



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 07/01/2022 through 09/30/2022.

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

AIRPORTS

[Davis – September 21, 2022 \(OP-2022-00011\)](#)

A joint airport board created under Mississippi Code Annotated Section 61-5-37 may exercise the authority of its constituent public agencies, including the authority to dispose of abandoned property pursuant to Sections 19-3-85 or 21-39-21.

Assuming the joint agreement creating the Corinth-Alcorn County Joint Airport Board is silent as to which statutory scheme shall be followed for the Corinth-Alcorn County Joint Airport Board's disposal of abandoned property, the Corinth-Alcorn County Joint Airport Board may dispose of abandoned property in accordance with either Section 19-3-85 or Section 21-39-21.

Pursuant to both Sections 19-3-85 and 21-39-21, claiming abandoned property requires filing a claim with the appropriate governing authority. The Corinth-Alcorn County Joint Airport Board may enact regulatory procedures for filing a claim of ownership of abandoned property to comply with Sections 19-3- 85 and 21-39-21. Whether a particular piece of abandoned property has been claimed and recovered is a factual determination to be made on a case-by-case basis.

The proceeds from the sale of the abandoned property shall be deposited into the Corinth-Alcorn County Joint Airport Board's fund created in accordance with Section 61-5-41.

COUNTY EMPLOYEES

[Baker – September 6, 2022 \(OP-2022-00057\)](#)

If the County determines that due to an administrative error it erroneously granted an employee sick leave pay that the employee had not earned, the County may allow the employee to repay the County using donated sick leave in accordance with a lawful policy enacted prior to the employee's catastrophic illness or injury. This would not be a retroactive salary increase nor extra compensation; thus, it would not be prohibited by Section 96 or 66 of the Mississippi Constitution.

[Barry – September 21, 2022 \(OP-2021-00233\)](#)

The Kemper County Board of Supervisors cannot require all county employees to accept payroll payments via direct deposit.

COURTS

[Bise – September 21, 2022 \(OP-2021-00126\) / \(OP-2021-00127\)](#)

A pre-evaluation screening by a community health center is not required prior to the filing of an affidavit that a person needs mental health treatment. Pursuant to Mississippi Code Annotated Sections 41-21-65(1) and 41-21-67(1), a relative of the person alleged to need treatment or an interested person may file an affidavit with the chancery clerk, and upon direction of the chancellor, the sheriff would take the person alleged to need treatment for pre-evaluation screening and treatment by the appropriate community mental health center.

ELECTIONS – BALLOTS

[DeGruy – September 29, 2022 \(OP-2022-00140\)](#)

A qualified elector may only vote by absentee ballot on the basis of a disability if he or she, in fact, has a temporary or permanent physical disability, which is a determination that must be made on a case-by-case basis by local election officials.

JUDGES

[Curry – August 25, 2022 \(OP-2022-00033\)](#)

A municipal judge is authorized to suspend fines in misdemeanor cases upon such terms as may be set by the court.

MEDICAL CANNABIS

[Povall – August 2, 2022 \(OP-2022-00069\)](#)

A dance studio is not a “school” as defined by the Mississippi Medical Cannabis Act. Miss. Code Ann. §§ 41-137-1 *et seq.*

MUNICIPAL OFFICERS

[G. Holcomb – July 11, 2022 \(OP-2021-00219\)](#)

Section 21-3-15 gives the mayor executive power of the municipality and superintending control of all the officers and affairs of the municipality, which includes access to city employee personnel records.

The clerk must provide the mayor with full rights of access to information that is necessary to perform his/her respective duties on behalf of the municipality.

MUNICIPALITIES

[Moak – July 11, 2022 \(OP-2022-00035\)](#)

The City may only dispose of property under Section 57-7-1 for industrial and commercial purposes if it determines that the property is no longer needed for governmental purposes.

[Brown – August 2, 2022 \(OP-2020-00145\)](#)

The Town is not authorized to allow on-street parking spaces to be utilized exclusively by the patrons of a private business to the exclusion of other members of the public. However, under emergency powers provided to the governor and municipalities, there may be exceptions to this law.

[Ringer – August 2, 2022 \(OP-2021-00186\)](#)

The City is authorized to institute an alcohol and drug testing policy that aligns with the statutes and the corresponding regulations. It is up to the governing authorities of the City to determine the parameters of its policy and the resultant actions that may be taken for a violation of that policy, so long as the terms of the statute are implemented in full. Miss. Code Ann. § 71-7-3(1).

[D. Hopson – September 21, 2022 \(OP-2021-00223\)](#)

While we do not opine on the content of resolutions or other local agreements, it is the opinion of this office that unless specifically authorized by statute, the Town of Gunnison does not have the authority to deed municipally-owned property to individual citizens because it would amount to an unlawful donation. However, if the Town of Gunnison is still an active participant in a Community Block Grant Program, it is possible that it may be afforded the additional authority granted by Mississippi Code Annotated Section 43-35-503.

OTHER STATE AGENCIES, BOARDS, AND COMMISSIONS

[Holleman – August 2, 2022 \(OP-2022-00108\)](#)

The legislation establishing the Mississippi Gulf Coast Regional Convention and Visitors Bureau provides that no supervisor may nominate any person from another supervisor's district to be a member of the Bureau. This restriction applies to the nominations of all nine Bureau members appointed by the Harrison County Board of Supervisors.

SCHOOLS – MISCELLANEOUS

[W. Hopson – September 19, 2022 \(OP-2022-00095\)](#)

If the School District makes the factual determination that a program is a special or alternative program under Section 37-41-3, the School District may provide transportation to the participants who are not enrolled in the School District. However, the School District may not expend any additional public funds for such transport. Transportation to an educational program under Section 37-41-27, however, is limited to students of the School District.

SECRETARY OF STATE

[Watson – September 13, 2022 \(OP-2022-00123\)](#)

Whether the art and essay contests as described in your request are “election-related expenses or voter education, voter outreach or voter registration programs” under H.B. 1365 is a factual determination to be made by the Secretary of State's Office subject to judicial review. H.B. 1365,

Reg. Sess. (Miss. 2022). H.B. 1365 does not prohibit election officials from participating in or administering voter education, outreach, or registration programs. Rather, H.B. 1365 prohibits election officials from soliciting, accepting, using, or disposing of private donations for such programs.

[Watson – September 26, 2022 \(OP-2022-00120\)](#)

With the exception of the duties specifically assigned to the State Department of Education in Mississippi Code Annotated Section 37-13-193, the Office of the Secretary of State is statutorily obligated to provide the administrative assistance necessary for the Mississippi Civil Rights Education Commission to carry out its statutory duties. Given that the statutes do not further define the specific role of the Office of the Secretary of State beyond “administrative purposes,” it is the opinion of this office that the Office of the Secretary of State is charged with assisting the Mississippi Civil Rights Education Commission with management of its activities and organizational tasks as determined by the needs of the Mississippi Civil Rights Education Commission.

Section 37-13-195(1) does not specify the amount of money that the Office of the Secretary of State is obligated to spend in carrying out its administrative function for the Mississippi Civil Rights Education Commission. Thus, absent a specific appropriation, there is not a specific monetary obligation imposed on the Office of the Secretary of State in order to carry out its administrative function.

The Office of the Secretary of State is not granted any authority over the responsibilities, duties, and obligations of the Mississippi Civil Rights Education Commission. The Office of the Secretary of State simply must provide the administrative assistance necessary for the members of the Mississippi Civil Rights Education Commission to carry out their statutory duties.

SOLID WASTE DISTRICTS

[Cardin – August 11, 2022 \(OP-2022-00090\)](#)

A proposed annual adjustment in a properly procured contract for waste management that exceeds the contractual three percent cap was not contemplated by the parties when the original request for proposals was issued or when the parties agreed to the contract. Therefore, the Authority must enter into a new contract after going through the proper procurement procedure.

SUPERVISORS – AUTHORITY

[Bailey – August 22, 2022 \(OP-2022-00039\)](#)

Pursuant to Mississippi Code Annotated Section 19-7-33, the Humphreys County Board of Supervisors has the authority to regulate parking on the premises around the courthouse.

[Reynolds – August 22, 2022 \(OP-2022-00045\)](#)

While the Tallahatchie County Board of Supervisors may require a permit and security for damage to highways under its jurisdiction caused by excessive size or weight of a vehicle or load, such regulations must be applied uniformly to all vehicles exceeding the established size and weight limits.

[W. Holcomb – September 7, 2022 \(OP-2022-00068\)](#)

Sections 66 and 96 of the Mississippi Constitution prohibit the Issaquena Board of Supervisors from granting additional compensation for services already rendered and included in a previously agreed upon contract.

TAXES – EXEMPTIONS

[Whitehead – August 2, 2022 \(OP-2021-00215\)](#)

Whether an entity is eligible for the manufacturing exemption under Sections 27-31-101 *et seq.* and the free port warehouse exemption under Sections 27-31-51 *et seq.* is a question of fact for the governing authorities of Tishomingo County. If an entity is eligible, the governing authorities of Tishomingo County have the discretionary authority to grant both exemptions.

TAXES – HOMESTEAD EXEMPTION

[Michel – September 6, 2022 \(OP-2022-00003\)](#)

An individual is not required to reapply for homestead exemption after filing a transfer-on-death deed.

TAXES – MUNICIPAL

[Shannon – August 22, 2022 \(OP-2022-00042\)](#)

The Plantersville Board of Aldermen does not have the authority to change the classification of a business from transient vendor to general business vendor. The municipal tax collector has the authority to determine the proper classification of a business and the type of license it requires.

A company in the business of selling fireworks may only operate from the fifteenth day of June to the fifth day of July and the fifth day of December to the second day of January each year and therefore falls into the category of a transient business, which by definition operates for less than six months of each year.

INTERLOCAL AGREEMENTS APPROVED

Gaylor – July 1, 2022 (OP-2022-00078)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the City of Jackson, Mississippi regarding Public Infrastructure Project 2022-01 is approved.

Gaylor – July 1, 2022 (OP-2022-00079)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the City of Jackson, Mississippi regarding Public Infrastructure Project 2022-02 is approved.

Gaylor – July 1, 2022 (OP-2022-00080)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the City of Jackson, Mississippi regarding Public Infrastructure Project 2022-04 is approved.

Gaylor – July 1, 2022 (OP-2022-00081)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the City of Jackson, Mississippi regarding Public Infrastructure Project 2022-05 is approved.

Gaylor – July 1, 2022 (OP-2022-00094)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the City of Jackson, Mississippi regarding Public Infrastructure Project 2022-11 is approved.

Barber – July 14, 2022 (OP-2022-00102)

The Interlocal Cooperation Agreement between DeSoto County, Mississippi; the City of Southaven, Mississippi; the City of Olive Branch, Mississippi; the City of Hernando, Mississippi; the City of Horn Lake, Mississippi; the Town of Walls, Mississippi; the DeSoto County Regional Utility Authority; and the DeSoto County Emergency 911 Commission for Digital Orthophotography is approved.

Gaylor – July 14, 2022 (OP-2022-00091)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the Town of Bolton, Mississippi regarding Public Infrastructure Project 2022-13 is approved.

Gaylor – July 14, 2022 (OP-2022-00092)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the Town of Bolton, Mississippi regarding Public Infrastructure Project 2022-22 is approved.

Abide – August 15, 2022 (OP-2022-00099)

The Amended Interlocal Cooperation Agreement between the City of Biloxi, Mississippi and the Biloxi Public School District regarding the A.J. Holloway Sports Complex is approved.

McWilliams – August 15, 2022 (OP-2022-00110)

The Interlocal Cooperation Agreement between Sunflower County, Mississippi and the City of Ruleville, Mississippi regarding the collection of ad valorem taxes is approved.

Crane – September 6, 2022 (OP-2022-00112)

The Fourth Amended and Restated Interlocal Cooperation Agreement between the City of Gulfport, Mississippi; the City of Biloxi, Mississippi; and the City of D'Iberville, Mississippi regarding the Regulation of Motor Vehicles for Hire is approved.

Nowak – September 6, 2022 (OP-2022-00125)

The Interlocal Cooperation Agreement between DeSoto County, Mississippi and the City of Olive Branch, Mississippi regarding Fire Protection Funding is approved.

Perry – September 6, 2022 (OP-2022-00126)

The Interlocal Cooperation Agreement between Tunica County, Mississippi and the Town of Tunica, Mississippi regarding the Collection of Taxes is approved.

Russell – September 6, 2022 (OP-2022-00136)

The Interlocal Cooperation Agreement between the City of Fulton, Mississippi and Itawamba County, Mississippi regarding the Purchase and Operation of a Fire Truck is approved.

Farris – September 19, 2022 (OP-2022-00117)

The Interlocal Cooperation Agreement between the City of D'Iberville, Mississippi and Harrison County, Mississippi regarding the Amended and Restated Tax Increment Financing Plans, One Promenade Project is approved.

McWilliams - September 19, 2022 (OP-2022-00127)

The Interlocal Cooperation Agreement between Sunflower County, Mississippi and the City of Drew, Mississippi regarding the collection of ad valorem and special assessment taxes is approved.

Smith – September 19, 2022 (OP-2022-00119)

The Interlocal Cooperation Agreement between Marshall County, Mississippi and the Town of Byhalia, Mississippi regarding the housing of inmates and detainees is approved.

REGIONAL ECONOMIC DEVELOPMENT ALLIANCES (REDA)

Karanja – September 19, 2022 (OP-2022-00151)

The Regional Economic Development Alliance (REDA) Agreement between Harrison County, Mississippi and the West Harrison County Water and Sewer District regarding the Tax Increment Financing Plan, Menge Avenue and I-10 Project is approved.

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

Go to: 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.**