



*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 10/01/2022 through 12/31/2022.

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

Sincerely,

Lynn Fitch  
Attorney General  
State of Mississippi

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## CHANCERY CLERKS

[McAdams – November 7, 2022 \(OP-2021-00237\)](#)

The statutory cap of \$400.00 on costs incidental to court proceedings in Section 41-21-79 of the Mississippi Code includes, but is not limited to, the following: court costs; prehearing hospitalization costs; cost of transportation; reasonable physician's, psychologist's, nurse practitioner's or physician assistant's fees; and reasonable attorney's fees.

This statutory cap applies to both indigent and non-indigent respondents. The total that may be charged for all the costs incidental to the court proceedings is \$400.00, and it either will be paid by the respondent or by the respondent's county of residence if the respondent is indigent.

If the county of the respondent's residence is responsible for the prehearing hospitalization costs, the county is still responsible despite being a partial owner of the hospital. Otherwise, it would amount to an unconstitutional forgiveness or waiver of debt.

## **COMMISSION ON WILDLIFE, FISHERIES, AND PARKS**

[Mounger – October 21, 2022 \(OP-2022-00012\)](#)

Section 49-7-51(1)(a) of the Mississippi Code states, “It is unlawful . . . to buy or sell or to offer for sale, exchange for merchandise, or other consideration, within this state, any game birds, game animals, or game fish, or parts thereof, named in this chapter, whether taken within or coming from without the state, *except as specifically permitted by law or regulation.*” (Emphasis added). The Commission on Wildlife, Fisheries, and Parks (the Commission) has “plenary authority in matters related to . . . white-tailed deer in enclosures. . . .” Miss. Code Ann. § 49-7-58(3). Therefore, the Commission could craft a regulation allowing for the commercial trade of white-tailed deer held within high-fenced enclosures between registered captive breeders without specifically contravening an express legislative act.

## **CONSTABLE**

[Davis – October 11, 2022 \(OP-2021-00105\)](#)

A constable is only entitled to receive the statutory fee when he serves as bailiff when court is in session with a presiding judge present.

## **ELECTIONS – MUNICIPAL**

[Nailor – November 23, 2022 \(OP-2022-00122\)](#)

While a municipality has the discretion to locate polling places without regard to precinct lines, all municipal polling places must be within the municipal limits.

## **JUSTICE COURT JUDGES**

[Ross – October 21, 2022 \(OP-2021-00149\)](#)

Arrest warrants may be served by any lawful officer with arrest powers pursuant to Rule 3 of the Mississippi Rules of Criminal Procedure. However, Section 99-3-1 of the Mississippi Code provides that police officers may only serve arrest warrants within their municipal jurisdictions.

We find no statutory provision authorizing the justice court to collect the constable's fee for serving an arrest warrant as authorized under Section 25-7-25 and then paying the fee to the city when a municipal police officer serves an arrest warrant for the justice court.

## **MUNICIPAL EMPLOYEES**

[Gaskin – October 11, 2022 \(OP-2022-00046\)](#)

When incentive pay for future performance is contracted for prior to the date when services are to be performed, determined in accordance with objective standards of measurement, and earned by personal services performed by the employees, then the city is authorized to make such payments.

## **MUNICIPAL OFFICERS**

[McAdams – November 8, 2022 \(OP-2022-00066\)](#)

The governing authorities of the city of Greenwood are responsible for compensating the city attorney for services provided to the Greenwood Tourism Commission.

## **MUNICIPALITIES**

[Douglas – October 11, 2022 \(OP-2022-00049\)](#)

The governing authorities of a municipality have the power to pass and enforce ordinances and to employ a police force and/or elect or appoint a town marshal to enforce ordinances related to speeding and other moving violations.

The municipal court clerk is responsible for issuing ticket books to municipal police officers, and the municipal governing authorities have the power to set the fines by ordinance.

State law does not require municipalities with a population of less than ten thousand (10,000), according to the latest available federal census, to appoint a municipal judge. However, without a municipal judge, the village of Satartia will not be able to enforce its ordinances.

[Greenlee – October 11, 2022 \(OP-2022-00058\)](#)

A town agent meeting with the excavator at a site and verbally indicating the location of the utility lines satisfies the requirements of Section 77-13-9(2) of the Mississippi Code. However it would not encompass all of the town of Kilmichael's duties under Sections 77-13-1 *et seq.*, which impose certain requirements that must be met before any excavation around or near underground utilities or facilities may commence.

[Childress – October 31, 2022 \(OP-2022-00026\)](#)

The town of Flora does not have the authority to terminate water service for nonpayment of sewer service because the town of Flora does not provide water service in the Churchill Park Subdivision.

## **SCHOOLS – DISTRICTS**

[Bullard – October 11, 2022 \(OP-2021-00226\)](#)

The Alcorn County School District may not give away free tickets to athletic events because such would amount to an unlawful donation under Article 4, Section 66 of the Mississippi Constitution.

[Armstrong – December 22, 2022 \(OP-2022-00129\)](#)

Whether a school board official has “removed” out of the jurisdiction for which he or she was elected or appointed, thereby creating a vacancy pursuant to Section 25-1-59 of the Mississippi Code, is a question of fact that must be determined by the North Panola County School Board of Trustees. The school board of a consolidated school district is authorized to fill a vacancy by appointment.

If the North Panola County School Board determines that the member in question was not lawfully entitled or qualified to hold his position, the member would have acted as a *de facto* officer, and actions of a *de facto* officer are valid.

## **SCHOOLS – OTHER EMPLOYEES**

[Reed – December 5, 2022 \(OP-2021-00134\)](#)

Sections 37-9-39 and 37-151-103(1) of the Mississippi Code provide the manner in which teacher’s assistants are to be paid. So long as the requirements of those sections are met, this office finds no statutory prohibition against teacher’s assistants being paid their equal installments on a salary basis over twelve months. Any questions regarding escrow should be directed to the Mississippi Office of State Auditor.

## **SHERIFFS - AUTHORITY**

[Pollan – October 25, 2022 \(OP-2021-00208\)](#)

If the twenty-one day detention period after a probation violation expires without a revocation hearing, the sheriff does not have the authority to keep the offender in the county jail any longer and is required to release the offender from the county jail. We reiterate our guidance in the *Rushing* opinion, MS AG Op., *Rushing* at \*3 (Jan. 24, 2019), and urge sheriffs and the Mississippi

Department of Corrections to devise a solution so that every detainee is brought before the court within the twenty-one day period.

## **SHERIFFS - MISCELLANEOUS**

[Slay – November 28, 2022 \(OP-2022-00161\)](#)

The annual salary cap set forth in Section 25-3-25 of the Mississippi Code applies only to an individual's role as sheriff. If a sheriff has separate employment in addition to his or her role as sheriff, the salary cap in Section 25-3-25 would not apply to the compensation for his or her second job.

A sheriff simultaneously working for the county emergency operations department would not violate the separation of powers doctrine because both positions are within the executive branch of government.

## **SUPERVISORS – AUTHORITY**

[Mord – December 5, 2022 \(OP-2021-00229\)](#)

If the Walthall County Board of Supervisors (the Board) determines based on the facts of the particular situation that the conditions of Section 19-7-3(3) of the Mississippi Code –for the sale or disposal of surplus county property– have been met, then the Board has the authority to sell the property in question to a small, privately-owned grocery store chain.

A county may sell surplus property consistent with Section 19-7-3(3) for good and valuable consideration, and what suffices as good and valuable consideration is within the Board's discretion.

The Board may not donate real property to an economic development district because doing so would violate the Constitutional prohibition against donations as well as Section 19-3-40, which prohibits a board of supervisors from granting any donation.

## **TAXES - ASSESSMENTS**

[Barnett – November 23, 2022 \(OP-2022-00197\)](#)

A county tax collector has no authority to unilaterally correct errors in the apportionment of assessed value of property assessed by the Mississippi Department of Revenue and apportioned pursuant to Section 27-35-309 of the Mississippi Code.

The Mississippi Department of Revenue assesses public service corporations pursuant to Sections 27-35-301 *et seq.*, and has the authority to determine whether a public service company has failed,

refused, or neglected to render the required apportionment of assessed values. However, because this is a mixed question of fact and law and asks about the authority of another public official, we cannot opine on the obligations of the Mississippi Department of Revenue.

This office does not opine on the validity of a claim or the appropriate relief that should be given. Whether a court of competent jurisdiction has the authority to grant injunctive relief in a particular situation is a mixed question of fact and law on which this office cannot opine.

## **TAXES – ASSESSORS – TAX COLLECTORS**

### [Barnett – October 21, 2022 \(OP-2021-00236\)](#)

Under the authority of Section 27-41-101 of the Mississippi Code, the tax collector may file a notice of tax lien with the circuit clerk of the county, who in turn shall enter it on the judgment roll. Such judgment shall serve as authority for the clerk to issue remedial writs, or in lieu thereof, the tax collector may issue a warrant, per Section 27-41-103, directing the sheriff to seize and sell the personal and real property of the taxpayer for the payment of the delinquent ad valorem taxes. With exceptions for motor vehicles and certain mobile homes, the resulting tax lien “shall be entitled to preference over all judgments, executions, encumbrances, or liens. . . .” Miss. Code Ann. § 27-41-101.

### [Hammack – November 28, 2022 \(OP-2022-00104\)](#)

As long as the amount of the salary raises is within the tax assessor/collector’s approved budget for the current fiscal year, it is the tax assessor/collector who determines the effective date of prospective raises for employees of his or her office.

## **TAXES – EXEMPTIONS**

### [McWilliams – October 21, 2022 \(OP-2022-00002\)](#)

Status as a 501(c)(3) nonprofit does not automatically qualify an entity as a charitable society as contemplated by Section 27-31-1(d) of the Mississippi Code, which exempts certain societies and organizations from ad valorem taxation.

The Sunflower County Board of Supervisors must determine whether the entity is actually a charitable society entitled to the exemption, which is mandatory for those qualifying under the statute.

The exemption flows from the property as a whole and can only be granted when it is used exclusively for the charitable society and not for profit.

Whether the property in question falls under Section 79-11-33, which delineates the uses available to property owned by religious organizations, is a factual determination to be made by the Sunflower County Board of Supervisors.

The tax assessor/collector presents a new tax roll to the Sunflower County Board of Supervisors for its approval each year based on the current uses and valuations of taxable property.

[Moore – October 28, 2022 \(OP-2022-00130\)](#)

Sections 27-31-105 *et seq.* of the Mississippi Code authorize the city of Pascagoula, in its discretion, to grant both newly submitted ad valorem tax exemption applications without violating the prohibition against granting exemptions retroactively so long as the exemptions begin the year the new requests are submitted and do not exceed the original ten-year total limitation.

## **TREASURY - STATE**

[McRae – November 22, 2022 \(OP-2022-00107\)](#)

The Uniform Disposition of Unclaimed Property Act, codified in Sections 89-12-1 *et seq.* of the Mississippi Code, does not require self-insured workers' compensation groups or associations comprised of members who have joint and several liability for the workers' compensation obligation of the other members to report or remit to the State Treasurer intangible personal property presumed abandoned.

## **INTERLOCAL AGREEMENTS APPROVED**

[Gaylor – October 6, 2022 \(OP-2022-00145\)](#)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the City of Jackson, Mississippi regarding Public Infrastructure Project 2022-15 is approved.

[Gaylor – October 6, 2022 \(OP-2022-00146\)](#)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the City of Jackson, Mississippi regarding Public Infrastructure Project 2022-21 is approved.

[Gaylor – October 6, 2022 \(OP-2022-00147\)](#)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the City of Jackson, Mississippi regarding Public Infrastructure Project 2022-23 is approved.

Gaylor – October 6, 2022 (OP-2022-00148)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the City of Jackson, Mississippi regarding Public Infrastructure Project 2022-24 is approved.

Gaylor – October 6, 2022 (OP-2022-00149)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the City of Jackson, Mississippi regarding Public Infrastructure Project 2022-26 is approved.

Nailor – October 6, 2022 (OP-2022-00156)

The First Amendment to the Interlocal Cooperation Agreement between Warren County, Mississippi and the City of Vicksburg, Mississippi for emergency services is approved.

Phillips – October 6, 2022 (OP-2022-00128)

The Interlocal Cooperation Agreement between the City of Hattiesburg, Mississippi; Lamar County, Mississippi; and the Lamar County School District regarding a shared use tennis and pickle ball sports complex is approved.

Turnage – October 6, 2022 (OP-2022-00157)

The Interlocal Cooperation Agreement between the City of Columbus, Mississippi and Lowndes County, Mississippi regarding the housing of city prisoners at the County Detention Center is approved.

Halford – October 24, 2022 (OP-2022-00171)

The Interlocal Cooperation Agreement between Amite County, Mississippi and Franklin County, Mississippi regarding the housing of inmates is approved.

Pickle – October 24, 2022 (OP-2022-00175)

The Interlocal Cooperation Agreement between the City of Kosciusko, Mississippi and Attala County, Mississippi regarding the operation of an Emergency Communications District is approved.

Pope – October 24, 2022 (OP-2022-00164)

The Interlocal Cooperation Agreement between the City of Hattiesburg, Mississippi and the Hattiesburg Public School District regarding a shared use softball facility is approved.



Stingley – October 24, 2022 (OP-2022-00174)

The Interlocal Cooperation Agreement between Claiborne County, Mississippi and the City of Port Gibson, Mississippi regarding mill and overlay work on Anthony Street, Rodney Road, and Flower Street is approved.

Hemphill – November 23, 2022 (OP-2022-00167)

The Interlocal Cooperation Agreement between the Town of Shuqualak, Mississippi and Noxubee County, Mississippi regarding police protection and law enforcement services is approved.

Houston – November 23, 2022 (OP-2022-00201)

The Interlocal Cooperation Agreement between Monroe County, Mississippi and the City of Aberdeen, Mississippi regarding enhanced water services is approved.

Houston – November 23, 2022 (OP-2022-00202)

The Interlocal Cooperation Agreement between Monroe County, Mississippi and the City of Aberdeen, Mississippi regarding plumbing and infrastructure improvements to Monroe Regional Hospital is approved.

Smith – November 23, 2022 (OP-2022-00183)

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

Nailor – December 19, 2022 (OP-2022-00206)

The Interlocal Cooperation Agreement between the City of Vicksburg, Mississippi and Warren County, Mississippi regarding the disposal of tires is approved.

Perry – December 19, 2022 (OP-2022-00191)

The Interlocal Cooperation Agreement between the Town of Tunica, Mississippi and Tunica County, Mississippi for rural fire protection is approved.

Slover – December 21, 2022 (OP-2022-00193)

The Interlocal Cooperation Agreement between the Adams County Airport Commission; the City of Natchez, Mississippi; and Adams County, Mississippi regarding the USDOT Small Community Air Service Development Program is approved.

## **REGIONAL ECONOMIC DEVELOPMENT ALLIANCES (REDA)**

Harkins – December 19, 2022 (OP-2022-00200)

The Amended and Restated Alliance Agreement between the City of Batesville, Mississippi; Panola County, Mississippi; and Northwest Mississippi Community College regarding “The Concourse” Development is approved.

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