



ATTORNEY GENERAL'S OPINION OUTLINE

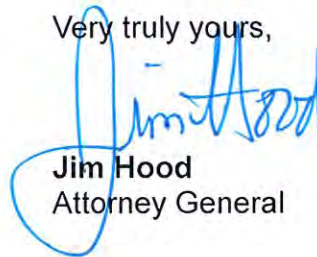
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The purpose of the Opinion Outline is to inform state, county and municipal officials and other interested persons of official opinions issued by the Attorney General's Office. This outline contains synopses of opinions issued from May 1, 2019 through May 31, 2019. 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

AGRICULTURAL COMMISSION

The EPA requires the MS Department of Agriculture to update its authority to oversee the state's pesticide certification program, which includes a written opinion of the state attorney general. The MS Department of Agriculture's authority is set forth in various state laws and regulations, including the *Mississippi Pesticide Law of 1975, Miss. Code Ann. Sections 69-23-1 et seq.* and the *Mississippi Pesticide Application Law of 1975, Miss. Code Ann. Sections 69-23-101 et seq.* (Gipson, 5/10/2019)(#004)(OP-2019-00114)

Senate Bill 3046 does not alter general procurement laws as they relate to either "net-of-fee" contracts which involve no expenditure of public funds or service agreements which do not involve the purchase of goods or commodities. Senate Bill 3046 does not impose bidding requirements where those requirements are not otherwise imposed by law. (Hutton, 5/17/2019)(#004)(OP-2019-00129)

ELECTIONS-GENERAL

To be in effect for the 2019 elections, alterations to precinct boundaries must have been properly adopted 30 days prior to the qualifying deadline. Additionally, any alterations made on or after July 1, 2019, must comply with House Bill 914 of the 2019 Regular Session. (Dionne, 5/17/2019)(#067)(OP-2019-00103)

The prohibition in Section 23-15-561 applies to all lotteries held to encourage persons to vote or refrain from voting on days when voters are casting their ballots including the forty-five (45) day absentee balloting period. (Turner, 5/17/2019)(#067)(OP-2019-00117)

ELECTIONS-LOCAL OPTION- BEER & WINE LIQUOR

It is permissible for petitioners to submit their petition for local option elections, in piecemeal fashion, to the circuit clerk prior to the petition being presented to the board of supervisors. It is essential that the circuit clerk certify the number of legitimate signatures on each petition.

Section 23-15-91 specifically protects county registrars (circuit clerks) from liability for any error of judgment regarding the registration of electors. (Clanton,5/14/2019)(#076A)(OP-2019-00105)

HOSPITALS-COMMUNITY

Section 41-7-195 clearly provides that a certificate of need (CON) is not transferrable or assignable to another entity, nor shall a project be transferred from one entity to another, and the George Regional Health System Board of Trustees may not use its nursing home's CON as collateral for a loan from Singing River Electric Power Association. Additionally, the title to the CON belongs to the owner of the community hospital. Consequently, the Board of Trustees cannot pledge a CON owned by the Owner as collateral for a loan. (Hurt, Jr.,5/31/2019)(#092)(OP-2019-00128)

INTERLOCAL AGREEMENTS

The Interlocal Cooperation Agreement between Hattiesburg, Mississippi and Forrest County, Mississippi regarding tax increment financing for the Hardy South Project is approved. (Farris,5/9/2019)(#277)(OP-2019-00121)

The Interlocal Cooperation Agreement between Forrest County, Mississippi and the City of Hattiesburg, Mississippi providing for cooperative action in connection with the Elam Arms Development TIF Project is approved. (Keyes,5/15/2019)(#277)(OP-2019-00122)

JUDGES

The Justice Court Judge may set the bond to be returned on a date certain in circuit court after the meeting of the grand jury. Additionally, Article 3, Section 24 of the Mississippi Constitution provides that any person can represent themselves *pro se* in any action. If a defendant asks for a preliminary hearing prior to a grand jury indictment, without the assistance of counsel, he or she is still entitled to such hearing. (Barton,5/10/2019)(#098)(OP-2019-00112)

MUNICIPAL FUNDS

Funds received by a municipality for road repair and construction under Section 27-67-35 of the Mississippi Code may be used to repay the principal amount of a loan where the loan proceeds were expended for the purposes outlined in the statute. (Reynolds,5/24/2019)(#141)(OP-2019-00125)

MUNICIPALITIES

Pursuant to Section 27-65-241(7)(h) of the Mississippi Code, the commission, with the input of the municipality, is required to establish a master plan, among other things, for road and street repairs, reconstruction and resurfacing. Expenditures of revenue collected shall be made at the discretion of the governing authorities. The commission, however, is charged with monitoring the municipality's compliance with the master plan. (Stokes,5/10/2019)(#142)(OP-2019-00115)

Municipal employees may perform renovations and upgrades to municipal buildings provided that the municipality complies with the competitive bidding requirements when procuring equipment and/or supplies. (Martin,5/24/2019)(#142)(OP-2019-00126)

In accordance with the limitations imposed in Section 21-27-27 of the Mississippi Code, a municipality may not discount water bills incurred by the rural water association. The municipality may not agree to the enforcement of a penalty clause against the municipality, nor may it bind successor boards to such contract. (Mayo,5/24/2019)(#142)(OP-2019-00131)

NATIONAL GUARD

A member of the Mississippi National Guard serving under state control under either Title 32 of the United States Code or Title 33 of the Mississippi Code in possession of a military firearm would be subject to the provisions of Section 97-37-5 prohibiting possession of a firearm by a convicted felon. Section 97-37-5 does not incorporate the exceptions relating to federal felony possession laws that are found in 18 U.S.C.A. Section 925(a). (Majors,5/24/2019)(#150)(OP-2019-00127)

OPEN MEETINGS/OPEN RECORDS

Whether an advisory panel or sub-committee created by a public body is subject to the Open Meetings Act is dependent on the manner in which it was created, its specific responsibilities and whether public funds are used to support it.
(Hutchinson,5/10/2019)(#272)(OP-2019-00110)

PLANNING & DEVELOPMENT DISTRICTS

A regional planning commission in the exercise of its discretion may provide leave with pay or leave without pay for employees who serve on juries, but it cannot recover statutorily-authorized fees from employees who serve on juries. Governing authorities may pay professional association dues for employees if it is determined that the professional association dues or licensing fees are reasonable and necessary to the performance of the employee's or officer's duties. Furthermore, the membership must accrue to the benefit of the governing authority, and any benefit to the individual must be merely incidental.
(Williams,5/24/2019)(#167A)(OP-2019-00119)

PUBLIC SERVICE COMMISSION

The Mississippi Public Service Commission has jurisdiction over rate making for municipal utilities with regard to customers in that area that is greater than one mile and up to five miles outside the municipal corporate boundaries. Thus, the Commission's authority to take action regarding rates or refunds should be in relation to utility customers within the one to five mile jurisdictional area. To the extent information is needed with regard to customers and expenditures outside of this jurisdictional area, the Commission may, if necessary, seek relief through a court of competent jurisdiction.
(Brown,5/24/2019)(#167)(OP-2018-00325)

TAX COMMISSION

Due to the broad nature of the language contained in Senate Bill 3024 (Laws of 2019, Regular Session), the Mississippi Department of Revenue is authorized to purchase real property for warehouse expansion purposes.
(Frierson,5/10/2019)(#234)(OP-2019-00113)

TAXES-ASSESSORS-TAX COLLECTORS

An increase in compensation for the tax assessor and/or deputy tax assessors who qualify for such shall begin October first of the fiscal year after the completion of qualifications have been met.
(Lewis,5/17/2019)(#237)(OP-2019-00120)

UTILITY DISTRICTS

A Joint Water Management District (the District) has the authority granted to it pursuant to Section 51-8-31 of the Mississippi Code to contract with private third parties to complete criminal background checks on prospective employees.
(Griffith,5/31/2019)(#266A)(OP-2019-00141)

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