



ATTORNEY GENERAL'S OPINION OUTLINE

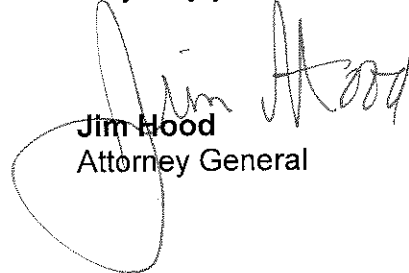
Volume 59, Number 11
November 2015

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 November 1, 2015 through November 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: agjimhood.com

Very truly yours,



Jim Hood
Attorney General

AIRPORTS

The Airport Authority's proposal to borrow funds on a twenty (20) year amortization with monthly payments for ten (10) years and a balloon payment at the end of ten (10) years satisfies the provisions of Section 61-3-60(1) provided the loan is repaid within the ten (10) year period.
(Tucker, 11/30/2015)(#002)(OP-2015-00419)

CORPORATIONS

This office does not opine as to the legal authority of a non-profit created by a community hospital to purchase and/or sell real or personal property.
(Williams, 11/6/2015)(#048)(OP-2015-00370)

COUNTY COURTS

In all cases in which the circuit clerk seeks fees in youth court, the clerk must prepare an itemized statement of fees for services performed and submit it to the youth court judge for approval. If the fees are in cases originating by petition, the provisions of Section 43-21-205 apply and, upon approval, the youth court judge submits the cost bill to the board of supervisors for payment out of the county general fund. If the fees are not from cases originating by petition, upon approval by the youth court judge, the fees would be paid from the youth court budget pursuant to Section 43-21-123.
(Coleman, 11/6/2015)(#051)(OP-2015-00401)

COURTS

If the court makes a finding in favor of the landlord in a proceeding for an eviction or removal, the court shall immediately issue a warrant of removal pursuant to Sections 89-7-35 or 89-7-41. Thereafter, if the judge grants possession of the premises to the landlord and the tenant does not remove his personal belongings before the date and time ordered by the judge, then the landlord may dispose of the tenant's personal property without any further legal action.
(Kirby, 11/13/2015)(#056)(OP-2015-00406)

ELECTIONS-COMMISSIONERS

Assuming that the election commission finds it is necessary for election commissioners to work when a quorum is not present, the election commission is not required to ratify the work of an individual commissioner in order for the commissioner to receive pay for work performed when a quorum is not present.

(Snowden, 11/13/2015)(#064)(OP-2015-00404)

INTERLOCAL AGREEMENTS

Approval of Interlocal Cooperation Agreement between Leake County, Mississippi and the Town of Walnut Grove, Mississippi for solid waste collection services.

(Webb, 11/2/2015)(#277)(OP-2015-00402)

Approval of Interlocal Cooperation Agreement between Coahoma County, Mississippi and the City of Clarksdale, Mississippi for tax collection services.

(Wood, 11/2/2015)(#277)(OP-2015-00357)

Interlocal Agreement between the City of West Point and Clay County creating an Emergency Management Agency is approved on the condition that all provisions in the Agreement are authorized by and compatible with the Mississippi State Emergency Management Plan.

(Berry, 11/4/2015)(#277)(OP-2015-00403)

The Interlocal Cooperation Agreement for the establishment of fiber-optic broadband infrastructure between the cities of Biloxi, Gulfport and D'Iberville is approved.

(Blessey, 11/23/2015)(#277)(OP-2015-00434)

Approval of Interlocal Cooperation Agreement between Hinds County, Mississippi and the Jackson Public School District regarding the construction of an asphalt walking trail and playground for Timberlawn Elementary School.

(Teeuwissen, 11/24/2015)(#277)(OP-2015-00441)

Approval of Interlocal Cooperation Agreement between Hinds County, Mississippi and the Jackson Public School District regarding the construction of an asphalt walking trail for Wingfield High School.

(Teeuwissen, 11/24/2015)(#277)(OP-2015-00442)

Interlocal Agreement between the City of Wiggins and Stone County regarding the "Legacy Project" tax increment financing plan is approved.

(Waddell, 11/24/2015)(#277)(OP-2015-00413)

Approval of Interlocal Cooperation Agreement between Neshoba County, Mississippi and the City of Union, Mississippi for the collection of municipal taxes.

(White, 11/24/2015)(#277)(OP-2015-00417)

Interlocal Agreement between Hinds County and the City of Clinton regarding the construction of a recreational center in the City of Clinton is approved.

(Teeuwissen, 11/25/2015)(#277)(OP-2015-00438)

Interlocal Agreement between Hinds County and the Town of Utica regarding the Town of Utica, Mississippi Public Road Resurfacing Project 2015 is approved.

(Teeuwissen, 11/25/2015)(#277)(OP-2015-00439)

MS. STATE DEPARTMENT OF HEALTH

The question of whether certain medical records may be submitted and shared with the Mississippi Health Information Network depends, according to Section 41-119-13, on whether those records would be releasable without patient consent under HIPAA.

HIPAA provides that psychotherapy notes may not be released without patient consent. However, those records excepted from HIPAA's definition of psychotherapy notes may be shared without patient consent with MS-HIN.

(Hill, 11/13/2015)(#027)(OP-2015-00391)

MUNICIPAL CONTRACTS & PURCHASES

A municipality may, pursuant to Section 21-17-1, contract with a firm to analyze the city's utility bills for improper charges and compensate the contractor by a contingent fee based on refunds or rebates actually received by the city provided the contract complies with the requirements of said statute and any additional rules and regulations established by the Mississippi Department of Audit.

(Bassi, 11/30/2015)(#140)(OP-2015-00426)

MUNICIPAL FUNDS

Excess funds generated by a municipal utility governed by a commission must be disbursed either to the municipal governing authority or at the direction and request of the municipal governing authority.

(Montgomery, 11/30/2015)(#141)(OP-2015-00429)

MUNICIPALITIES

The general rule is that abstentions are counted with the prevailing side. However, an abstention does not count as an affirmative vote when the applicable statute requires "the affirmative vote of a majority of the quorum."

(Foote, 11/6/2015)(#142)(OP-2015-00405)

Provided that a bona fide and just claim has been made, the municipality may satisfy any negotiated settlement of a claim for damages, pursuant to Mississippi Code Annotated Section 25-1-47(2).

(Thomas, 11/13/2015)(#142)(OP-2015-00398)

It is legally permissible for an alderman to volunteer to keep town hall open in the absence of the town clerk and answer the phone, redirect calls and collect payments. If any payments are collected in any form or the volunteer alderman has access to any municipal funds, he or she must obtain a surety bond of not less than Fifty Thousand Dollars (\$50,000), the premium to be paid from the municipal treasury. Mississippi Code Annotated Section 21-3-5 (Revised 2015).
(Custom, 11/20/2015)(#142)(OP-2015-00415)

A city council may adopt a resolution authorizing the clerk of council to have access to financial information via internet banking or other methods, provided that the municipality has determined that such access constitutes reasonable access.
(Rafferty, 11/20/2015)(#142)(OP-2015-00411)

A municipality may remove dilapidated buildings and structures in accordance with the authority granted to it in Mississippi Code Annotated Sections 21-19-21, 21-19-11 and 21-19-20, provided that it makes the requisite factual findings. In addition, a municipality may secure structures located on private property that are insecure or dangerous pursuant to Section 21-19-21. Any costs associated with the clean up, removal and/or stabilization efforts of dilapidated buildings or structures by the municipality, in accordance with its authority granted under Sections 21-19-21, 21-19-11 and 21-19-20, would be the responsibility of the property owner.
(Barton, 11/30/2015)(#142)(OP-2015-00423)

In the event that the municipality determines that the referenced entity is a benevolent institution as contemplated in Miss. Code Ann. Section 21-27-27, it may provide water service at no charge to such entity.
(Collins, 11/30/2015)(#142)(OP-2015-00416)

Should a city council wish to reduce the salary of a municipal employee, it may do so by amending the ordinance it originally adopted which set the salaries of municipal officers and employees.
(DuPree, 11/30/2015)(#142)(OP-2015-00408)

Acceptance by municipal governing authorities of the resignation of a municipal employee is not required in order for the employee's resignation to become effective.
(Turnage, 11/30/2015)(#142)(OP-2015-00424)

SCHOOLS-BUDGETS

Pursuant to Miss. Code Ann., Section 37-7-301(s), a school board does not have the authority to expend activity funds for salaries of school employees.
(Carnathan, 11/13/2015)(#176)(OP-2015-00412)

SCHOOLS-MISCELLANEOUS

Conservators have the same authority as the former school board and, pursuant to Miss. Code Ann. Section 37-57-108, may issue a promissory note to cover a revenue shortfall for the prior school year so long as the school district can demonstrate that the shortfall occurred during that school district fiscal year and the amount of the promissory note does not exceed 25 percent of the budget anticipated to be funded from the source of the shortfall for that fiscal year.
(Pulley, 11/6/2015)(#187)(OP-2015-00397)

SCHOOLS-PROPERTY

Whether or not school trustees can lease unused school property to a volunteer fire department under the provisions of Miss. Code Ann. Section 37-7-471, et seq., is dependent on whether the trustees can make the required factual determinations required under Sections 37-7-471(a), (b), and (c) as well as those required under Section 37-7-473.
(Smith, 11/30/2015)(#190)(OP-2015-00433)

SEPARATION OF POWERS

A supervisor of the Alcorn County Board of Supervisors is prohibited from simultaneously serving as commissioner for the Yellow Creek State Inland Port Authority.
(Davis, 11/20/2015)(#271)(OP-2015-00425)

STATE PERSONNEL BOARD

Senate Bill 2804 is unambiguous and contains no language exempting MDOC from other MSPB rules, regulations and procedures; therefore, we are of the opinion MDOC is subject to the same.
(Mosley, 11/20/2015)(#121A)(OP-2015-00407)

SUPERVISORS-AUTHORITY

This office finds no requirement, statutory or otherwise, which requires that the advertisement required by Section 19-7-3(2) be of a larger size or in a particular section of the local newspaper other than the legal notices.
(Power, 11/6/2015)(#220)(OP-2015-00396)

The Tallahatchie County Board of Supervisors does not have the statutory authority to enter into a contract with a binding arbitration provision absent specific statutory authority.
(Reynolds, 11/6/2015)(#220)(OP-2015-00387)

TAXES-REFUND

Pursuant to Section 27-35-143, corrections to the assessment roll must be initiated prior to the last Monday in August next, i.e., the end of the fiscal year in which the taxes were payable. A board of supervisors may not void a tax sale after the redemption period has run.
(Slover,11/13/2015)(#254)(OP-2015-00384)

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

1. Go to: 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.