



*Lynn Fitch*

**ATTORNEY GENERAL**  
OPINIONS AND POLICY

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 07/01/2020 through 07/31/2020.

The synopses that follow 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 available on our website, [www.ago.state.ms.us](http://www.ago.state.ms.us).**

Sincerely,

Lynn Fitch  
Attorney General  
State of Mississippi

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## **ARCHIVES AND HISTORY**

Though the Office of the Attorney General may not interpret nor opine upon federal law, Native American remains and associated funerary objects are subject to the Native American Graves Protection and Repatriation Act and those federal regulations that implement the Act.

No provision in Mississippi law prohibits the Mississippi Department of Archives and History (MDAH) from using state-owned property or acquiring property for the purpose of reburying prehistoric Native American remains if the MDAH Board of Trustees has made the necessary factual findings in accordance with Section 39-5-5.

(Blount, 7/31/2020)(#015)(OP-2020-00095)

## **JUSTICE COURT JUDGES**

Commencement of a case in justice court is governed by Mississippi Code Annotated Section 99-33-2.

County patrolmen, employed by the board of supervisors, do have the power to enforce violations of Section 97-15-30, related to disposal of solid waste.

The fifty-dollar (\$50.00) assessment provided by Section 97-15-29(7) would not be applicable to a conviction pursuant to Section 97-15-30.  
(Howell,7/31/2020)(#100)(OP-2020-00100)

## **MUNICIPALITIES**

The municipality may discontinue the use of bound minute books and store its minutes electronically provided, however, that the minutes comply with the signing and seal requirements of Section 21-15-33 and are available for public inspection.  
(Smith,7/31/2020)(#142)(OP-2020-00021)

Pursuant to Section 7-5-25, opinions of the Attorney General are issued upon questions of law for the future guidance of those officials entitled to receive them, relevant to their respective duties.

An Attorney General's opinion can neither validate nor invalidate past action of the municipal governing authorities. Therefore, this opinion is prospective in nature and cannot address those actions which already may have occurred.

While aldermen are entitled to information necessary to enable their board to perform its legislative duties, ordering the mayor to ensure the attendance of a particular employee at a board meeting is not the appropriate method for acquiring such information. Further, such an order directing the mayor of a code charter municipality to produce a particular employee to appear at the next board meeting appears to be an encroachment upon the executive powers of the mayor and not an exercise of the legislative powers of the board. Any attempt by the board of aldermen to exercise executive powers of the municipality would result in a separation of powers doctrine violation.

If an elected official fails to perform his or her duties as required by an ordinance lawfully adopted by the board of aldermen in full compliance with Section 21-3-15(2)(b), the town may seek a writ of mandamus pursuant to Section 11-41-1 from a court of competent jurisdiction to force compliance. MS AG Op., *Barton* (June 17, 2016).

Absent municipal policy to the contrary, we find no restrictions with whom a city clerk may communicate regarding his/her duties or municipal grievances.

If a mayor's salary has been lawfully reduced, the mayor would not have the authority to direct the city clerk to write his/her paycheck for the amount he/she previously received instead of the newly adjusted salary.  
(Thomas,7/31/2020)(#142)(OP-2020-00008)

## **SCHOOLS – COMMUNITY AND JUNIOR COLLEGES**

If the Board of Trustees of East Central Community College (ECCC) determines that personal protective equipment (PPE) is necessary to achieve a statutory purpose and not for the sole

benefit of the individual students and employees, ECCC may provide PPE to its students and employees.

(Mayo,7/31/2020)(#172)(OP-2020-00136)

## **SCHOOLS – DISTRICTS**

A school district may not offer monetary incentives to students based upon their performance on the ACT as such incentives would constitute an unlawful donation in violation of Section 66 of the Mississippi Constitution.

A school district may provide monetary incentives to its employees based upon improvements in overall ACT Test scores at a particular high school if the incentives are contracted for prior to performance of the services, determined by objective standards, and earned by services performed by the employee.

(Rodolfich,7/31/2020)(#180)(OP-2020-00059)

## **SUPERVISORS – AUTHORITY**

By virtue of the authority granted to the Office of the Attorney General, this office cannot opine upon the terms and provisions of a court order.

Furthermore, this office relies upon the facts as set forth by the specific written request seeking an official opinion and cannot assume facts or make any factual determinations upon which to base an official opinion or provide guidance to the requesting party.

The Humphreys County Board of Supervisors may hire and pay for with county funds independent counsel retained to represent the current tax assessor/collector if the board determines it has an interest in the litigation and spreads that factual determination upon its minutes. MS AG Op., *Henderson* (May 13, 2020)(emphasis added).

(Bailey,7/31/2020)(#220)(OP-2020-00157)

Section 19-3-27 imposes a duty upon the clerk of the board of supervisors not only to keep and preserve the minutes but also to create or make the minutes by entering on them actions taken by the board; however, it is within the discretion of the board of supervisors to appoint another person, in addition to the clerk, to draft the minutes for the board's approval.

(Killebrew,7/31/2020)(#220)(OP-2020-00140)

Upon a determination that the health, comfort and convenience of the inhabitants of Oktibbeha County will be promoted, the Oktibbeha County Board of Supervisors may provide the labor, materials and supplies to clean or clear the creek on private property so as to prevent additional flooding. However, the board must satisfy the prerequisites of Section 19-5-92.1(2).

(Roberson,7/31/2020)(#220)(OP-2020-00134)

## **YOUTH COURT**

Mississippi Code Annotated Section 43-21-605(1)(l)(i) requires the youth court to administratively review the time period of a youth's detention no later than 45 days after entry of the disposition order. In connection with this review, the youth court counselor is required to review the status of the youth in detention and to report any concerns to the court. Section

43-21-605(1)(l)(i) does not provide a specific definition of “administrative review,” nor does it specify factors to be considered by the youth court in its administrative review.

Therefore, in the absence of a statutory definition or list of factors, the youth court should exercise its discretion in conducting the administrative review process.

(Lee,7/31/2020)(#101)(OP-2020-00044)

## **INTERLOCAL AGREEMENTS**

The Third Amended and Restated Interlocal Cooperation Agreement among the Cities of Gulfport, Biloxi and D'Iberville pertaining to the regulation of Motor Vehicle for Hire and other related purposes is approved.

(Crane,7/10/2020)(#277)(OP-2020-00150)

The Interlocal Cooperation Agreement between Hinds County and the City of Jackson for infrastructure improvements to Mayes Street and Albermarle Road located in the City of Jackson is approved (Project 2020-06).

(Gaylor,7/10/2020)(#277)(OP-2020-00138)

The Interlocal Cooperation Agreement between Hinds County and the City of Jackson for infrastructure improvements to Huntview Drive, Romany Drive, Twin Lake Circle and Westhaven Boulevard located in the City of Jackson is approved (Project 2020-04).

(Gaylor,7/10/2020)(#277)(OP-2020-00148)

The Interlocal Cooperation Agreement between Wayne County and the City of Waynesboro for the collection of city ad valorem taxes is approved.

(Jackson,7/10/2020)(#277)(OP-2020-00116)

The Interlocal Cooperation Agreement between the Town of Lena and Leake County for the collection of city ad valorem taxes is approved.

(Webb,7/10/2020)(#277)(OP-2020-00149)

The Interlocal Cooperation Agreement between Hinds County and the City of Jackson for infrastructure improvements to Suffolk Drive, Rockdale Drive and Stillwood Drive is approved (Project 2020-07).

(Gaylor,7/24/2020)(#277)(OP-2020-00130)

The Interlocal Cooperation Agreement between Hinds County and the City of Jackson for infrastructure improvements to Catchings Drive, Westhaven Boulevard, Pear Street, Wiggins Road, Buddy Butts Park and Capitol Street is approved (Project 2020-05).

(Gaylor,7/24/2020)(#277)(OP-2020-00139)

The Interlocal Cooperation Agreement between Mississippi State University and Hancock County documenting the relationship between the Mississippi State University Extension Service and Hancock County is approved.

(Gordon,7/24/2020)(#277)(OP-2020-00147)

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