



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 August 1, 2015 through August 31, 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: agjimhood.com

Very truly yours,


Jim Hood
Attorney General

CHANCERY CLERKS

If funds held by a chancery court are subject to the Uniformed Disposition of Unclaimed Property Act, the court may enter an order directing the funds accordingly.

(Bradley, 8/7/2015)(#041)(OP-2015-00250)

COURT REPORTERS

The board of supervisors of the counties in each respective court district determines and sets the salaries of circuit and chancery court reporters. However, any additional compensation for the performance of the duties of a court administrator shall be set by vote of the judges and chancellors for whom the court administrator duties are performed. Each county shall transfer its proportionate share to the Administrative Office of Courts, and the total amount shall be the annual salary of the court reporter, including any additional compensation paid for the performance of court administrator duties.

(Nowak, 8/28/2015)(#055)(OP-2015-00281)

ELECTIONS-MUNICIPAL

Senate Bill 2926 authorizes a vote on the sales tax as one issue. The election will be conducted by the Vicksburg Election Commission. General law requires the city to establish polling places equal to the number of precincts in the municipality.

(Thomas, 8/21/2015)(#069)(OP-2015-00276)

HOSPITALS-COMMUNITY

If a community hospital follows the procedures established by the Office of Purchasing and Travel as set forth in the Procurement Manual, it may utilize the small purchase procurement card and procurement programs or may obtain merchant specific credit cards in order to make small purchases for the hospital. The hospital may not, however, utilize a credit card for travel purposes as it lacks the specific statutory authority to do so and is prohibited by Section 10.112.04(9) of the Procurement Manual.

(Bryan, 8/7/2015)(#092)(OP-2015-00253)

INTERLOCAL AGREEMENTS

Approval of 2015-2016 Interlocal Agreement between Pike, Walthall and Lincoln Counties; the Sheriffs of Pike, Walthall and Lincoln Counties; the Cities of McComb and Brookhaven; and the Chiefs of the McComb and Brookhaven Police Departments establishing the Southwest Mississippi Inter-Jurisdictional Narcotics Enforcement Unit. (Dye, 8/3/2015)(#277)(OP-2015-00275)

Amendment to MS ORTHO 2015 Aerial Photography Update Initiative 2014-2015 Interlocal Agreement is approved. (Wallace, 8/6/2015)(#277)(OP-2015-00284)

Interlocal Agreement between Hancock County and the City of Diamondhead for use of county owned generator by the City during emergency situations is approved. (Yarborough, 8/7/2015)(#277)(OP-2015-00279)

The Interlocal Cooperation Agreement between the City of Okolona and the Okolona Municipal School District is approved, contingent upon the inclusion of a termination clause and any necessary revisions to ensure that application of the agreement does not preclude the use of the municipal park by all of the general public. (Barton, 8/14/2015)(#277)(OP-2015-00266)

Interlocal agreement between the City of Madison, Mississippi and Madison County, Mississippi related to tax increment financing is approved. (Wallace, 8/19/2015)(#277)(OP-2015-00273)

Approval of Interlocal Cooperation Agreement involving the sharing of a Justice Assistance Grant Award between DeSoto County, Mississippi, the City of Olive Branch and the City of Southaven. (Dye, 8/20/2015)(#277)(OP-2015-00264)

Approval of Interlocal Cooperation Agreement between Pontotoc County, Mississippi and the City of Pontotoc for the collection of ad valorem taxes. (Tutor, 8/20/2015)(#277)(OP-2015-00278)

MUNICIPALITIES

Upon notification by the municipality, the county tax collector is required to withhold the issuance or renewal of a car tag for delinquent municipal garbage fees in accordance with Mississippi Code Annotated Section 21-19-2(3)(c), provided that the municipality has complied with the provisions of Section 21-19-2. (Turnage, 8/6/2015)(#142)(OP-2015-00249)

If the police chief and assistant police chief are to be paid additional compensation for grant-related work, the municipality must enter an order authorizing such payment prior to the time the grant-related work is performed. (Taylor, 8/7/2015)(#142)(OP-2015-00262)

A municipality may appropriate funds to a qualified entity for a qualified purpose, as contemplated in Sections 21-19-44 and 21-19-44.1, regardless as to whether the project is located within the municipal limits, provided that it determines that the appropriation will result in a positive impact on the economic development of the municipality. (Turnage, 8/7/2015)(#142)(OP-2015-00251)

Assuming that a firearm has been deemed lost or abandoned property by the municipality, it may be disposed of in accordance with the provisions of Mississippi Code Annotated Section 21-39-21. With respect to any restrictions imposed by Section 21-39-21, there is no provision in Section 21-39-21 which would require that the firearm be sold to a federally-licensed firearms dealer. The municipality should take appropriate action to ensure that a sale is not made to an individual who is prohibited by law from owning or possessing a firearm. (Carter, 8/14/2015)(#142)(OP-2015-00258)

Pursuant to Miss. Code Ann. Section 67-3-65, the City of Poplarville is authorized to enact an ordinance repealing a previous ordinance which prohibited the sale of beer and light wine in the form of drive-up or curbside service. (Thompson, 8/14/2015)(#142)(OP-2015-00269)

Based on our research and discussions with the Government Records Division of the Mississippi Department of Archives and History, no retention policy currently exists that specifically identifies the retention schedule for electronic data from police body cameras. (Lawrence, 8/21/2015)(#142)(OP-2015-00274)

We find no statutory procedure to compel a retired city clerk to come to city hall to show current personnel the location of documents. (Milner, 8/21/2015)(#142)(OP-2015-00290)

A municipality may contract with a private gym, and pay any corresponding fee, for the use of the gym facilities by the members of its fire and rescue department. Should a municipality determine that the time its fire and rescue department employees use to exercise at a private health club is consistent with the employees' job description and is considered actual "work", it may require or permit its employees to exercise at the private health club during working hours or on municipal time. A municipality may provide bottled water, as opposed to tap water, to its fire and rescue employees, provided that it determines that the provision of bottled water is the most efficient and cost effective way to provide water to such employees. (Turnage, 8/21/2015)(#142)(OP-2015-00271)

A city council may adopt municipal policies and procedures in the form of an ordinance or resolution establishing the process for procuring professional services. In the event that a mayor does not agree with the adoption of such policies and procedures, he may exercise his veto power over the measure. Naturally, a city council may override the mayor's veto with a two-thirds (2/3) vote of the members of the council that are present and voting pursuant to Mississippi Code Annotated Section 21-8-17. (Hendrix,8/28/2015)(#142)(OP-2015-00289)

In the council manager form of government, when, because of a vacancy, there are only five (5) council members, three (3) affirmative votes for a particular motion, resolution or ordinance would constitute a majority vote sufficient for passage. There is nothing that requires a municipal special election to be held on a Tuesday. (Tindell,8/28/2015)(#142)(OP-2015-00295)

OTHER STATE AGENCIES, BOARDS AND COMMISSIONS

As a general matter, the Pearl River Valley Water Supply District is not required to obtain additional lease payments as compensation for use of rights generally associated with waterfront properties. (Sigman,8/21/2015)(#218C)(OP-2015-00277)

PORT COMMISSION

The specific language in Section 59-9-19(f) is controlling with regard to the investment of excess funds credited to the county development commission. (Wyly,8/21/2015)(#159)(OP-2015-00286)

SCHOOLS-16TH SECTION LEASES, ETC.

Proposed donation of road right of way does not meet the criteria in Section 29-3-91 (2). (Harrell,8/14/2015)(#192)(OP-2015-00268)

SCHOOLS-BONDS

Current Mississippi law does allow bond proceeds to be used to pay capitalized interest accrued during the construction period if the interest is directly related to the purpose for which the bonds were issued and the proceeds remain in a special fund. (Greenlee,8/28/2015)(#175)(OP-2015-00285)

SCHOOLS-SUPERINTENDENTS OF EDUCATION

While the school board has authority to adopt policies regarding the assignment and care of district property by employees, the school board remains the statutorily designated custodian of district property. (Mayfield,8/21/2015)(#198)(OP-2015-00237)

SCHOOLS-UNIVERSITIES-COLLEGES-STATE SCHOOLS

A student in the position you describe would be a nonresident pursuant to Section 37-103-11 who would not be required to pay out-of-state tuition pursuant to Section 37-103-7. Unless excepted by the rules of a specific financial aid program, a student must be a Mississippi resident to qualify for financial assistance under the Act (see Miss. Code Ann. Section 37-106-5(1)(g)). Pursuant to Section 37-103-11, the minor student becomes a nonresident when the parents move their legal residence from the State of Mississippi. (Rogers,8/21/2015)(#173)(OP-2015-00288)

SUPERVISORS-AUTHORITY

Supervisors may only cancel tax sales involving sixteenth section lands where the sale is voidable on specific facts. Tax sales of sixteenth section lands may not be cancelled simply because a lease which was subject to a tax sale was cancelled after the tax sales. Tax sales cannot be cancelled after they have matured through the expiration of the redemption period or after a tax deed has been granted. (Miller,8/7/2015)(#220)(OP-2015-00231)

The purchase of emergency weather radios by a county with general funds to be given to the residents of the county would constitute an unlawful donation. Additionally, the E-911 Commission may not purchase emergency weather radios as this equipment is outside of the scope of the E-911 law. A county may not purchase emergency weather radios, which are not needed for county use, but are purchased for the express purpose of reselling them to county residents for their own private use. (Shepard,8/7/2015)(#220)(OP-2015-00241)

TAXES-AD VALOREM

The Warren County Port Commission may not contribute toward the ad valorem taxes due on a property not owned by the Port Commission. To do so would be an unlawful donation by the county which would benefit the private corporation that owned the property on January 1, 2014 and later sold said property to the County. (Varner,8/21/2015)(#236)(OP-2015-00206)

UTILITY DISTRICTS

The Tunica County Utility District can designate a member of the Commission to serve as a liaison between the Board of Commissioners and a management company for the purposes of transitioning management from the company to employees. The commissioner so designated, however, cannot receive per diem for his duties above the amount specified in the local and private legislation authorizing the district. Whether or not additional funds may be paid in any form to the commissioner in his capacity as such or as an employee or contractor is a question that should be presented to the Mississippi Ethics Commission. (Cotton,8/14/2015)(#266A)(OP-2015-00265)

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