



# ATTORNEY GENERAL'S OPINION OUTLINE

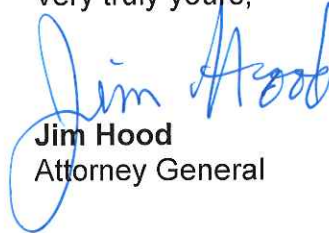
Volume 66, Number 12  
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The purpose of the Opinion Outline is to inform state, county and municipal officials and other interested persons of official opinions issued by the Attorney General's Office. This outline contains synopses of opinions issued from December 1, 2017 through December 31, 2017. 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](http://agjimhood.com)**

Very truly yours,

  
**Jim Hood**  
Attorney General

## AGRICULTURAL COMMISSION

State inspection exemptions for poultry producers raising their own poultry on their own farms should be consistent with and not contradict the exemptions in the United States Wholesome Poultry Products Act and its corresponding regulations.  
(Hill, 12/22/2017)(#004)(OP-2017-00381)

## DEPARTMENT OF EDUCATION

If the State Board of Education acts to reconstitute a school district, it should follow the procedure provided in the current version of the statute.  
(Wright, Ed.D., 12/1/2017)(#058)(OP-2017-00371)

## ELECTIONS-GENERAL

The election for a school bond issue for a school district that encompasses the entire county should be conducted by the county election commission. Provided that the notice and proper procedural requirements are met, the date of the election is not restricted. The election can be held on the same day as the June Primary or the November General Election.  
(Dionne, 12/1/2017)(#067)(OP-2017-00369)

## ELECTIONS-MUNICIPAL

All trustees elected or appointed to serve one of the five newly created special trustee election districts for the School District must be a resident and qualified elector of the district he/she will be serving.

The terms of current trustees who were in office on the first Monday of July 2017 that would otherwise expire on the first Monday in July 2018 will now expire on the first Monday of January 2018.

Trustees who do not reside in District 5 and have remaining time left on their term may be eligible to continue to serve District 2 or District 4 until those elections are regularly held in November 2018 if they are legitimate residents and qualified electors of either of those districts. If eligible, such trustee would serve until the first Monday of January 2019 or until his term expires, whichever comes first.

The municipal governing authorities must appoint a qualified elector of District 3 to fill the vacancy created by the failure of anyone to qualify as a candidate for that office in the November 2017 elections.  
(St. Pe', 12/15/2017)(#069)(OP-2017-00391)

## INTERLOCAL AGREEMENTS

The Interlocal Cooperation Agreement between the Union County Board of Supervisors and the City of Sherman, Mississippi providing for the collection of city taxes by the county is approved.  
(Rogers, 12/12/2017)(#277)(OP-2017-00398)

The Interlocal Cooperation Agreement between Washington County and the Town of Metcalfe, Mississippi for garbage and trash collection is approved except paragraph 17 which purports to bind successor boards of the parties to the agreement.  
(Power, 12/13/2017)(#277)(OP-2017-00401)

The Interlocal Cooperation Agreement between Madison County and the City of Ridgeland regarding the funding of certain street improvements is approved.  
(Snell, 12/19/2017)(#277)(OP-2017-00402)

The Interlocal Cooperation Agreement between Madison County and the City of Madison regarding the funding of certain street improvements is approved.  
(Snell, 12/19/2017)(#277)(OP-2017-00403)

The Interlocal Cooperation Agreement between Clarke County and the Town of Shubuta for police protection and law enforcement services for Shubuta to be provided by the Clarke County Sheriff's Office is approved.  
(Snowden, 12/20/2017)(#277)(OP-2017-00374)

The Interlocal Cooperation Agreement between Holmes County, Mississippi and Washington County, Mississippi involving the sharing of equipment and manpower to assist in the maintenance of roads is approved.  
(Riley, 12/21/2017)(#277)(OP-2017-00380)

## MUNICIPALITIES

A municipality would be required to ascertain that a customer did, in fact, submit a utility deposit in order to make a refund in accordance with the provisions of Mississippi Code Annotated Section 21-27-23. To refund monies to a customer who did not submit a utility deposit would result in an unlawful donation.  
(Clark, 12/1/2017)(#142)(OP-2017-00376)

Upon a finding by the municipal governing authorities, consistent with the facts, that there was an express condition for the use of donated property and those conditions were accepted by said governing authorities and that the purpose for which the donation was made will not be carried out, the governing authorities would be within their authority to return the property in question to the donor.  
(Clark, 12/8/2017)(#142)(OP-2017-00375)

A mayor may lawfully veto an item passed by the board after a meeting was adjourned, provided that the veto is made within ten (10) days from the date that he actually received the written ordinance. In order to make a lawful veto, a mayor is required to return the ordinance to the board by delivering it to the municipal clerk, along with a written statement setting forth his objections pursuant to Mississippi Code Annotated Section 21-3-15.  
(Griffith, 12/8/2017)(#142)(OP-2017-00387)

Any policy allowing for the adjustment of a water customer's bill must include a factual determination by the municipal governing authorities that, because of unforeseen circumstances, the customer did not receive the benefits of the water service thereby warranting a reduction or compromise. Such factual determinations should be reflected in the municipal minutes.  
(Stockton, 12/8/2017)(#142)(OP-2017-00378)



Section 21-27-39 authorizes municipalities owning or operating water systems to supply water to consumers residing within five (5) miles of the corporate limits of the municipality.  
(Trapp,12/22/2017)(#142)(OP-2017-00396)

## NEPOTISM

There is no violation of the nepotism statute when a sister was employed as the inmate case manager prior to her brother taking office as sheriff. Additionally, an inmate case manager is not one of the five positions specifically listed in the statute.  
(Turnage,12/8/2017)(#151)(OP-2017-00384)

## OPEN MEETINGS/OPEN RECORDS

The Board of Supervisors does not have the authority to declare a moratorium upon itself not to bring up a specific issue at board meetings.  
(Brown,12/14/2017)(#272)(OP-2017-00385)

## SUPERVISORS-AUTHORITY

A percentage based commission may not be charged to the supplier of the winning bid of a reverse auction performed pursuant to Section 31-7-13(c)(i)(2). Knowing that the supplier of the winning bid of the reverse auction will be required to pay a commission to the auctioneer may result in inflated bids to absorb the cost of the fee that will be paid to the auction company. We are unaware of a statute that exempts a county from paying for auctioneer services for reverse auctions required pursuant to Section 31-7-13(c)(i)(2).  
(Perry,12/1/2017)(#220)(OP-2017-00372)

A county may not repair, maintain or improve roads on private property, and rights of way must be acquired by or donated to the county prior to any county funds being spent on such right of way.  
(Brown,12/15/2017)(#220)(OP-2017-00386)

## TAXES-EXEMPTIONS

For a fee-in-lieu agreement entered into pursuant to either Section 27-31-104 or Section 27-31-105, a county has the authority to include a term or condition in the agreement providing that the requesting entity remain current on all taxes not exempted and not in dispute. If a Board of Supervisors makes a factual finding, spread on the minutes, that the requesting entity has failed to pay lawful taxes owed to the county, the Board of Supervisors may terminate the fee-in-lieu agreement or any fee-in-lieu period granted thereunder.  
(Barber,12/22/2017)(#242)(OP-2017-00394)

## TORT CLAIMS BOARD

An instrumentality of a governmental entity, including certain corporate entities, may receive protections afforded by the Mississippi Tort Claims Act.  
(Hill,12/8/2017)(#278)(OP-2017-00373)

## UTILITY DISTRICTS

A utility district may not enter into a construction contract without issuing a solicitation of bids. It must comply with the provisions of Mississippi Code Annotated Section 19-5-199 when letting a construction contract.  
(Haas,12/22/2017)(#266A)(OP-2017-00399)

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