



Lynn Fitch

ATTORNEY GENERAL
OPINIONS AND POLICY

The purpose of the Opinion Outline is to inform, on a quarterly basis, 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 04/01/2021 through 06/30/2021.

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.**

Sincerely,

Lynn Fitch
Attorney General
State of Mississippi

AERONAUTICS

Long – June 23, 2021 (OP-2020-00302)

We are not aware of any provision of state law that would prohibit the Authority from paying a fixed fee to a site location/development firm, where such fee is based on a percentage of the lease payments paid to the Authority by commercial tenants.

BOARD OF PHARMACY

McCoy – June 22, 2021 (OP-2020-00169)

There is no authority for the State Board of Pharmacy to expunge records of its prior disciplinary action.

ECONOMIC DEVELOPMENT DISTRICTS

Welch – June 23, 2021 (OP-2021-00068)

With respect to property being conveyed by a party who originally purchased such property from the District, so long as the covenants permit their amendment and so long as any changes comport with applicable zoning requirements, we find no statutory prohibition on the District amending the covenants to remove the industrial/warehouse use restriction for the property. MS AG Op., *Welch* at *2 (July 1, 2011).

Your second question is too broad to address by official opinion. However, for your guidance only, property owned by the District must comply with Mississippi Code Annotated Section 19-5-99 and may be conveyed solely for industrial or warehouse use.

HOSPITALS – COMMUNITY

Gilchrist – May 14, 2021 (OP-2021-00064)

A community hospital may provide authorized services within the hospital's "service area," which "may include areas outside of the State of Mississippi."

JUSTICE COURT JUDGES

Jones – June 23, 2021 (OP-2020-00318)

Justice court clerks must accept and record all criminal affidavits submitted by complainants. Whether the conduct described in the affidavit is violative of a criminal statute that has been invalidated as unconstitutional, or whether such conduct meets the elements of another crime, is a determination for the judge.

MUNICIPAL OFFICERS

Griffith – June 22, 2021 (OP-2020-00281)

The City of Cleveland may allow an alderman to use a police radio to monitor police radio traffic without it being a per se violation of the separation of powers doctrine. However, the actions an alderman takes in response to what he or she hears on the police radio could easily become a violation if he or she gets involved in the daily operations of the police department.

MUNICIPALITIES

Barton – May 17, 2021 (OP-2020-00319)

A municipality does not have authority to provide broadband service to its residents as part of its municipal utility system. We reaffirm our two previous opinions to you.

Miller – June 23, 2021 (OP-2020-00118)

Since the plat was approved by the Board and filed with the Chancery Clerk, pursuant to Mississippi Code Annotated Section 21-19-63, the roads of the subdivision are public.

If the roads were made public, the city has a duty to maintain such roads for the public good, and a municipality has no authority to surrender any jurisdiction or authority conflicting with its duty to keep streets in reasonably safe condition. However, a municipality may accept, as a donation or gratuity, work and/or materials on a public street by a private individual to be performed under the supervision and control of the governing authorities.

Section 19-27-23, governing the required contents of maps and plats, does not require the engineer's signature.

St. Pe' – June 30, 2021 (OP-2021-00078)

The Pascagoula Redevelopment Authority may loan funds that it receives from the State pursuant to Section 43-35-15(e) to a developer pursuant to Section 43-35-15(f) to be utilized for an urban renewal project in accordance with the Urban Renewal Law.

NEPOTISM

Slover – April 12, 2021 (OP-2020-00289)

The county public defender's appointment of an assistant public defender who is the sister or daughter of the senior judge who appointed the public defender would not violate the nepotism statute. However, there are potential conflict of interest questions that must be resolved by the Mississippi State Ethics Commission.

Scanlon – May 3, 2021 (OP-2021-00032)

There will be no violation of Mississippi's nepotism statute by the Board employing the Mayor's grandson as a laborer in the Parks and Recreation Department because a laborer is not one of the five employment positions enumerated in Section 25-1-53.

OTHER STATE AGENCIES, BOARDS AND COMMISSIONS

Mallory – May 14, 2021 (OP-2021-00026)

The Board member appointed to the Law Enforcement Officer Standards and Training Board, pursuant to Section 45-6-5(2)(a), must be a "representative of higher education" – a fact determination made by the Governor. The statute does not impose any specific employment requirements on the representative of higher education.

PAROLE BOARD

Smith – May 3, 2021 (OP-2020-00323)

As an initial matter, we note that opinions of this office are issued on prospective questions of law pursuant to Section 7-5-25. Official opinions do not validate nor invalidate past actions. Further, whether a particular statute has been violated is a factual question on which we do not opine. We offer the following for future guidance.

(1) Reimbursements to Parole Board members for actual and necessary expenses authorized pursuant to Sections 47-7-5(2) and 25-3-41 are separate and distinct from per diem pay, which is prohibited for Parole Board members under Section 47-7-5(2).

(2) Reimbursements issued to Parole Board members pursuant to Sections 47-7-5(2) and 25-3-41 are for actual and necessary expenses. Per diem pay is a form of compensation calculated at a daily rate in accordance with Section 25-3-69. Section 47-7-5(2) authorizes Parole Board members to receive travel reimbursements and simultaneously prohibits them from receiving per diem pay.

SCHOOLS – PROPERTY

Rimes – June 28, 2021 (OP-2021-00050)

Spending public funds to improve school district property for the purpose of transferring the property to a non-profit organization would constitute an unlawful donation under Article 4 Section 66 of the Mississippi Constitution.

SUPERVISORS – AUTHORITY

Ross – May 3, 2021 (OP-2020-00295)

Pursuant to the county “home rule” statute, the Coahoma County Board of Supervisors may engage a firm to conduct a feasibility study and pay for a portion of the study, provided it finds that the expenditure will benefit the county.

Munn – June 30, 2021 (OP-2020-00306)

Your first question is too broad to address by opinion. However, for your guidance, and consistent with the facts and with this office’s previous opinions, we note that if a constable performs all the duties required by Section 25-7-27(1)(f), the Board must pay the “state fail fee” to the constable. A constable is ineligible to collect the fee where the Board determines, consistent with the facts, that the constable did not do the following in cases in which the state failed in the prosecution: (1) serve, or diligently attempt to serve, all warrants and other process presented to him or her for service; and (2) attend all trials, unless lawfully excused or otherwise unavailable for a legitimate reason.

In response to your second question, we find no requirement that the Board make a finding that the constables in question are not entitled to the fee. On an annual basis, if the Board determines,

consistent with the facts, that the constables performed the required duties and are entitled to the fee, the Board should, prior to paying the fee, making an affirmative finding of such entitlement. Though the fee, if earned, must be paid on an annual basis, we find no requirement that such allowance be made prior to the end of a calendar year.

Your third question is too broad to address by opinion. However, for your guidance, as noted in response to your second question, before paying a constable the fee, the Board is responsible for making an affirmative finding, consistent with the facts, that the constable in question performed the required duties and is entitled to the fee.

UTILITY DISTRICTS

Myers – May 14, 2021 (OP-2020-00269)

Only Caledonia Natural Gas District residents are qualified to serve on the District's Board of Commissioners.

INTERLOCAL AGREEMENTS APPROVED

Gaylor – April 29, 2021 (OP-2021-00043)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the City of Jackson, Mississippi in regard to Public Infrastructure Project 2020-09 (Lake Circle) is approved.

Gaylor – April 29, 2021 (OP-2021-00045)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the City of Jackson, Mississippi in regard to Public Infrastructure Project 2020-13 (Nimitz Street) is approved.

Gaylor, April 29, 2021 (OP-2021-00046)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the City of Jackson, Mississippi in regard to Public Infrastructure Project 2020-14 (Rolling Meadows Drive and Meadowoods) is approved.

Gordon – April 29, 2021 (OP-2021-00047)

The Interlocal Cooperation Agreement between Mississippi State University and George County, Mississippi to document the relationship between the MSU Extension Service and George County concerning the management of county Extension agents and staff is approved.

Griffin – May 3, 2021 (OP-2021-00048)

The Interlocal Cooperation Agreement between Washington County, Mississippi and the City of Greenville, Mississippi to provide certain street, bridge maintenance, and other services is approved.

Riley – May 12, 2021 (OP-2021-00072)

The Interlocal Cooperation Agreement between the Holmes County Board of Supervisors and the City of Lexington, Mississippi for assistance in street repair and dilapidated property and various other projects for the upkeep of the city is approved.

Williams – May 12, 2021 (OP-2021-00056)

The Interlocal Cooperation Agreement between the City of Meridian, Mississippi and the Lauderdale County Board of Supervisors for repairs and improvements to Phil Hardin Ball Park is approved.

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