



*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 01/01/2023 through 03/31/2023.

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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## CONSTABLES

[Nowak – January 19, 2023 \(OP-2022-00113\)](#)

Riding bailiffs are hired in a judge's discretion by court order. They are additional bailiffs distinct from the typical deputies or bailiffs of the sheriff. A constable is not authorized to serve as a riding bailiff.

[White – January 24, 2023 \(OP-2022-00141\)](#)

A constable that serves as bailiff shall be paid for each day, or part thereof, for civil court *and* for criminal court. Thus, a constable that serves as bailiff shall receive a fee between \$55.00 and \$100.00 for attending each day or portion of a day for civil court and shall also receive a separate fee between \$55.00 and \$100.00 for attending each day or portion of a day for criminal court on the same day.

## COURTS

### [Bounds – January 19, 2023 \(OP-2022-00047\)](#)

If a petition for expungement pursuant to Mississippi Code Annotated Section 99-19-71 is filed as part of the original criminal filing, then only the \$150.00 fee enumerated in Section 99-19-72 shall be collected. However, if a petition for expungement is filed as a new civil filing, all other applicable, statutorily required fees that a circuit clerk must charge when a civil case is filed shall be collected in addition to the \$150.00 fee required by Section 99-19-72.

### [Negrotto – January 19, 2023 \(OP-2022-00131\)](#)

Mississippi Code Annotated Section 97-32-9 specifically prescribes punishment for persons under age twenty-one (21) who are found to be in possession of tobacco or alternative nicotine product on educational property *and* found to be in violation of any other statute. There is no punishment for possession alone. Therefore, a municipal court is not authorized to charge and punish a student solely for possessing tobacco or alternative nicotine product on educational property.

### [Nowak – January 24, 2023 \(OP-2022-00143\)](#)

The purpose of civil contempt is to compel compliance with a court's orders, admonitions, and instructions, while the purpose of criminal contempt is to punish. Whether a certain matter constitutes civil or criminal contempt is a mixed question of fact and law that this office may not determine by official opinion.

In regard to matters of civil contempt, the Mississippi Supreme Court has said, “[t]he power of the court to imprison in a civil contempt in order to coerce the performance of a decree is without limit because, as already said, the contemnor himself may end the sentence by performing the decree or by declaring his willingness to perform it, -and being released he proceeds so to do with costs, if within his power.” *Masonite Corp. v. International Woodworkers of America, AFL-CIO*, 206 So. 2d 171, 179 (Miss. 1967).

### [Adams – February 23, 2023 \(OP-2022-00055\)](#)

“Another jurisdiction” in Mississippi Code Annotated Section 99-5-25 includes jurisdictions outside of Mississippi.

Upon a bail agent's presentation of a written notice of surrender in accordance with Section 99-5-27(1)(b), a Mississippi court of proper jurisdiction shall issue a hold order if a defendant is found incarcerated in another jurisdiction outside of Mississippi.

## MUNICIPALITIES

### [Eaton – January 3, 2023 \(OP-2022-00103\)](#)

If the city of Petal makes a factual determination that a citizen did not receive the benefit of garbage service for a specified period of time, then the citizen does not owe any payment for the service that the citizen did not receive during that time period. Therefore, the city of Petal could cancel the charge for the time period when the citizen was not receiving the benefit of the service.

### [Wilkinson – January 3, 2023 \(OP-2021-00203\)](#)

While we find no general law authorizing the operation of motor-assisted stand-up scooters on public roads or public sidewalks, if the governing authorities of Ocean Springs determine that such scooter qualifies as an electric personal assistive mobility device, then Mississippi Code Annotated Section 63-3-208 mandates where they may be operated.

### [Campbell – January 19, 2023 \(OP-2021-00083\)](#)

Pursuant to a municipality's authority to adopt ordinances with respect to municipal affairs, we find no statutory prohibition against a municipality continuing to regulate property where a landlord ultimately owns a piece of real property but enters into an installment sales contract or contract for deed with a third party if the city determines that the agreement remains rental in nature. Whether a certain agreement may be regulated as a rental agreement is a factual determination to be made by the governing authorities on a case-by-case basis. Where a municipality does not find that a contract for deed or installment sales contract is in fact rental in nature, we find no authority for a municipality to regulate the same.

### [Abide – January 24, 2023 \(OP-2022-00155\)](#)

A city is authorized to make incentive payments to employees for future performance, such as payments for an annual wellness check, when it 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.

### [Frieson – January 24, 2023 \(OP-2022-00159\)](#)

The town of Tutwiler's Board of Aldermen cannot authorize a design consultant to extend "private invitations" to potential qualified contractors for competitive bids when no bids were received after publishing for competitive bids in the local newspaper pursuant to Mississippi Code Annotated Section 31-7-13(c). Issuing private invitations to select contractors does not comply with the publication or notice requirements in Section 31-7-13(c) for purchases over \$75,000. If the publication and notice deadlines have passed, and no bids were received, the procedure set out in Section 31-7-13 must start anew.

[Turner – February 9, 2023 \(OP-2022-00133\)](#)

While the town of Leakesville has the authority to set rates sufficient for the maintenance and operation of a utility system and to pay any related outstanding bonds, the town does not have the authority to intentionally collect a surplus of utility system revenues. Donations by a municipality are unlawful unless otherwise prescribed by law.

[Hemphill – February 24, 2023 \(OP-2022-00209\)](#)

A town marshal may adopt an internal communication policy and employment protocols pursuant to his or her authority as the municipality's chief law enforcement officer having supervision and control over all police officers employed by the municipality.

## **SCHOOLS**

[Maron – February 24, 2023 \(OP-2022-00172\)](#)

There is no statutory authority to use public school buses to transport employees between their homes, some distance away from or outside District boundaries, and the schools where they work.

Because there is no authority for school buses to be used to transport employees to and from work, such transportation would not be considered a proper incentive under Article 4, Section 96 of the Mississippi Constitution, and the Forest Municipal School District may not provide this incentive as consideration prior to the District employees signing their contracts.

A school board does not have the authority to establish a bus route from Forest, Mississippi to Brandon, Mississippi, for example, for the purpose of providing transportation to employees who travel to teach or work in the Forest Municipal School District.

## **SECRETARY OF STATE**

[Watson – March 13, 2023 \(OP-2023-00014\)](#)

The Office of the Secretary of State is statutorily obligated to provide the administrative assistance necessary for the Mississippi Commission on the Holocaust to carry out its 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 Commission on the Holocaust with management of its activities and organizational tasks as determined by the needs of the Mississippi Commission on the Holocaust.

Mississippi Code Annotated Section 39-29-1(1), which created the Mississippi Commission on the Holocaust, 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 Commission on

the Holocaust. 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 Commission on the Holocaust. The Office of the Secretary of State simply must provide the administrative assistance necessary for the members of the Mississippi Commission on the Holocaust to carry out their statutory duties.

## **SUPERVISORS**

### [Fair – January 3, 2023 \(OP-2022-00109\)](#)

An elected official who has adopted his or her own system of personnel administration pursuant to Section 19-2-9(2) of the Mississippi Code has the authority to determine the frequency of pay for his or her employees.

If an elected official has adopted his or her own system of personnel administration pursuant to Section 19-2-9(2), the countywide personnel system implemented by the board of supervisors would have no application to that elected official and his or her employees. However, if the elected official has not adopted his or her own personnel policy, the elected official “shall adopt the system of personnel administration adopted by the board of supervisors.” *Id.*

### [Jones – January 9, 2023 \(OP-2022-00074\)](#)

The chancery clerk has the statutory duty to issue pay certificates for county employees. Hinds County has no authority to delegate to a third party the duty to pay county employees.

It remains the opinion of this office that a board of supervisors cannot contract for services that may infringe on the exercise by the chancery clerk of his statutory duties.

### [Hammack – January 31, 2023 \(OP-2022-00135\)](#)

The Clarke County Board of Supervisors may not spend public funds to lease space in a privately-owned building and subsequently allow a nonprofit to exclusively utilize the private building or space for its operations rent-free or for nominal rent. To do so would amount to an unlawful donation.

### [Slover – March 13, 2023 \(OP-2022-00199\)](#)

Pursuant to Mississippi Code Annotated Section 19-2-3, a county that operates under the countywide system of road administration, or the “unit” system, is required to distribute and use all road funds based on the needs of the county as a whole and without regard to any district boundaries.

[Sanders – March 28, 2023 \(OP-2023-00031\)](#)

The Leflore County Supervisors have the discretion to provide legal counsel for the Sheriff, if they make a factual determination, spread across the minutes, that the County has an interest in litigation pursuant to Mississippi Code Annotated Section 25-1-47 and/or Section 19-3-47(1)(b).

The Leflore County Supervisors do not have to find that the County has a pecuniary interest in the state lawsuit in order to provide the Sheriff with legal counsel and a defense. The requirement in Section 19-3-47(1)(b) that the Supervisors determine that they have a pecuniary interest applies only to “criminal cases against a county officer for malfeasance or dereliction of duty in office, when by the criminal conduct of the officer of the county may be liable to be affected pecuniarily.”

## **TAXES**

[Bruni – January 20, 2023 \(OP-2022-00096\)](#)

Pursuant to Mississippi Code Annotated Section 27-31-1(d), all property, real or personal, belonging to a historical society that is used exclusively for the association or society and not for profit shall be exempt from taxation. However, because the historical society does not own the property in question and because there is no other statutory authority extending a tax exemption to a historical society’s leasehold interest in property, it is the opinion of this office that the contemplated leasehold interest to be held by the historical society would not be tax exempt.

[Anderson – March 13, 2023 \(OP-2023-00015\)](#)

When a county contracts with an online auction vendor to sell land on which taxes are due and pays the vendor \$20 per parcel sold, the \$20 expense may be assessed against persons entitled to redeem land sold for taxes as a “cost[] incident to the sale” as prescribed by Mississippi Code Annotated Section 27-45-3.

[Nowak – March 13, 2023 \(OP-2022-00142\)](#)

The DeSoto County Board of Supervisors, on its own motion, may not refund erroneously paid taxes. The tax collector, pursuant to Mississippi Code Annotated Section 27-73-7, may refund erroneously paid property taxes. Any claim for the refund of erroneously paid taxes, however, is subject to a three-year statute of limitations.

## **INTERLOCAL AGREEMENTS APPROVED**

[Kirk – January 24, 2023 \(OP-2022-00216\)](#)

The Interlocal Cooperation Agreement between the City of Winona, Mississippi and Montgomery County, Mississippi for the collection of real and personal property taxes is approved.

Latimer – January 24, 2023 (OP-2023-00005)

The Interlocal Cooperation Agreement between the City of Starkville, Mississippi and Mississippi State University regarding the Collegeview Connector Project is approved.

Powell – January 24, 2023 (OP-2022-00211)

The Interlocal Cooperation Agreement between the University of Southern Mississippi; the City of Hattiesburg, Mississippi; and Forrest County, Mississippi regarding law enforcement duties on certain property is approved.

Smith – January 24, 2023 (OP-2023-00001)

The Interlocal Cooperation Agreement between the City of Holly Springs, Mississippi and Marshall County, Mississippi regarding the use of the Marshall County Jail for housing inmates and detainees is approved.

Berry – March 16, 2023 (OP-2023-00006)

The Interlocal Cooperation Agreement between the City of West Point, Mississippi and Clay County, Mississippi regarding the location of the Clay County Emergency Communications District is approved.

Davis – March 16, 2023 (OP-2023-00027)

The Interlocal Cooperation Agreement between the City of Meridian, Mississippi and Lauderdale County, Mississippi regarding the 2022 Byrne Justice Assistance Grant Program Award is approved.

Keyes – March 16, 2023 (OP-2023-00012)

The Interlocal Cooperation Agreement between the City of Hattiesburg, Mississippi and Forrest County, Mississippi regarding the Midtown Montevista TIF Project is approved.

Sessoms – March 16, 2023 (OP-2023-00029)

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

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

Karanja – March 16, 2023 (OP-2023-00025)

The Regional Economic Development Act Agreement between Jones County, Mississippi and the City of Ellisville, Mississippi regarding the 1-59 South Industrial Site Project is approved.

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