to the presidential preference primary ballot. Should a potential candidate choose to utilize the second method of filing separate petitions for each congressional district, Section 23-15-1093 specifically provides that the signatures of one hundred (100) qualified electors of each congressional district is sufficient. Based on the plain language of Section 23-15-1093, since we now have only four (4) congressional districts, a potential candidate would only need a total of four hundred (400) signatures to satisfy the statutory requirement to gain ballot access. (Turner,6/5/2015)(#071)(OP-2015-00158)

ELECTIONS-REGISTRATION

Pursuant to Miss. Code Ann. Sections 25-1-99 and 23-15-37, we are of the opinion that registrars' offices should be open on Saturday, July 4, 2015 for voter registration from 8:00 a.m. until 12:00 noon. (Turner,6/4/2015)(#074)(OP-2015-00156)

INTERLOCAL AGREEMENTS

Approval of Interlocal Cooperation Agreement between the Sunflower County Board of Supervisors and the City of Indianola to jointly apply for DIP grant funds which will be utilized to extend a portion of the sewer disposal system in the city. (McWilliams,6/8/2015)(#277)(OP-2015-00150)

Approval of Interlocal Cooperation Agreement between Holmes County, Mississippi and the City of Goodman, Mississippi involving the removal of debris from ditches and dilapidated structures. (Riley,6/9/2015)(#277)(OP-2015-00165)

Approval of Interlocal Agreement between Warren County and Vicksburg concerning 2015 Edward Byrne Memorial Justice Assistance Grant. (Thomas,6/9/2015)(#277)(OP-2015-00175)

Approval of Interlocal Agreement between the City of Waynesboro and the Town of Shubuta for the mutual support regarding the reconstructing, repairing, and maintaining their respective roads, real property, sidewalks, infrastructure, landfills, sewer systems, drainage systems and other property. (Bates,6/10/2015)(#277)(OP-2015-00179)

The Interlocal Cooperation Agreement between the Town of Puckett and the Rankin County School District involving the construction of tennis courts in the town park complex is approved. (Baker,6/12/2015)(#277)(OP-2015-00195)

The Interlocal Cooperation Agreement between Madison County and the City of Ridgeland involving the extension of Lake Harbour Drive is approved. (Espy,6/12/2015)(#277)(OP-2015-00190)

The Interlocal Cooperation Agreement between the City of Pontotoc, the Pontotoc School District and Itawamba Community College involving the lease, rehabilitation, use and maintenance of real property is approved. (Tutor,6/12/2015)(#277)(OP-2015-00198)

Interlocal Cooperation Agreement between the City of Okolona, Mississippi and the Okolona Municipal School District for improvement and use of athletic facilities is approved. (Green,6/16/2015)(#277)(OP-2015-00200)

Approval of Interlocal Cooperation Agreement between Jackson County, Mississippi and the City of Ocean Springs, Mississippi regarding Jackson County striping part of Government Street. (Karcher,6/23/2015)(#277)(OP-2015-00214)

Approval of Interlocal Cooperation Agreement between Holmes County, Mississippi and the City of West, Mississippi involving the removal of debris from ditches and dilapidated structures. (Riley,6/23/2015)(#277)(OP-2015-00199)

Interlocal Agreement between Hinds County and the City of Jackson regarding the resurfacing of Village Drive from Watkins Drive to Nakoma Drive, construction of the Northgate Park Walking Trail, construction of the Battlefield Park Walking Trail, and the construction of the Westside Park Pavilion all within the City of Jackson is approved. (Teeuwissen,6/23/2015)(#277)(OP-2015-00203)

Interlocal Cooperation Agreement between Hinds County and the Jackson Public School District regarding the construction of an Asphalt Walking Trail for Provine High School is approved.
(Teeuwissen,6/23/2015)(#277)(OP-2015-00204)

Interlocal Cooperation Agreement between Hinds County and the Jackson Public School District regarding the construction of an Asphalt Walking Trail for Forest Hill High School is approved.
(Teeuwissen,6/23/2015)(#277)(OP-2015-00205)

Interlocal Agreement relating to the collection of delinquent taxes between Pike County and the municipalities of McComb, Magnolia, Summit and Osyka is approved.
(Dowdy,6/26/2015)(#277)(OP-2015-00216)

Interlocal Cooperation Agreement between DeSoto County, Mississippi, the City of Hernando, Mississippi, the City of Horn Lake, Mississippi, the City of Olive Branch, Mississippi and the City of Southaven, Mississippi for the shared funding and use of election equipment is approved.
(Nowak,6/26/2015)(#277)(OP-2015-00202)

Approval of Interlocal Cooperation Agreement between Holmes County, Mississippi and the City of Durant, Mississippi involving the removal of debris from ditches and dilapidated structures.
(Riley,6/26/2015)(#277)(OP-2015-00220)

Approval of Interlocal Agreement between Lamar County, the Sheriff of Lamar County and the Lamar County Board of Education providing law enforcement assistance.
(Norton,6/29/2015)(#277)(OP-2015-00221)

MUNICIPALITIES

Upon a finding by the municipal governing authorities that the carrying of a firearm is necessary for a code enforcement officer to properly perform his or her duties, the purchase and issuance of a firearm to such individual would be legally authorized.
(Lawrence,6/12/2015)(#142)(OP-2015-00169)

Abandoned cash appearance bonds may be disposed of in accordance with Miss. Code Ann. Section 89-12-1 et seq. and/or Section 21-39-21.
(Murdock,6/19/2015)(#142)(OP-2015-00183)

A municipality may legally allow the use of its facilities free of charge, upon a determination by the municipal governing authorities, consistent with the facts and documented on the minutes, that the use of the facilities by a particular group constitutes sufficient consideration to the Town or constitutes a public service.

Municipalities may enact an ordinance that fixes fees for the use of municipal facilities that establishes a set of fees for non-profit and a separate set of fees for commercial activities.
(Grace,6/26/2015)(#142)(OP-2015-00188)

It is the opinion of this office that a municipal water system cannot sell water to entities not normally served by the water system for export to another state.
(Hunt,6/26/2015)(#142)(OP-2015-00176)

A municipality may not compel another utility service provider to share meter reading information for billing purposes, absent a previously existing contractual obligation to do so. A municipality may not add delinquent utility bills to a homeowner's ad valorem tax bill.
(Marx,6/26/2015)(#142)(OP-2015-00201)

Municipalities may adopt vacation and sick leave policies for their employees which exceed benefits available to state employees. The creation of a "sick leave bank", from which leave hours over and above what such employees normally earn and which may be granted in the discretion of the employer upon the happening of a catastrophic event, would, in our opinion, be an unlawful donation to such employees. Miss. Const. Art. 4, Sec. 96 (1890). Such discretionary leave would be tantamount to granting extra compensation after services have been rendered. If the policy is adopted, applies prospectively, and the employer is legally obligated to grant such leave in a manner similar to other accrued leave, then an impermissible donation would not result.
(Murdock,6/26/2015)(#142)(OP-2015-00182)

SCHOOLS-16TH SECTION LEASES, ETC.

The school board is not required to obtain prior approval from the Secretary of State on sixteenth section leases. However, prior review by the Secretary of State may help the board avoid inadvertent mistakes, clouds on titles, potential litigation and the like.
(Lee,6/9/2015)(#192)(OP-2015-00016)

SCHOOLS-PROPERTY

Whether activities are events connected with the schools and a part of the schools' educational programs is a factual determination to be made by the local School Board in accordance with the parameters of Section 37-41-27 and the rules and regulations adopted by the State Board of Education.
(Hopson,6/19/2015)(#190)(OP-2015-00185)

STATE BOARD OF MENTAL HEALTH- STATE DEPT. OF MENTAL HEALTH

Pursuant to Miss. Code Ann. Section 41-4-7(g), the Mississippi State Hospital, through the Board of Mental Health, may contract with an individual if the Board makes a finding, consistent with fact, that such action is in the public interest.
(Mikula,6/5/2015)(#113A)(OP-2015-00180)

SUPERVISORS-AUTHORITY

Section 83-1-39 authorizes the board of supervisors to "gravel" the real property of a county volunteer fire department as necessary for the effective and safe operation of the county volunteer fire department. The county may not utilize county equipment and employees to gravel the private drive where the pumper truck will be stored.

(White,6/5/2015)(#220)(OP-2015-00132)

A county or municipality has the authority to enact an ordinance, under Home Rule, restricting or prohibiting the sale or distribution of caffeine pills or powder to minors under the age of eighteen.

(Reynolds,6/19/2015)(#220)(OP-2015-00187)

Under the provisions of the county home rule statute, Section 19-3-40 of Miss. Code Ann. (1972), a county may enter into an agreement with a school district for the demolition and removal of buildings on school property so long as the county is repaid the actual costs of the work.

(Pickett,6/26/2015)(#220)(OP-2015-00136)

TAXES-COLLECTIONS

Pursuant to Section 27-65-201(4), the sales tax collected on the trade of two motor vehicles between two individuals is 5% of the net difference of the two motor vehicles traded.

(Shepard,6/5/2015)(#238)(OP-2015-00155)

UTILITY DISTRICTS

Fire protection districts formed pursuant to Miss. Code. Ann. Section 19-5-155 are not granted law enforcement authority over state and/or county life safety codes/laws. Such districts may enact regulations that can be enforced through court action.

(Davis,6/26/2015)(#266A)(OP-2015-00210)

WATER DISTRICTS

Section 19-5-177 provides authority for a water and sewer district to, if the board of commissioners so choose, provide group hospitalization benefits for its employees and their dependents, and pay the full cost of such benefits.

(Simpson,6/26/2015)(#266)(OP-2015-00191)

Our website now offers a FREE searchable database of Official Opinions issued since 1979.

1. Go to <http://www.ago.state.ms.us>
2. Scroll down to AGO Quick Links and click on OPINIONS SEARCH.
3. In the search box, enter the opinion number (ex. 2013-00367) and click search.