



*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 10/01/2021 through 12/31/2021.

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

---

## **AIRPORTS**

*Hensarling* – September 3, 2021 (OP-2021-00065)

The statutes governing joint airport boards allow for the revision and amendment of joint agreements.

*Hensarling* – October 7, 2021 (OP-2021-00095)

Because both a school board and an airport board fall within the executive branch of government, serving simultaneously on both boards would not violate the separation of powers doctrine.

*Hensarling* – December 17, 2021 (OP-2021-00096)

The territorial jurisdiction of police officers of a municipality is limited to the corporate limits of the municipality. Therefore, a municipal police officer could not provide official on-duty security services at the airport located within the city limits of another municipality.

## **COURTS**

Owen – December 10, 2021 (OP-2021-00207)

There is no statutory authority to house respondents to drug and alcohol civil commitment petitions in the county jail pending commitment to either a state or private facility.

## **CRIMINAL LAW**

Simmons – October 29, 2021 (OP-2021-00013)

When a statute conflicts with a rule of criminal procedure adopted by the Mississippi Supreme Court, the rule controls. Accordingly, the procedural rule in Rule 26.6(d) would control over Miss. Code Ann. § 63-1-53(1).

## **DISTRICT ATTORNEYS**

Evans – November 29, 2021 (OP-2020-00311)

The ability to make findings on the merits of a misdemeanor affidavit filed in justice court rests within the sole province of the duly elected justice court judge.

## **ELECTIONS-COMMISSIONERS**

Tate – November 23, 2021 (OP-2021-00157)

Statutes passed by the Mississippi Legislature are presumed constitutional until a court of competent jurisdiction rules otherwise. To our knowledge, no court to date has held that Miss. Code Ann. § 23-15-213 is unconstitutional.

## **HIGHWAY SAFETY PATROL**

Horne – December 7, 2021 (OP-2020-00205)

Pursuant to Miss. Code Ann. § 63-3-519, the Mississippi Highway Patrol has authority to use radar speed detection equipment upon any public street, road or highway in the state. By legislative amendment made during the 2021 Regular Session, the Legislature removed from Miss. Code Ann. § 63-3-519 the express prohibition on the Mississippi Highway Safety Patrol “sett(ing) up radar on highways within municipalities with a population in excess of fifteen thousand according to the latest federal census.”

The Mississippi Supreme Court has held that highway patrolmen are not peace officers within the sense that sheriffs, constables and policemen are such to enforce general laws of state, but act within the limited sphere of authority granted under statute defining their powers and duties.

## **JUSTICE COURT JUDGES**

Hedgepeth – November 29, 2021 (OP-2021-00141)

A justice court loses jurisdiction over a defendant charged with a felony offense when either the defendant is bound over to the grand jury or the defendant waives the preliminary hearing.

## **LAW ENFORCEMENT OFFICERS**

Rushing - October 29, 2021 (OP-2021-00179)

The term “cause of death” within Miss. Code Ann. § 45-2-1 encompasses deaths sustained from COVID-19. Whether a particular claim under the Death Benefits Fund otherwise qualifies for payment is a matter for the Department of Public Safety to determine.

## **MUNICIPAL FUNDS**

Depreo – November 30, 2021 (OP-2021-00081)

A municipality may not lawfully expend municipal funds to promote non-binding referenda, if such promotion is meant to influence the outcome of the referenda.

## **MUNICIPAL OFFICERS**

Merchant – November 23, 2021 (OP-2021-00116)

To the extent the 2020 census figures have been finalized and made official, they constitute the results of the “latest available federal census” for the purpose of determining population pursuant to Miss. Code Ann. §§ 21-23-3 and 21-23-5. However, preliminary figures may not be used as the latest available federal census.

Municipalities that have a population of 20,000 or more are required to appoint a municipal judge who is an attorney at law and is a qualified elector of the county in which the municipality is located. Municipalities that have a population of less than 20,000 may appoint a municipal court judge who is a licensed attorney in the State of Mississippi or a justice court judge of the county in which the municipality is located.

## **MUNICIPALITIES**

Turnage – October 11, 2021 (OP-2021-00063)

Assuming the municipality has made the proper factual findings that the program is consistent with Mississippi law, a municipality may expend public funds for arts and crafts supplies to be

used by participants at a recreation authority neighborhood park facility, at no cost to the participants and is authorized to spend municipal funds to pay operational costs of the park, which includes hiring personnel to run authorized programs.

Pope – November 29, 2021 (OP-2021-00098)

A municipality may enter into a non-exclusive agreement that allows a private company to use its branding marks and then receive payment for that authorized use. However, a municipality may only engage in activities that constitute proper government purposes and may not engage in private enterprise.

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

Bennett – November 18, 2021 (OP-2021-00166)

The board of aldermen of a code charter municipality has exclusive authority under Miss. Code Ann. § 21-3-15 to adopt ordinances, which, by definition, include resolutions and orders. However, in very limited circumstances, such as a civil emergency proclaimed pursuant to Miss. Code Ann. § 45-17-1, *et seq.*, the mayor has authority to issue orders.

An attempt by a mayor to issue an ordinance under Miss. Code Ann. § 21-3-15 would be invalid. If a mayor issues an order during a civil emergency proclaimed pursuant to Miss. Code Ann. § 45-17-1, *et seq.*, the statute does not provide a procedure for a board of aldermen to override such an order.

## **NEPOTISM**

Turnage – October 28, 2021 (OP-2020-00073)

An individual may not be promoted or transferred into one of the five prohibited positions enumerated in Miss. Code Ann. § 25-1-53 when a relative is part of the hiring authority.

The purpose of a *nunc pro tunc* order is to correctly evidence a previous action which was not accurately recorded.

## **SCHOOLS-16<sup>TH</sup> SECTION LEASES, ETC.**

Rhodes – October 1, 2021 (OP-2021-00036)

While the Board of Trustees for the Hazlehurst City School District has authority to reclassify Sixteenth Section land due to a change in conditions, the reclassification is limited to the highest and best use for maximizing revenue.

Rhodes – October 7, 2021 (OP-2021-00049)

The Board of Trustees for the Hazlehurst City School District may reclassify a tract of Sixteenth Section land from commercial to residential, provided the current lease does not prohibit such reclassification, the land in question meets the requirements for residential land, and the Board of Trustees follows the statutorily mandated procedures.

## **SCHOOLS - DISTRICTS**

Pulley – November 17, 2021 (OP-2021-00167)

A superintendent is only granted authority to close schools in emergency situations in accordance with Miss. Code Ann. §§ 37-13-64 and 37-13-65, both of which require prior school board action.

Watson – December 10, 2021 (OP-2021-00051)

When purchasing real property in excess of fifty thousand dollars, a school district must comply with Miss. Code Ann. § 37-7-301(aa) and, therefore, may not pay a purchase price in excess of the average of two appraisals.

## **SUPERVISORS – AUTHORITY**

Holleman – October 29, 2021 (OP-2021-00097)

Boards of supervisors are subject to Miss. Code Ann. § 19-3-19, which prescribes specific notice requirements for their special meetings, in addition to the provisions of Miss. Code Ann. § 25-41-13(1).

## **SUPERVISORS-FUNDS**

Hammack – November 23, 2021 (OP-2021-00163)

The county cannot expend public funds to provide broadband/internet service to a private home of a member of the board of supervisors, unless the board finds, consistent with the facts and spread upon the minutes, that such expenses are reasonable and necessary to the performance of the supervisor's duties or to conduct public business of the county.

The board may pay for the supervisor's broadband/internet services for as long as, consistent with the facts and spread upon the minutes, the board determines such expenses are reasonable and necessary to the performance of the supervisor's duties or to conduct public business of the county, not to exceed the time during which the supervisor is in office.

## **TAXES-COLLECTIONS**

White – November 30, 2021 (OP-2021-00094)

The penalty provided in Miss. Code Ann. § 27-35-45 is mandatory. Neither the county board of supervisors nor the tax assessor/collector may waive or forgive the penalty. However, if the tax assessor/collector determines that the taxpayer did submit the proper documentation or the board determines that the tax assessor/collector did not fulfill his statutory mandates, the board may determine that the taxpayer does not owe the penalty.

## **TAXES-SALES (LAND)**

Fuller – October 11, 2021 (OP-2021-00073) / Hammack – October 11, 2021 (OP-2021-00085)

If the Village of Pachuta agreed to pay ad valorem taxes on real property as part of the purchase agreement with the previous owner, the Village may pay such taxes subject to certain limitations. However, as a general rule, municipalities are not authorized to assume a tax liability; therefore, the County cannot compel the Village to pay the taxes.

Additionally, the County has no authority to forgive unpaid taxes owed by the previous landowner because it would amount to an unlawful donation. This office has previously opined that any tax lien on real property is extinguished as of the date of acquisition, and as a result, real property owned by a public body may not be sold for unpaid taxes.

## **MS REGIONAL ALLIANCE DEVELOPMENT PROGRAM APPROVED**

Sugg – October 15, 2021 (OP-2021-00174)

A Regional Economic Development Alliance Agreement for the Broadwater Redevelopment Project, City of Biloxi, Harrison County, Mississippi for the purpose of assisting in the redevelopment of the former site of the Broadwater Beach Hotel and related amenities in the City is approved.

## **INTERLOCAL AGREEMENTS APPROVED**

Greenlee – October 15, 2021 (OP-2021-00176)

The Interlocal Cooperation Agreement between Montgomery County, Mississippi and the Town of Kilmichael, Mississippi related to the collection of real and personal property taxes is approved.

Mord – October 15, 2021 (OP-2021-00168)

The Interlocal Cooperation Agreement between the Town of Tylertown, Mississippi and Walthall County, Mississippi for the collection of municipal ad valorem taxes and the redemption of property sold for taxes is approved.

Gaylor – November 12, 2021 (OP-2021-00180)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the City of Jackson, Mississippi in regard to Public Infrastructure Project 2021-04 is approved.

Parker – November 12, 2021 (OP-2021-00182)

The Interlocal Cooperation Agreement between Madison County, Mississippi, the City of Madison, Mississippi, and the City of Ridgeland, Mississippi to provide a residential household hazardous waste disposal opportunity is approved.

Scanlon – November 12, 2021 (OP-2021-00177)

The Interlocal Cooperation Agreement between Madison County, Mississippi and the City of Ridgeland, Mississippi regarding the exchange of services to include road grading and grass cutting is approved.

Hudson – November 18, 2021 (OP-2021-00185)

The Interlocal Cooperation Agreement between Lowndes County, Mississippi and the City of Starkville, Mississippi regarding the housing of juvenile offenders in the Lowndes County Juvenile Detention Center is approved.

Dodson – November 24, 2021 (OP-2021-00189)

The Interlocal Cooperation Agreement regarding the North Mississippi Narcotics Unit for 2021-2022 is approved.

Houston – November 24, 2021 (OP-2021-00192)

The Interlocal Cooperation Agreement between Monroe County, Mississippi and the City of Amory, Mississippi for the transportation and housing of inmates is approved.

Pounds – November 24, 2021 (OP-2021-00194)

The Interlocal Cooperation Agreement between the City of Booneville, Mississippi and Prentiss County, Mississippi regarding the collection of city taxes is approved.

Teller – November 24, 2021 (OP-2021-00190)

The Interlocal Cooperation Agreement between the City of Vicksburg, Mississippi and Warren County, Mississippi for the assessment and collection of taxes is approved.

Weems – November 24, 2021 (OP-2021-00193)

The Amendment to the Interlocal Cooperation Agreement between Jefferson Davis County, Mississippi and the Town of Prentiss, Mississippi regarding tax collection services is approved.

Parker – December 3, 2021 (OP-2021-00197)

The Interlocal Cooperation Agreement between Madison County, Mississippi and the City of Madison, Mississippi regarding street improvements to Belle Rose Circle, Audrey Lane, Lansbury Way, and Perry Williams Road is approved.

Parker – December 3, 2021 (OP-2021-00200)

The Interlocal Cooperation Agreement between Madison County, Mississippi and the Town of Flora, Mississippi regarding the collection of ad valorem, special assessment taxes and public property assessments is approved.

Sessoms – December 3, 2021 (OP-2021-00201)

The Interlocal Cooperation Agreement between the City of Pascagoula, Mississippi and the Pascagoula-Gautier School District regarding traffic control and crossing guards is approved.

Stingley – December 3, 2021 (OP-2021-00195)

The Interlocal Cooperation Agreement between Claiborne County, Mississippi and the City of Port Gibson, Mississippi regarding street repair and resurfacing of portions of Chinquepin Street and Bridewell Lane is approved.

Lovvorn – December 21, 2021 (OP-2021-00227)

The Interlocal Cooperation Agreement between Chickasaw County, Mississippi and the City of Houston, Mississippi to provide E-911 services throughout Chickasaw County is approved.

Parker – December 21, 2021 (OP-2021-00220)

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

Rackley – December 21, 2021 (OP-2021-00228)

The Interlocal Cooperation Agreement between Mississippi State University and Tate County, Mississippi concerning the management of county Extension agents and staff is approved.

Slover – December 21, 2021 (OP-2021-00213)

The Interlocal Cooperation Agreement between the City of Natchez, Mississippi and Adams County, Mississippi for the maintenance and operation of the joint aquatic facilities and soccer fields located at Liberty Park in Adams County, Mississippi is approved.



Weems – December 21, 2021 (OP-2021-00211)

The Amendment to the Interlocal Cooperation Agreement between Jefferson Davis County, Mississippi and the Town of Bassfield, Mississippi regarding the collection of ad valorem taxes is approved.

**Our website offers a FREE searchable database of  
Official Opinions issued since 1979.**

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

**Select “Opinions and Policy”.**

**Select “Opinions”.**

**In the search box, enter the opinion number  
(ex. 2013-00367) and click search.**