



*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 07/01/2021 through 09/30/2021.

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](http://www.ago.state.ms.us).**

Sincerely,

Lynn Fitch  
Attorney General  
State of Mississippi

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## **CONSTABLE**

### *Barber – July 13, 2021 (OP-2020-00155)*

The constable is responsible for mailing summons and complaints when mailing is required under Rule 14 of the Mississippi Rules of Justice Court. Pursuant to Section 19-7-23, the county must provide stationery, including postage, to the courthouse and all county offices.

Justice court costs and fees are charged in accordance with Section 25-7-25, which contains no provision for a justice court to charge additional mailing or postage fees.

The constable is responsible for service of process under Mississippi Rule of Justice Court 14(d)(2)–(3), which includes mailing a copy of the summons and complaint. However, there is no prohibition against court clerk personnel assisting the constable with this requirement.

For personal service, pursuant to Mississippi Rule of Justice Court 14(d)(1), service is complete upon the date of service. For “service upon a family member” and “service by posting,” pursuant to Rule 14(d)(2)–(3), service is complete on the tenth day after mailing.

## **COUNTY ATTORNEY (PROSECUTING ATTORNEY)**

Barton – September 30, 2021 (OP-2021-00066)

The salary of the county prosecutor is separate from secretarial expenses paid by the board of supervisors to the county prosecutor.

## **GROUP INSURANCE**

Killebrew – September 30, 2021 (OP-2020-00310)

A county may provide healthcare benefits to full-time employees who are paid directly by the county. A county may elect to provide group health insurance only for specified groups of employees.

## **INSTITUTIONS OF HIGHER LEARNING**

Rankins – July 21, 2021 (OP-2021-00084)

Pursuant to Section 25-3-69, board members appointed by the Governor may receive per diem compensation prior to confirmation by the Senate.

Pursuant to Section 25-3-41(8), board members appointed by the Governor may receive reimbursements for mileage and other actual expenses incurred in the performance of official duties prior to confirmation by the Senate.

IHL Board members fit within the broad definition of “employees of the state of Mississippi” as set forth in Section 11-46-1(f) and, when acting within the course and scope of their duties, are entitled to the protection of the Mississippi Tort Claims Act.

Rankins – July 23, 2021 (OP-2021-00106)

Incentive payments may be included within contracts. A public body may pay employee incentives, provided that the incentives are contracted for prior to the date when services are to be performed, are determined in accordance with objective standards of measurement, and are earned by personal services performed by the employee.

## **JUDGES**

Fratesi – September 3, 2021 (OP-2021-00132)

Until the preliminary figures of the 2020 census become finalized and official, the official results from the 2010 census constitute the “latest available federal census” as contemplated by Section 21-23-3.

## **MS STATE BOARD OF DENTAL EXAMINERS**

Hutchinson – July 13, 2021 (OP-2020-00312)

Members of the Mississippi Anesthesia Advisory Panel fit within the broad definition of “employees of the state of Mississippi” as set forth in Section 11-46-1(f) and, when acting within the course and scope of their duties, are entitled to the protection of the Mississippi Tort Claims Act.

## **MUNICIPAL OFFICERS**

Moak – September 30, 2021 (OP-2021-00160)

Because Mississippi Code Annotated Section 21-23-3 provides an exception to the qualified elector requirement for municipalities within the purview of Section 21-23-5, Brookhaven’s municipal judge is not required to be a qualified elector of Lincoln County.

## **MUNICIPALITIES**

Miller – July 23, 2021 (OP-2021-00020)

A transient vendor may only sell products without obtaining a transient vendor license if one of the exceptions in Section 75-85-3 applies. The sale of beef, poultry, and seafood products sourced from within the State of Mississippi fall within the exception contemplated in Section 75-85-3.

Purdie – September 30, 2021 (OP-2021-00088)

Pursuant to Section 21-17-5(1)—municipal “Home Rule” authority—a debt, or portion thereof, may be satisfied by the transfer of real property, so long as the property accepted is used for proper municipal purposes and will benefit the citizens of the municipality.

Acquisitions of real property by a municipality are subject to the process set forth by Section 43-37-3.

## **MUNICIPALITIES-ORDINANCES-ZONING-ANNEXATION**

Hemphill – July 13, 2021 (OP-2021-00016)

State assessments collected pursuant to Mississippi Code Annotated Section 99-19-73 must be remitted to the state. Municipal fines, fees, and court costs, such as those collected pursuant to Section 21-23-7, would remain with the municipality.

## **SCHOOLS - DISTRICTS**

Lee – August 6, 2021 (OP-2021-00022)

The language of Section 37-7-301(zz) is clear that the school board of a district is authorized to fund and operate an early childhood education program. There does not appear to be a prohibition on charging tuition for such a program.

Section 37-7-301(zz) authorizes the school board “to fund and operate voluntary early childhood education programs ... and to use any source of revenue for such early childhood education programs.” The statute is silent as to the meaning of “any source of revenue.” We recommend you contact the Mississippi Department of Education (“MDE”) and/or Technical Assistance Division of the Office of the State Auditor for guidance on this question.

The statute does not enumerate specific costs of early childhood programs but does authorize the board “to *fund* and *operate*” said programs. Miss. Code Ann. § 37-7-301(zz) (emphasis added). Whether any specific expenditure is incurred to “operate” the early childhood education program is a question of fact that this office cannot address.

Section 37-7-339 allows districts to charge a reasonable fee for after-school programs, and there is no prohibition against including a tuition-based after-school program for pre-kindergarten students.

The applicable statute states that the board may expend funds available from sources other than the adequate education program. Miss. Code Ann. § 37-7-339(2). For further guidance, we recommend you contact the MDE and/or the Technical Assistance Division of the Office of the State Auditor.

The plain language of Section 37-7-301(zz) provides that the board is authorized “to *fund* and *operate*” the program. Miss. Code Ann. § 37-7-301(zz) (emphasis added). Whether any specific expenditure is incurred to “operate” the after-school program is a question of fact that this office cannot address.

Hill – September 30, 2021 (OP-2021-00101)

The Equity in Distance Learning Act authorizes the sale of “devices and other technology” purchased under the EDLA grant program to students in Grade 12, provided that such sale comports with Mississippi Code Annotated Section 37-7-459.

## **SCHOOLS – TRUSTEES**

Brock – September 3, 2021 (OP-2021-00069)

Assuming the City of McComb’s special charter is silent on the matter, the City Board has no authority to remove a School Board member during the term for which the member was appointed.

Assuming the City of McComb’s special charter is silent on the matter, Section 37-7-203 governs the terms of service of school board trustees. The City Board has no authority to adopt an ordinance that conflicts with state statutes.

## **SUPERVISORS – AUTHORITY**

Perry – September 30, 2021 (OP-2020-00286)

We find no prohibition on the County and Chamber of Commerce agreeing, as part of a lawful management agreement, for the County to continue to use offices at the RiverPark for use by County employees.

The County and the Chamber, when acting on the County’s behalf in managing the RiverPark pursuant to the terms of a lawful management agreement, must at all times comply with laws governing public funds. With respect to technical aspects of payments made between the County and Chamber, we recommend you contact the Office of the State Auditor’s Technical Assistance Division.

Roberson – September 30, 2021 (OP-2020-00300)

For ordinances dealing with a subject matter that is not governed by specific statutory publication requirements, the Mississippi Code does not prescribe a specific number of times that a county must advertise such an ordinance.

Ordinances dealing with a subject matter not governed by a publication requirement may be shortened for dissemination. If a statute requires publication in a specific manner, the ordinance must be published in such manner. In the absence of a statutorily required medium of publication, the board of supervisors may disseminate on a website.

## **INTERLOCAL AGREEMENTS APPROVED**

Fairbank – July 12, 2021 (OP-2021-00122)

The Amendment to the Interlocal Cooperation Agreement between the City of Flowood, Mississippi and Rankin County, Mississippi in connection with the \$5,200,000 City of Flowood Tax Exempt General Obligation Refunding Bonds, Series 2015 is approved.

Fairbank – July 12, 2021 (OP-2021-00123)

The Interlocal Cooperation Agreement between the City of Flowood, Mississippi and Rankin County, Mississippi in connection with the \$1,845,000 City of Flowood, Mississippi Taxable General Obligation Refunding Bonds, Series 2015, dated January 29, 2015 is approved.

Fairbank – July 12, 2021 (OP-2021-00124)

The Interlocal Cooperation Agreement between the City of Flowood, Mississippi and Rankin County, Mississippi in connection with the refunding of certain tax increment financing bonds issued by the City is approved.

Gordon – July 12, 2021 (OP-2021-00120)

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

Keyes – July 12, 2021 (OP-2021-00103)

The Interlocal Cooperation Agreement between the City of Ridgeland, Mississippi and Madison County, Mississippi for joint participation in the development and redevelopment of the Renaissance Phase III and Renaissance Phase IV TIF Project is approved.

Pope – July 29, 2021 (OP-2021-00137)

The Interlocal Cooperation Agreement between the City of Hattiesburg, Mississippi and Arnold Line Water Association, Inc. to share account information regarding outstanding balances and authorization of water disconnection is approved.

Pope – July 29, 2021 (OP-2021-00138)

The Interlocal Cooperation Agreement between the City of Hattiesburg, Mississippi and Dixie Community Utility Association, Inc. to share account information regarding outstanding balances and authorization of water disconnection is approved.

Delaney – August 9, 2021 (OP-2021-00112)

The Interlocal Cooperation Agreement between the Town of Mayersville, Mississippi and the Issaquena County Board of Supervisors for maintenance of the south end of Unita Blackwell/Twin Oaks Drive by District Two of Issaquena County is approved.

Gaylor – August 17, 2021 (OP-2021-00119)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the City of Jackson, Mississippi in regard to Public Infrastructure Project 2021-02 is approved.

Ladner – August 19, 2021 (OP-2021-00147)

The Interlocal Cooperation Agreement among Amite, Covington, Forrest, Hancock, Jefferson Davis, Lamar, Lauderdale, Pearl River, Pike, Simpson, Stone, and Walthall Counties regarding Aerial Photography is approved.

Gore– August 20, 2021 (OP-2021-00100)

The Interlocal Cooperation Agreement between the City of Grenada, Mississippi and Grenada County, Mississippi related to funding for improvements to the Grenada-Bogue Basin/Gore Springs Water System is approved.

Powell – September 2, 2021 (OP-2021-00133)

The Interlocal Cooperation Agreement between the University of Southern Mississippi and the City of Hattiesburg, Mississippi for the continuation of a fixed bus route operated by the City and serving the USM campus is approved.

Rackley – September 21, 2021 (OP-2021-00148)

The Interlocal Cooperation Agreement between Mississippi State University and Bolivar County, Mississippi for the purpose of documenting the relationship between the MSU Extension Service and Bolivar County concerning the management of county Extension agents and staff is approved.

Rackley – September 21, 2021 (OP-2021-00173)

The Interlocal Cooperation Agreement between Mississippi State University and Alcorn County, Mississippi for the purpose of documenting the relationship between the MSU Extension Service and Alcorn County concerning the management of county Extension agents and staff is approved.

Ashley – September 25, 2021 (OP-2021-00151)

The Interlocal Cooperation Agreement between Jones County, Mississippi and the City of Laurel, Mississippi for delinquent tax payments collected by the chancery clerk is approved.

Ashley – September 25, 2021 (OP-2021-00152)

The Interlocal Cooperation Agreement between Jones County, Mississippi and the City of Ellisville, Mississippi for delinquent tax payments collected by the chancery clerk is approved.

Ashley – September 25, 2021 (OP-2021-00153)

The Interlocal Cooperation Agreement between Jones County, Mississippi and the Town of Sandersville, Mississippi for delinquent tax payments collected by the chancery clerk is approved.

Scanlon – September 25, 2021 (OP-2021-00169)

The Interlocal Cooperation Agreement between the City of Gluckstadt, Mississippi and Madison County, Mississippi relating to the collection of ad valorem, special assessment taxes and public property assessments is approved.

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