



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 01/01/2022 through 03/31/2022.

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

CRIMINAL LAW

Barnett – January 14, 2022 (OP-2021-00204)

It is a violation of Miss. Code Ann. § 97-37-5 for a convicted felon to possess a butcher knife. A pocketknife, bow and arrows, and a crossbow are not among the enumerated weapons prohibited by Miss. Code Ann. § 97-37-5. It is not a violation of that section for a convicted felon to possess a knife that is not listed among those that are prohibited.

Whether a pocketknife with a spring release qualifies as a switchblade or any other knife prohibited by Miss. Code Ann. § 97-37-5 is a question of fact that must be determined by a court of competent jurisdiction.

BANKING & CONSUMER FINANCE

Patano – February 15, 2022 (OP-2021-00017)

It is the opinion of this office that there is no conflict between Miss. Code Ann. §§ 63-19-43 and 75-67-181. The two statutes pertain to two different types of financing, both of which can be applied to motor vehicles. Miss. Code Ann. § 63-19-43 pertains to retail installment contracts for motor vehicles while Miss. Code Ann. § 75-67-181 pertains to consumer installment loans, regardless of the loan's purpose.

ECONOMIC DEVELOPMENT DISTRICTS

Morgan – February 15, 2022 (OP-2021-00025)

Whether a particular use of property constitutes an industrial purpose requires a factual determination that this office is unable to make by official opinion. To use the property for something other than an industrial purpose would violate the use restriction imposed by Section 1, Chapter 386, Laws of 2017 as well as Miss. Code Ann. § 19-5-99. Legislation would be required for the Marion County Economic Development District to convey property for purposes other than those specified in Section 1, Chapter 386, Laws of 2017 and to exempt any conveyance made by the Marion County Economic Development District from the use restrictions of Miss. Code Ann. § 19-5-99.

MUNICIPAL FUNDS

Simmons – February 15, 2022 (OP-2021-00188)

A stipend is a form of compensation rather than a form of reimbursement. Section 96 of the Mississippi Constitution prohibits granting city council members compensation in addition to the amount authorized pursuant to Miss. Code Ann. § 21-8-21. The City may reimburse travel of council members, in accordance with and in the manner provided in Miss. Code Ann. § 25-3-41, that is both pre-authorized and required in the performance of the official's official duties.

Any reimbursement for cell phone expenses or internet services is limited to expenses incurred by way of city business and may not cover expenses incurred for personal use.

MUNICIPALITIES

Sims – February 15, 2022 (OP-2021-00205)

The town may amend or revise its building code pursuant to Miss. Code Ann. § 21-19-25.

Dailey – February 24, 2022 (OP-2020-00175)

As a general rule, municipalities may settle claims in accordance with Miss. Code Ann. § 25-1-47, as long as the governing authorities have determined that the municipality is legally obligated for the claim. However, whether the Mississippi Tort Claims Act applies and whether the claim is subject to applicable defenses —such as the statute of limitations— are questions of fact to be determined by the municipal governing authorities.

NEPOTISM

Jones – January 14, 2022 (OP-2021-00139)

There will be no violation of Mississippi’s nepotism statute by the Mississippi Board of Barber Examiners employing a Board member’s nephew or cousin as a barber inspector because a barber inspector is not one of the five employment positions enumerated in Miss. Code Ann. § 25-1-53.

SCHOOLS - DISTRICTS

Turner – February 24, 2022 (OP-2021-00082)

The school board may not create a new category of bereavement leave. The three bereavement days referred to in Miss. Code Ann. § 37-7-307(3)(b)(iv) are not additional days of leave or a new category of leave. Instead, they are exceptions to the statutorily imposed restrictions on the three types of days of the school term on which personal leave may not be taken.

The maximum number of allowable personal leave days and sick days is calculated based upon an individual’s years of continuous service as specified in Miss. Code Ann. §§ 25-3-93 and 25-3-95.

SHERIFFS – MISCELLANEOUS

Gore – February 24, 2022 (OP-2022-00005)

The sheriff must keep his office at or within one half mile of the county courthouse in accordance with Miss. Code Ann. § 25-1-99.

The county jail must be located in the county seat unless there is specific legislation expressly and clearly authorizing the jail to be located away from the county seat or if a county chooses the joint construction option with a municipality in accordance with Miss. Code Ann. § 17-5-1.

SUPERVISORS – AUTHORITY

Rogers – January 14, 2022 (OP-2021-00206)

The Covington County Economic Development District is not required to obtain an appraisal to determine fair market value prior to the disposal of the referenced property under Miss. Code Ann. § 19-5-99.

The District is not required to obtain an opinion from a court of competent jurisdiction as to whether consideration for the referenced property is nominal or not.

Holleman – February 24, 2022 (OP-2021-00218)

The general notice requirements of the Open Meetings Act, Miss. Code Ann. § 25-41-13, are in addition to the notice requirements for meetings of county boards of supervisors in Miss. Code Ann. § 19-3-17 for recessed meetings and Miss. Code Ann. § 19-3-19 for adjourned meetings.

McAdams – February 24, 2022 (OP-2021-00214)

The chancery clerk does not have the independent authority to close his office in anticipation of extreme weather conditions. The chancery clerk's office may only be closed under the Emergency Management Law pursuant to an order of the board of supervisors. Additionally, as clerk of the chancery court, the chancery clerk's office must comply with Rule 77 of the Mississippi Rules of Civil Procedure and any orders issued by the court.

TAXES – AD VALOREM

Perry – January 14, 2022 (OP-2021-00164)

The ad valorem exemption granted pursuant to Miss. Code Ann. § 27-31-46 may only exceed ten years if the board of supervisors determines that Article 7, Section 182 of the Mississippi Constitution does not apply. If the board of supervisors determines that Article 7, Section 182 of the Mississippi Constitution applies, the exemption must commence from the date of completion of the new enterprise.

This office is unaware of any prohibition against the board of supervisors granting the tax exemption pursuant to Miss. Code Ann. § 27-31-46 and fee-in-lieu pursuant to Miss. Code Ann. § 27-31-104 concurrently. However, only the Mississippi Development Authority can determine whether the project is statutorily eligible to qualify for a fee-in-lieu of ad valorem taxes. The Mississippi Development Authority's grant of authority is limited to approving a fee-in-lieu agreement only to the extent that it complies with the statute, and it has no authority to approve peripheral agreements incorporated into a fee-in-lieu agreement.

WORKERS' COMPENSATION COMMISSION

Formby – January 14, 2022 (OP-2021-00104)

The annual assessment collected by the Workers' Compensation Commission and authorized by Miss. Code Ann. § 71-3-99 is of the type of interagency charge contemplated by the general prohibition against interagency charges in Miss. Code Ann. § 27-104-203. Thus, the Commission does not have the authority to assess the Mississippi State Agencies Self-Insured Workers' Compensation Trust under Miss. Code Ann. § 71-3-99.

We have previously opined, and still do opine, that the premium collected by the Trust is not the type of interagency charge contemplated or prohibited by Miss. Code Ann. § 27-104-203. Thus, the Commission must continue to pay the Trust the premium collected pursuant to Miss. Code Ann. § 27-104-31(1)(e).

INTERLOCAL AGREEMENTS APPROVED

Barry – January 10, 2022 (OP-2021-00225)

The Second Amended Interlocal Cooperation Agreement between Kemper County, Mississippi and the Town of DeKalb, Mississippi for police protection and law enforcement services is approved.

Parker – January 10, 2022 (OP-2021-00234)

The Interlocal Cooperation Agreement between Madison County, Mississippi and the City of Ridgeland, Mississippi for certain road improvements located in the City of Ridgeland is approved.

Parker – January 10, 2022 (OP-2021-00235)

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

Cummings – January 11, 2022 (OP-2021-00224)

The Interlocal Cooperation Agreement between Tishomingo County, Mississippi and the Town of Burnsville, Mississippi regarding the collection of taxes is approved.

Teller – February 11, 2022 (OP-2021-00239)

The Interlocal Cooperation Agreement between Warren County, Mississippi and the City of Vicksburg, Mississippi regarding the sale of property for nonpayment of taxes and the redemption of property sold for nonpayment of taxes is approved.

Gaylor – March 9, 2022 (OP-2022-00007)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the City of Jackson, Mississippi regarding Public Infrastructure Project 2021-03 to pave Sleepy Hollow Drive is approved.

Johnston – March 9, 2022 (OP-2022-00009)

The Interlocal Cooperation Agreement between the City of Diamondhead, Mississippi and Hancock County, Mississippi regarding the Tax Increment Financing Plans of the Diamondhead Medical Center Project, 2021 is approved.

Parker – March 9, 2022 (OP-2022-00006)

The Interlocal Cooperation Agreement between Madison County, Mississippi and the City of Ridgeland, Mississippi regarding the funding of certain road repairs and improvements located in the City of Ridgeland (Highland Colony Parkway between County Line Road and Business Park Drive) is approved.

Parker – March 9, 2022 (OP-2022-00013)

The Interlocal Cooperation Agreement between Madison County, Mississippi and the City of Madison, Mississippi regarding street improvements in the City of Madison (Courtland Cove, Florence Drive, Church Street, Baywood Drive, Laramie Court, Woodberry Drive, Wills Lane, Woodland Hills Blvd., Annandale Parkway East, Ashford Court, Ingleside Road, Timberline Drive, Meadowland Drive, Stone Mill Drive, Bayleaf Lane, Buckhill Lane, Comstock Lane, and Pine Ridge Drive) is approved.

Slay – March 9, 2022 (OP-2022-00014)

The Interlocal Cooperation Agreement between Rankin County, Mississippi and the City of Brandon, Mississippi regarding the maintenance and improvement of roads and bridges is approved.

Slay – March 9, 2022 (OP-2022-00015)

The Interlocal Cooperation Agreement between Rankin County, Mississippi and the City of Richland, Mississippi regarding the maintenance and improvement of roads and bridges is approved.

Thaggard – March 9, 2022 (OP-2022-00020)

The Interlocal Cooperation Agreement between Lauderdale County, Mississippi and the Town of Marion, Mississippi regarding the joint use of an Animal Control Center is approved.

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