



ATTORNEY GENERAL'S OPINION OUTLINE

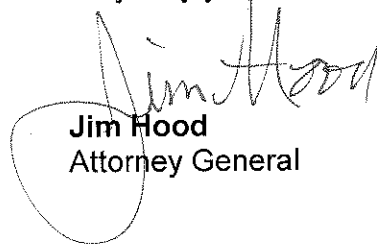
Volume 61, Number 1
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The purpose of the Opinion Outline is to inform state, county and municipal officials and other interested persons of official opinions issued by the Attorney General's Office. This outline contains synopses of opinions issued from January 1, 2016 through January 31, 2016. 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

DEPT. OF FINANCE & ADMINISTRATION

Pursuant to Section 47-5-66, the fifteen percent (15%) fee derived from leasing Penitentiary lands is not a fee-in-lieu of ad valorem taxes.
(Upchurch, 1/29/2016)(#037)(OP-2016-00014)

DISTRICT ATTORNEYS

Salary supplements may be paid to the District Attorney, Assistant District Attorneys, and Criminal Investigators from worthless check funds, pretrial intervention funds, and forfeiture funds to the extent authorized or required in Sections 25-31-10, 25-31-10.1 and 25-31-33. The salary of the Victims Assistance Coordinator may be supplemented with these same funds to the extent authorized in Section 99-36-7.
(Duncan, 1/29/2016)(#059)(OP-2015-00437)

GAMING COMMISSION

Fantasy sports wagering is illegal in the state of Mississippi both on a licensed gaming floor and outside of a licensed gaming floor.
(Godfrey, 1/29/2016)(#276)(OP-2015-00445)

HIGHWAY SAFETY PATROL

Officers' salaries may be increased by benchmarks or other provisions of the Variable Compensation Plan, subject as always to legislative appropriation therefor.
(Berry, 1/19/2016)(#089)(OP-2015-00465)

INTERLOCAL AGREEMENTS

Interlocal Cooperation Agreement between Franklin County and the Town of Roxie for Police Protection and Law Enforcement Services for the Town of Roxie is approved.
(Halford, 1/19/2016)(#277)(OP-2016-00020)

Approval of Interlocal Agreement between Hancock County and the City of Diamondhead for Police Protection Services and other purposes through December 31, 2017.
(Yarborough, 1/21/2016)(#277)(OP-2015-00472)

Approval of Interlocal Cooperation Agreement between Monroe County, Mississippi and the City of Aberdeen, Mississippi involving the collection of ad valorem taxes for the City.
(Boozer, 1/27/2016)(#277)(OP-2016-00025)

Approval of Interlocal Cooperation Agreement between Monroe County, Mississippi and the City of Amory, Mississippi involving the collection of ad valorem taxes for the City.
(Boozer, 1/27/2016)(#277)(OP-2016-00026)

Approval of Interlocal Cooperation Agreement between Harrison County, Mississippi and the Harrison County Utility Authority involving the assistance of Harrison County in constructing, reconstructing and repairing of roads, bridges, driveways, parking areas, etc. within the jurisdiction of the Harrison County Utility Authority and within the unincorporated areas of the County.
(Holleman, 1/27/2016)(#277)(OP-2016-00019)

Approval of Interlocal Cooperation Agreement between Holmes County, Mississippi and the City of Goodman, Mississippi for the collection of city taxes.
(Riley, 1/28/2016)(#277)(OP-2016-00033)

Approval of Interlocal Cooperation Agreement between Holmes County, Mississippi and the City of Cruger, Mississippi for the collection of city taxes.
(Riley, 1/28/2016)(#277)(OP-2016-00034)

Approval of Interlocal Cooperation Agreement between Holmes County, Mississippi and the City of Durant, Mississippi for the collection of city taxes.
(Riley, 1/28/2016)(#277)(OP-2016-00035)

Approval of Interlocal Cooperation Agreement between Holmes County, Mississippi and the City of West, Mississippi for the collection of city taxes.
(Riley, 1/28/2016)(#277)(OP-2016-00036)

MS. STATE DEPARTMENT OF HEALTH

The Mississippi Board of Health has no authority, express or implied, to require a certificate of need, or to adopt related criteria, for the establishment of a Brain and Spinal Cord Injury facility or for the offering of such services. However, to the extent, if any, that such a facility also constitutes a "health care facility" under Section 41-7-173 or offers services listed in Section 41-7-191, the Board is authorized to adopt CON-related criteria and regulations applicable thereto.
(Currier, 1/15/2016)(#027)(OP-2015-00354)

MUNICIPAL OFFICERS

A part-time public defender does not exercise core powers of the executive branch. Accordingly, it would not constitute a violation of the separation of powers doctrine set forth in Sections 1 and 2 of the Constitution if a part-time public defender also serves as a municipal court judge. This office defers on questions of application of the Code of Judicial Conduct to the Commission on Judicial Performance.
(Turnage, 1/29/2016)(#149)(OP-2016-00017)

MUNICIPALITIES

Members of the board of selectmen are entitled to, and should insist on, reasonable access to public information required to perform the duties of their office and may request that the information be provided in a reasonable and timely manner. Denial of access to such information would be made by the mayor, who may seek legal advice in making such determination. Any determination as to what constitutes a "public record" as contemplated in Mississippi Code Annotated Section 25-61-3 is a determination to be made by the municipal governing authorities, subject to review by a court of competent jurisdiction. Naturally, the municipality may seek the advice of its counsel when making determinations involving a public record request.
(Brock, 1/22/2016)(#142)(OP-2016-00005)

A contract with a marketing company to sell a surplus vehicle valued in excess of \$100,000 through various channels of websites, auctions, ads, and direct sales does not comply with Mississippi Code Section 17-25-25.
(Lawrence, 1/22/2016)(#142)(OP-2016-00006)

A municipality may adopt a reasonable ordinance that imposes restrictions on the placement of a height barrier on a private road in an effort to ensure that such barrier does not deprive emergency vehicles access to the private road in accordance with Mississippi Code Annotated Section 21-19-15. Any such restrictions imposed must be consistent with Section 63-5-17.
(Ringer, 1/22/2016)(#142)(OP-2015-00474)

A municipality is authorized, but not required, to 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.
(Sims, 1/22/2016)(#142)(OP-2016-00004)

Pursuant to Mississippi Code Annotated Section 17-3-1, a municipality may expend funds, not to exceed one mill of its respective valuation and assessment, for the purpose of advertising and bringing into favorable notice the opportunities, possibilities and resources of the municipality.
(Hornsby, 1/29/2016)(#142)(OP-2016-00008)

NEPOTISM

The position of county administrator is an office subject to the provisions of Section 25-1-53 (the nepotism statute). Therefore, a newly elected chancery clerk who is the brother of a supervisor may not be appointed to that position.

The appointment or employment of a newly elected chancery clerk who is the brother of a member of a board of supervisors as comptroller or to preserve essential public records pursuant to Section 19-15-1 does not violate the nepotism statute. However, the Mississippi State Ethics Commission should be consulted prior to the employment of a newly elected chancery clerk who is the sibling of one of the supervisors to these positions.
(Lancaster, 1/15/2016)(#151)(OP-2015-00478)

OPEN MEETINGS/OPEN RECORDS

Considering the absence of any state law to the contrary, the Board of Supervisors has the inherent authority to establish its own policy regarding the adoption of rules of parliamentary procedure, including setting the agenda, limiting the time allotted for debate or comment on each agenda item and debate on pending motions.
(O'Donnell, 1/22/2016)(#272)(OP-2015-00463)

OTHER STATE AGENCIES, BOARDS AND COMMISSIONS

Agents and employees of the Yazoo-Mississippi Delta Levee Board are authorized by Section 4, Chapter 66 (Laws of 1890) to kill feral pigs on levee property as prescribed therein.
(Henson, 1/29/2016)(#218C)(OP-2016-00021)

SCHOOLS-COUNTY BOARDS

A press release issued by two county school board members appears to be a protest against actions taken by a majority of board members as opposed to formal resignations.

Should a school board member fail to perform the duties of the office, he or she would be subject to certain potential criminal and civil penalties. See Mississippi Code Annotated Sections 97-11-37 and 25-1-45 and Sections 175 and 267, Mississippi Constitution of 1890.
(Lamar, 1/29/2016)(#179)(OP-2016-00022)

SCHOOLS-MISCELLANEOUS

A school board has the authority to contract with a non-profit foundation to allow a nurse practitioner employed by the foundation to treat students and staff during non-instructional time and charge the foundation a facility use fee.
(Mayo, 1/8/2016)(#187)(OP-2015-00459)

STATE PERSONNEL BOARD

Officers' salaries may be increased by benchmarks or other provisions of the Variable Compensation Plan, subject as always to legislative appropriation therefor.
(Mosley, 1/19/2016)(#121A)(OP-2015-00471)

SUPERVISORS-AUTHORITY

If, pursuant to Section 23-15-219, a county election commission employs legal counsel and determines that one of the duties of said counsel is to represent the commission in litigation and that employment is approved by the board of supervisors, that counsel would be the appropriate counsel to represent the commission in litigation to which it is a party.

If a board of supervisors makes the determination, consistent with the facts, that the county has an interest in pending litigation, it may, pursuant to Section 19-3-47, employ its own counsel to seek to intervene in said litigation in order to protect the county's interest.

Only a court of competent jurisdiction can approve any withdrawal of counsel.
(Snell, 1/28/2016)(#220)(OP-2016-00013)

The determination of whether the publication in question satisfies the requirements of Section 13-3-31 (publication of legal notices) is factual, and this office, by way of official opinion, cannot make such factual determination pursuant to Miss. Code Ann. Section 7-5-25.
(Carnathan, 1/29/2016)(#220)(OP-2016-00002)

Considering the absence of any state law to the contrary, the Board of Supervisors has the inherent authority to establish its own policy regarding, or address ad hoc, the investigation and response to a citizen's complaint, including authorizing the county administrator to investigate and report his findings to the board and the individual supervisor of the district from which the inquiry or complaint arises. (Slover, 1/29/2016)(#220)(OP-2016-00007)

Pursuant to Section 19-5-17, the county may institute civil action against the property owner to recover any delinquent fees and charges for collecting and disposing of garbage and/or rubbish, and all administrative and legal costs associated with collecting such fees and charges, in addition to implementing any other administrative procedures established by the county under Section 19-5-22(4). Once the court decides that the fees are owed and enters a judgment, that judgment is enrolled by the circuit clerk just like any other judgment. A county may then execute on the real property to satisfy the judgment. A county may only use fees, charges or ad valorem assessment, or a combination thereof to cover the costs of a waste collection and disposal system. The use of general funds should be limited to unanticipated costs and shortfalls in anticipated revenue, and such funds should not be budgeted for such purposes. (Webb, 1/29/2016)(#220)(OP-2015-00475)

TAXES-COLLECTIONS

Pursuant to Miss. Code Ann., Section 51-35-333 and Section 27-35-3, once property is added and becomes part of the Flood and Drainage Control District, it is subject to the special tax that is levied annually upon all taxable property within the district. (Turner, 1/15/2016)(#238)(OP-2015-00446)

TAXES-EXEMPTIONS

After deducting the shares of the school districts involved, the balance of a fee in lieu of ad valorem taxes may be allocated to any one or all of the county funds at the discretion of the board of supervisors, including the fire protection district fund, but it is not required to allocate a pro rata share to the fire protection district. (Leatherman, 1/15/2016)(#242)(OP-2015-00455)

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