



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 September 1, 2018 through September 30, 2018. 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

CRIMINAL LAW

In order to be eligible for parole under Miss. Code Ann. Section 47-7-3(1)(g)(iii), a defendant would have to meet the qualifications in Section 47-7-3(1) and be convicted as a confirmed and habitual criminal of a crime that is not a crime of violence under Miss. Code Ann. Sections 99-19-81 and 99-19-87. (Loper, 9/21/2018)(#057)(OP-2018-00287)

Rule 3.2(c)(1) of the Mississippi Rules of Criminal Procedure does not authorize municipal officers to serve or execute warrants outside of the municipality's corporate limits. Rule 3.2(c)(1) simply states the process for proper service stating that the arrest warrant may be executed by any officer authorized by law. The law that gives municipal officers their authority is Miss. Code Ann. Section 21-21-1, and this office has consistently opined that municipal officers cannot serve process outside the municipal limits. (Hammack, 9/28/2018)(#057)(OP-2018-00318)

INTERLOCAL AGREEMENTS

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the City of Utica, Mississippi for the refurbishing and making improvements to Southview Street is approved. (Teeuwissen, 9/5/2018)(#277)(OP-2018-00273)

The Interlocal Cooperation Agreement between the Counties of Calhoun, DeSoto, Hinds, Grenada, Lafayette, Lee, Monroe, Pontotoc, and Rankin to be known as the Mississippi Ortho 2019 Aerial Photography Update Initiative 2018-2019 (MS Ortho 2019) and is for the purpose of allowing the participating counties to collectively seek bids for and acquire Aerial Photography Services for Tax Assessment Purposes is approved. (Wallace, 9/10/2018)(#277)(OP-2018-00295)

The Interlocal Cooperation Agreement between DeSoto County, Mississippi, the City of Olive Branch, Mississippi, and the City of Southaven, Mississippi for the acceptance of the 2018 Edward Byrne Justice Assistance Grant (JAG) is approved. (Manley, 9/14/2018)(#277)(OP-2018-00289)

The Interlocal Cooperation Agreement between the City of Ocean Springs and Jackson County for the housing of city prisoners in the Jackson County Adult Detention Center is approved.
(Karcher,9/18/2018)(#277)(OP-2018-00294)

The Interlocal Cooperation Agreement between the City of Jackson, Mississippi and Hinds County, Mississippi for the resurfacing of Cynthia Road is approved.
(Teeuwissen,9/18/2018)(#277)(OP-2018-00303)

The Interlocal Cooperation Agreement between the City of Jackson, Mississippi and Hinds County, Mississippi for the paving and striping of Cabaniss Street, rehabilitation of curbs and gutters, and maintenance/landscaping of rights of way is approved.
(Teeuwissen,9/18/2018)(#277)(OP-2018-00304)

The Interlocal Cooperation Agreement between Mississippi State University and Smith County regarding the management of county extension agents and staff is approved.
(Hale,9/19/2018)(#277)(OP-2018-00300)

The Interlocal Cooperation Agreement between Issaquena County and Sharkey County regarding the collection and disposal of garbage and rubbish in Issaquena County by Sharkey County is approved.
(Woodard,9/24/2018)(#277)(OP-2018-00311)

The Interlocal Cooperation Agreement between DeSoto County, Mississippi and the City of Olive Branch, Mississippi involving the County and City making drainage improvements to County property within the City limits is approved.
(Nowak,9/25/2018)(#277)(OP-2018-00312)

JUDGES

Section 1 paragraph (3) of House Bill 387 (Laws 2018, Ch. 416) states that in the event a defendant is charged with a crime that carries a jail sentence as well as fines and willfully fails to pay he cannot be incarcerated for a term longer than the maximum authorized for the sentence. This does not apply to a situation where a defendant is charged with a crime that carries no jail time. Anyone who is found to have willfully not paid fines, fees, or restitution can be incarcerated for contempt. Any incarceration should be pursuant to the guidelines laid out in Miss. Code Ann. Section 99-19-20.
(Crawford,9/21/2018)(#098)(OP-2018-00277)

MUNICIPAL OFFICERS

Based upon your factual scenario, the subject municipal airport commissioner can serve no longer than ninety (90) days from July 1, 2018. Naturally, once the governing authorities make a new appointment, or reappoint the same commissioner, the hold-over service would immediately cease.
(Walker,9/7/2018)(#149)(OP-2018-00280)

MUNICIPALITIES

A utility debt may not be adjusted or forgiven when a customer has received the benefits of the utility service, regardless of a municipality's error in billing, as such would result in a violation of Mississippi Constitution Article 4, Section 100.

If a municipality is owed a lawful debt, such debt may not be released or extinguished except by payment into the municipal treasury.
(Frieson,9/7/2018)(#142)(OP-2018-00270)

Assuming that a municipality has determined that its employee was working while "on call," it may compensate said employee for such "on call" work.
(Pope,9/14/2018)(#142)(OP-2018-00279)

All municipal expenditures must be for payment of an approved claim on the claims docket or for payment of a specific appropriation made by an order of the governing authorities, pursuant to Mississippi Code Annotated Section 21-39-17. Pursuant to Section 21-39-7, a municipality is not required to obtain approval each time its salaries or other compensation are to be paid, assuming that it has previously fixed the amounts of said salaries or other compensation in the approval of its payroll and has entered the total payroll on the claims docket.
(Hammack,9/21/2018)(#142)(OP-2018-00292)

A municipality may regulate open burning by ordinance so long as the ordinance is not in conflict with state law or any corresponding regulations regarding same. The ordinance must be approved by the Mississippi Department of Environmental Quality.
(Sutton,9/21/2018)(#142)(OP-2018-00291)

Assuming that a quorum exists, any member may vote on a matter via teleconference regardless as to when he joined the meeting.
(Roberts,9/28/2018)(#142)(OP-2018-00293)

SEPARATION OF POWERS

Pursuant to Miss. Code Ann. Section 49-17-737, the President of the Hancock County Board of Supervisors may serve on the Board of Directors of the Hancock County Utility Authority.
(Yarborough,9/21/2018)(#271)(OP-2018-00297)

Pursuant to Section 17-17-313(1)(a)(v), a member of the Hancock County Board of Supervisors may serve on the Board of Commissioners of the Hancock County Regional Solid Waste Authority and is not prohibited by the separation of powers doctrine.
(Yarborough,9/24/2018)(#271)(OP-2018-00298)

SUPERVISORS-AUTHORITY

The Board of Supervisors may appropriate funds pursuant to Section 89-1-39 to volunteer fire departments and a fire protection district for the purchase of fire hydrants, and the volunteer fire department and fire protection district may then arrange with privately owned water associations for the installation of the fire hydrants. If the Board of Supervisors makes a finding of fact, spread upon the minutes, that the purchase and installation of fire hydrants constitute "capital improvements" as defined in Section 57-1-301(2), then it may borrow funds from the Local Governments Capital Improvements Revolving Loan Fund for such purpose.
(Sutton,9/14/2018)(#220)(OP-2018-00283)

UTILITY DISTRICTS

Based on the exemption language included in Section 7, contracts entered into by the DeSoto County Regional Utility Authority in furtherance of the purposes authorized by the subject local and private legislation are not subject to the public purchasing statutes and are not required to be competitively bid.
(Manley,9/28/2018)(#266A)(OP-2018-00302)

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