



ATTORNEY GENERAL'S OPINION OUTLINE

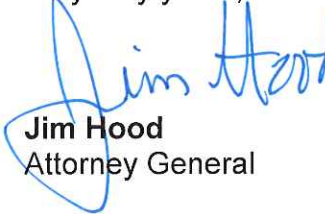
Volume 65, Number 12
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The purpose of the Opinion Outline is to inform state, county and municipal officials and other interested persons of official opinions issued by the Attorney General's Office. This outline contains synopses of opinions issued from December 1, 2016 through December 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

COUNTY ATTORNEY (PROSECUTING ATTORNEY)

A person serving as youth court prosecutor and county prosecuting attorney is limited to earning the county prosecuting attorney's salary as set forth in Section 25-3-9.
(Ready, 12/27/2016)(#050)(OP-2016-00536)

COURTS

If a defendant is convicted of DUI first offense pursuant to Section 63-11-30 of the Mississippi Code and appeals the conviction and the circuit court then enters a writ of procedendo for the municipal court to proceed as originally ordered, the municipal court may not allow a nonadjudication of the DUI.
(Turnage, 12/9/2016)(#056)(OP-2016-00518)

CRIMINAL LAW

A person who is out on bond or released on his own recognizance is not entitled to an initial appearance pursuant to Rule 6.05 of the Rules of Circuit and County Court Practice.
(Darby, 12/27/2016)(#057)(OP-2016-00512)

DEPARTMENT OF FINANCE AND ADMINISTRATION (DFA)

If a public employee or officer receives a travel advance pursuant to Section 25-3-41(5), he is statutorily required to provide receipts for reimbursements upon return from the travel. Section 25-3-41(4) does not require receipts for reimbursements without a travel advance. However, public employees and officers can only be reimbursed actual expenses, which should be supported by meaningful itemization or sufficient documentation.
(Jackson, 12/9/2016)(#037)(OP-2016-00514)

ELECTIONS-GENERAL

A party-affiliated elected official may run for another office as an independent candidate before the expiration of his or her current term of office. However, depending upon the specific offices, potential issues arise with respect to constitutional separation of powers issues, whether offices are incompatible and the requirement that a public employee not be paid by two entities for the same time worked.

(Lamar,12/16/2016)(#067)(OP-2016-00522)

INTERLOCAL AGREEMENTS

The Interlocal Cooperation Agreement between the City of Vicksburg and Warren County involving the administration of the Special Needs Assistance Program (SNAP) is approved.

(Bartlett,12/2/2016)(#277)(OP-2016-00515)

The Interlocal Cooperation Agreement between the Horn Lake Creek Watershed Drainage District and the Horn Lake Creek Basin Interceptor Sewer District involving erosion control measures for Horn Lake Creek is approved.

(Quimby,12/2/2016)(#277)(OP-2016-00524)

The Interlocal Cooperation Agreement between the Horn Lake Creek Watershed Drainage District and the City of Horn Lake involving erosion control measures for Horn Lake Creek is approved.

(Quimby,12/2/2016)(#277)(OP-2016-00525)

Approval of Interlocal Cooperation Agreement between Sunflower County, Mississippi and Region VI Community Mental Health Commission for the construction of a building for housing and the provision of mental health services.

(McWilliams,12/6/2016)(#277)(OP-2016-00507)

The Interlocal Agreement between Pontotoc and Lee Counties for the rehabilitation and overlay of County Line Road is approved subject to the condition that it is first approved by resolution duly adopted and entered on the minutes of the respective governing authorities in accordance with Mississippi Code Annotated Section 17-13-7(3) (Revised 2012).

(Ferguson,12/13/2016)(#277)(OP-2016-00537)

LEGISLATIVE

As a general matter, the lessee of government property would have the right to restrict possession of firearms on leased property. This opinion is based on general, non-specified facts and could be different under identified facts and based on state or local laws and/or regulations.

(Criswell,12/5/2016)(#104)(OP-2016-00498)

MUNICIPALITIES

The Local and Private Laws that authorized the creation of the Yazoo Recreation Commission provide that all parks in Yazoo City and Yazoo County are to be managed and controlled by said Commission. We find no authority for the City of Yazoo City to unilaterally transfer the management and control of the park in question from the Commission to the City, nor do we find any authority for the Commission to transfer or delegate the management and control of the park to the City of Yazoo City.

(O'Reilly-Evans,12/9/2016)(#142)(OP-2016-00526)

A meeting of the board of aldermen may continue for discussions of matters before the Board after a quorum is lost, but no official action may be taken other than adjournment.

Four aldermen (of a five-member board) may meet and take official action with three aldermen constituting a quorum and an additional alderman serving as mayor *pro tempore* for the meeting.

When no quorum is present, discussion may occur but the only official action that may be taken is to adjourn.

(Wiggins,12/16/2016)(#142)(OP-2016-00523)

The issuance of a resolution by the city council which serves to select a particular vendor and/or extend a contract with a vendor would amount to an encroachment upon, and interference with, the authority of the executive branch.

(Joiner,12/27/2016)(#142)(OP-2016-00532)

A mayor is authorized to suspend a municipal employee with pay regardless of the approval of a board of aldermen. Once an employee files a written complaint with the civil service commission, it retains jurisdiction over the matter until the matter is resolved either by an order of the commission itself or a withdrawal by the aggrieved employee. Because the investigative authority of the civil service commission is limited to that provided under the statutory scheme of the civil service laws, there is no authority which would authorize the civil service commission to consider a matter absent a written complaint filed with the commission. A municipal department head is not authorized to create a new position for his department as that authority rests solely with the municipal governing authorities.

(Latham,12/27/2016)(#142)(OP-2016-00529)

PUBLIC DEFENDERS

Pursuant to Section 25-32-5 of the Mississippi Code a part-time public defender (appointed pursuant to Section 25-32-1 *et seq.*) may not serve as a part-time prosecuting attorney.

(Austin,12/9/2016)(#059A)(OP-2016-00527)

SEPARATION OF POWERS

A housing authority is within the executive branch of government. A housing commissioner holds an office in the executive branch of government. Office holders in other branches of government cannot accept the position of commissioner without automatically vacating the other office.
(McCaughn,12/2/2016)(#271)(OP-2016-00490)

SHERIFFS-AUTHORITY

Absent specific statutory authority for additional compensation, the sheriff may not receive overtime pay pursuant to a federal grant.
(Slover,12/16/2016)(#213)(OP-2016-00462)

SUPERVISORS-AUTHORITY

The Coahoma County Board of Supervisors may authorize the assignment of an existing hospital lease to a nonprofit corporation in accordance with the terms of the lease without being subject to the requirements of Section 41-13-15. The Coahoma County Board of Supervisors is not authorized to extend the 1998 amended lease for an additional ten (10) years by relying upon Senate Bill 2419, Local and Private Laws of the 1998 Regular Session, as this legislation was specific to the 1996 lease, not the 1998 amended lease.
(Hall,12/9/2016)(#220)(OP-2016-00497)

If the Board of Supervisors makes a factual determination that the amount owed to the depository is due to a failure of the tax collector to collect taxes owed to the county, the Board of Supervisors is not authorized to pay the \$2,500.00 owed to the depository bank.
(Lee,12/9/2016)(#220)(OP-2016-00503)

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