



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 04/01/2023 through 06/30/2023.

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.**

Sincerely,

Lynn Fitch
Attorney General
State of Mississippi

CHARTER SCHOOLS

[Hill – April 6, 2023 \(OP-2022-00004\)](#)

While the Mississippi Charter Schools Act of 2013 does not speak specifically to the authority to “administratively consolidate” under a single contract, the Mississippi Charter School Authorizer Board has the authority under Mississippi Code Annotated Section 37-28-9 to develop chartering policies, negotiate and execute charter contracts, monitor the performance and legal compliance of charter schools, and determine “whether each charter contract merits renewal, nonrenewal, or revocation. . . .” Therefore, because the Mississippi Charter School Authorizer Board has this authority to develop policies, it could, by regulation, allow for the administrative consolidation of two schools under a single contract.

COMMUNITY AND JUNIOR COLLEGES

[Hopkins – May 9, 2023 \(OP-2022-00213\)](#)

Section 1(2)(a) of House Bill 1509, as enacted by the Mississippi Legislature in the 2022 Regular Session and codified as Mississippi Code Annotated Section 41-23-49(2)(a), prohibits public community colleges from refusing, withholding, or denying a student any local or state educational opportunities based on the student's COVID-19 vaccination status. Whether a public community college's nursing program or portion thereof takes place at a qualified "health care facility" that is exempt from the prohibition set forth in House Bill 1509 Section 1(2)(a) is a mixed question of fact and law upon which we are unable to officially opine.

[Barrett – June 23, 2023 \(OP-2023-00052\)](#)

"Facilities" as used within Mississippi Code Annotated Section 37-29-135 includes renewable energy facilities.

COURTS

[Littleton – April 26, 2023 \(OP-2022-00230\)](#)

Read in conjunction, Mississippi Code Annotated Sections 9-13-19, 9-13-61, and 43-21-123 restrict a court reporter for a Mississippi county and youth court from receiving a salary exceeding \$64,000.00.

CRIMINAL LAW

[Edwards – June 29, 2023 \(OP-2023-00026\)](#)

Applying the plain meaning of Mississippi Code Annotated Section 97-23-93(9), "three (3) or more separate mercantile establishments" may not be interpreted as one mercantile establishment on three different visits. However, House Bill 795 from the 2023 legislative session amends Mississippi Code Annotated Section 97-23-93(9) to allow prosecutors to "aggregate the total price of merchandise shoplifted from the same or separate mercantile establishments within the same legal jurisdiction over a period of thirty (30) or fewer days." This amendment took effect July 1, 2023.

ELECTIONS

[Ragan – June 23, 2023 \(OP-2023-00043\)](#)

An election commissioner or a candidate running for election commissioner may be affiliated with a political party and may run for election with their party affiliation shown on the ballot. However, an election commissioner must refrain from showing favoritism to any candidate or group of candidates.

JUDGES

[Ladner – April 6, 2023 \(OP-2022-00173\)](#)

A retired justice court judge that receives 25% of his or her average PERS compensation under Mississippi Code Annotated Section 25-11-127(6) due to continued work as a justice court judge is not entitled to additionally receive Section 25-7-25(3)'s \$25 fee for performing courtroom or office wedding ceremonies.

[Ladner – May 18, 2023 \(OP-2022-00163\)](#)

A justice court judge's salary that is based upon county population pursuant to Mississippi Code Annotated Section 25-3-36(2)(b) would not increase based upon an increase in population. Rather, it is based upon the salary authorized for a justice court judge in that county as of September 30, 2008.

If the County Board of Supervisors receives a salary increase, the justice court judges whose salaries are determined pursuant to Mississippi Code Annotated Section 25-3-36(2) shall receive a "commensurate increase."

MS DEPARTMENT OF AGRICULTURE & COMMERCE

[Gipson – May 9, 2023 \(OP-2023-00034\)](#)

Mississippi Code Annotated Section 89-1-23 generally precludes nonresident aliens from acquiring or holding land in Mississippi, with the exception of the 320-acre industrial development. However, regarding the consequence of violating Mississippi Code Annotated Section 89-1-23, the statute only states that "[a]ll land held or acquired contrary to this section shall escheat to the state."

MS DEPARTMENT OF CHILD PROTECTION SERVICES

[Sanders – May 19, 2023 \(OP-2023-00009\)](#)

State law does not currently provide the Mississippi Department of Child Protection Services with unrestricted, broad authority to use its state funding. Therefore, absent specific legislative authority, using Mississippi Department of Child Protection Services' state funds to purchase a vehicle or other personal property for the parent of a child in the agency's custody would be a violation of Section 66 of the Mississippi Constitution.

The same is true for using Mississippi Department of Child Protection Services' state funds to pay private school tuition, and room and board, on behalf of a child in state custody. Absent specific legislative authority, such payment would be a violation of Section 66 of the Mississippi Constitution.

MS DEPARTMENT OF MENTAL HEALTH

[Bailey – May 1, 2023 \(OP-2022-00194\)](#)

Mississippi Code Annotated Section 41-31-11 does not provide Mississippi State Hospital or East Mississippi State Hospital the authority to transfer an individual court-committed for substance use disorder treatment to an inpatient acute psychiatric ward for mental health treatment.

When an individual committed to Mississippi State Hospital or East Mississippi State Hospital for substance use disorder treatment is found to be suffering from a mental condition requiring commitment for psychiatric treatment, the hospital's medical director may bring commitment proceedings –in accordance with Mississippi Code Annotated Sections 41-21-61 *et seq.*– for psychiatric treatment. Miss. Code Ann. § 41-31-19. In this scenario, there is no statutory requirement that an individual be discharged from his or her commitment for substance use disorder treatment prior to a medical director bringing mental health commitment proceedings.

MS DEPARTMENT OF PUBLIC SAFETY

[Edwards – June 23, 2023 \(OP-2023-00038\)](#)

A registered sex offender who wishes to reside less than five hundred feet from a public beach must receive advance approval from the Director of the Department of Public Safety Sex Offender Registry pursuant to Mississippi Code Annotated Section 45-33-26, which provides that registered sex offenders may not lawfully be in or about a public beach without advance approval.

Whether a public beach fits within the definition of “playground, ballpark or other recreational facility” as set forth in Mississippi Code Annotated Section 45-33-25(4)(a) requires a factual determination upon which this office may not opine.

MS DIVISION OF MEDICAID

[Snyder – May 1, 2023 \(OP-2022-00088\)](#)

Statutes passed by the Mississippi Legislature are presumed constitutional until a court of competent jurisdiction rules otherwise. MS AG Op., *Capps* at *2 (Sept. 6, 1996) (citing *Mississippi Power Co. v. Goudy*, 459 So. 2d 257 (Miss. 1984)). As of the date of this opinion, we are not aware that any court has declared Mississippi Code Annotated Section 43-13-117 unconstitutional. This statute remains valid until such time as a court of competent jurisdiction declares it to be unconstitutional or until it is repealed or amended by the Legislature. To the extent your question asks us to opine on the constitutionality of Mississippi Code Annotated Section 43-13-117, we must decline to do so.

MS WORKERS' COMPENSATION COMMISSION

[Aldridge; Henry – May 9, 2023 \(OP-2022-00138\)](#)

While this office is only authorized to opine on prospective questions of law pertaining to the authority, duties, and responsibilities of the requestor, in this instance, to thoroughly answer your questions, the rules of statutory interpretation require this office to address Mississippi Code Annotated Section 71-3-85, which recites the administrative duties of the chairman in context of the Workers' Compensation Commission's responsibilities as a body. As relevant to your inquiry here, the chairman of the Workers' Compensation Commission acts as its administrative head.

Reading Mississippi Code Annotated Sections 71-3-93 and 71-3-85 *in pari materia*, the Workers' Compensation Commission must act as a body in establishing and enforcing rules for the appointment, promotion, and demotion of personnel. The statutes do not speak to the authority to fire personnel.

MUNICIPALITIES

[Blackwell – April 26, 2023 \(OP-2022-00222\)](#)

The time that an individual resided within the territory prior to municipal annexation would apply to the residency requirement for municipal office in Mississippi Code Annotated Section 23-15-300(1).

[Gilbert – April 26, 2023 \(OP-2022-00229\)](#)

The town of Summit may make a donation to the Boys and Girls Club of Southwest Mississippi, provided the town of Summit determines that the Boys and Girls Club of Southwest Mississippi qualifies as a chartered chapter located within the municipality.

[Brock – May 18, 2023 \(OP-2022-00116\)](#)

Mississippi law does not authorize the city of Greenwood to enact ordinances requiring the installation of security camera systems in large apartment complexes or multi-unit family developments or to maintain and keep security camera recordings for a certain amount of time.

[Tullos – May 18, 2023 \(OP-2022-00168\)](#)

This office is unable to opine on questions of federal law; therefore, we offer no opinion on the questions of Social Security, federal taxes, and Medicare. Regarding what taxes the town is required to withhold from monthly compensation paid to aldermen and the town attorney, compensation paid to aldermen would be considered wages paid to a salaried employee of the town of Louin for purposes of taxation. However, whether an attorney working for a municipality is employed as a city employee or as an independent contractor is a determination of fact to be made by the governing authorities based on the circumstances surrounding employment.

[Martin – June 23, 2023 \(OP-2023-00044\)](#)

The Jackson/Hinds Library System may utilize the general appropriation from the city of Jackson for repairs and maintenance of its library facility in accordance with Mississippi Code Annotated Section 39-3-3.

[Brannon – June 29, 2023 \(OP-2023-00045\)](#)

There is no legal definition of an “integral part” of a municipal sewer system. In order for a municipality to expend public funds to install and maintain grinder pumps on private property, the municipality must make the factual determination that the grinder pumps are necessary to the functioning of the municipal sewer system—and not for the sole benefit of the private property owner—and obtain the appropriate easements. However, there is not a list of factors to be considered in determining whether a grinder pump is part of the municipal sewer system or the individual property owner’s responsibility. This is factual determination and would vary on a case-by-case basis.

Whether and how the city of Madison returns the maintenance of a grinder pump to a private property owner turns on a determination of fact to be made by the city of Madison and would depend upon the specific agreement between the parties. This question cannot be addressed by official opinion.

[Kramer – June 29, 2023 \(OP-2022-00052\)](#)

Mississippi Code Annotated Section 63-32-3(1) provides that municipalities “may . . . authorize the operation of golf carts and low-speed vehicles only on public roads and streets as designated by ordinance, within the corporate limits of the municipality.” However, Mississippi Code Annotated Section 63-31-3(6) states that there is *no* authorization for the “operation of an off-road vehicle on a public road or highway of this state.” Whether a vehicle is a “low-speed vehicle” or an “off-road vehicle” is a question of fact for the governing authority.

SCHOOL DISTRICTS

[Caves – April 26, 2023 \(OP-2022-00226\)](#)

Whether an employee was underpaid due to an administrative error is a factual determination that must be resolved by the Perry County Board of Education. For additional guidance regarding this matter, we recommend that you contact the Office of the State Auditor.

[Revere – May 10, 2023 \(OP-2023-00035\)](#)

There is no statutory authority that allows a student who is not participating in a school-related event to ride a school bus simply because their parent, grandparent, or guardian is driving the school bus. Transportation provided pursuant to Mississippi Code Annotated Section 37-41-27 is limited to students participating in the event, and Section 37-41-5 only applies to the transportation of students *to school* due to extraordinary circumstances or conditions.

[Gates – June 23, 2023 \(OP-2023-00003\)](#)

The city of Okolona is a special charter municipality. Assuming the city of Okolona’s charter is silent regarding interviewing candidates for appointment on the school board for the Okolona Municipal Separate School District, the Okolona City Council may interview candidates pursuant to its “home rule” authority set out in Mississippi Code Annotated Section 21-17-5.

SECRETARY OF STATE

[Watson – June 30, 2023 \(OP-2023-00100\)](#)

Because there is no contention that any portion of 2023 Mississippi Senate Bill No. 2077 or Mississippi Code Annotated Section 79-11-507 is ambiguous, the title of the legislation or statute has no effect and should not be considered.

SEPARATION OF POWERS

[Franklin – April 26, 2023 \(OP-2023-00013\)](#)

This office has previously opined that there is no separation of powers violation when an individual simultaneously serves in two different positions within the same branch of government. Regarding ethical considerations, we refer you to the Mississippi Ethics Commission. We also defer to the Office of the State Auditor regarding how payment would be apportioned when a Chief of Police is also serving in a secondary role as an assistant water utility maintenance worker.

SHERIFFS

[Sims – April 6, 2023 \(OP-2022-00210\)](#)

Regarding forfeiture, Mississippi Code Annotated Section 41-29-153 generally allows local law enforcement officers to seize money possessed by an individual at the time of the individual’s arrest for felony possession of narcotics with intent to distribute. There is no statutory exclusion from this allowance for juveniles.

SUPERVISORS

[Daughdrill – April 12, 2023 \(OP-2022-00188\)](#)

If the total assessed value of Jefferson Davis County for the preceding taxable year is at least \$125,000,000.00 but less than \$300,000,000.00, the members of the Jefferson Davis County Board of Supervisors are only entitled to the 2022 salary increase afforded under Mississippi Code Annotated Section 25-3-13(1)(e), which would set their salaries in an amount not to exceed \$45,000.00.

Assuming the total assessed valuation of Jefferson Davis County for the preceding taxable year remains within the range in Mississippi Code Annotated Section 25-3-13(1)(e), it is the opinion of this office that Mississippi Code Annotated Section 25-3-13(2) allows the Jefferson Davis County

Board of Supervisors to increase their salaries up to \$47,000.00 from and after January 1, 2024, and up to \$49,000.00 from and after January 1, 2028.

[Rogers – May 22, 2023 \(OP-2022-00093\)](#)

Once a purchase request is received by the county purchasing clerk, and a subsequent purchase order is issued for equipment, the county funds are obligated and a purchase is made. Thereafter, even if the equipment is not received until the last six months of the Union County Board of Supervisors' term, it would not be a violation of Mississippi Code Annotated Section 19-11-27.

[Morris-Harris – June 29, 2023 \(OP-2023-00037\)](#)

Mississippi Code Annotated Sections 19-13-23 and 19-13-31 provide the statutory scheme for persons having claims against a county. Under this scheme, a person must first file a claim with the clerk of the board of supervisors. If the board of supervisors rejects or refuses the claim, the claimant may appeal to the circuit court or may bring suit against the county.

UTILITY AUTHORITIES

[Simpson – April 26, 2023 \(OP-2022-00219\)](#)

The Harrison County Utility Authority may only enter a contract affecting rates, bonds, or capital improvements by unanimous vote of all members of the board of directors. Mississippi Code Annotated Section 49-17-729 does not provide for approval of such actions by only certain participating member agencies.

While the city of Gulfport may abstain from voting, because the Harrison County Utility Authority may only enter a solid waste services contract that affects rates by unanimous vote of all members of the board of directors, the result of an abstention would prevent the unanimous vote needed to enter into the contract.

[Moore – May 10, 2023 \(OP-2022-00137\)](#)

In general, the Jackson County Utility Authority (“Authority”) is subject to municipal zoning ordinances. Whether a particular ordinance is enforceable against the Authority is a factual determination that must be made by the municipal governing authorities and is subject to judicial review. While reasonable municipal zoning restrictions may be enforced, including regulations regarding nuisance odors, the city of Pascagoula may not enact an ordinance that would have the effect of prohibiting the Authority from fulfilling its statutory obligations. However, whether an ordinance prohibiting the emission of nuisance odors is enforceable against a specific entity is a mixed question of fact and law on which this office cannot opine.

Spell – June 29, 2023 (OP-2023-00033)

The DeSoto County Regional Utility Authority’s establishing and governing law, Mississippi Local and Private Laws of 1999, Chapter 1039, House Bill 1735, does not provide authority for the DeSoto County Regional Utility Authority to pay membership dues and join local chambers of commerce.

INTERLOCAL AGREEMENTS APPROVED

Atkinson – April 25, 2023 (OP-2023-00053)

The Interlocal Cooperation Agreement between Lafayette County, Mississippi; the City of Oxford, Mississippi; and the University of Mississippi regarding the Multi-Jurisdictional Drug Enforcement Unit is approved.

Permenter – April 25, 2023 (OP-2023-00061)

The Interlocal Cooperation Agreement between Madison County, Mississippi and the City of Ridgeland, Mississippi regarding the Lake Harbour at Highway 51 and Steed Road improvements is approved.

Smith – April 25, 2023 (OP-2023-00050)

The Interlocal Cooperation Agreement between the Cities and Towns of Tupelo, Amory, Booneville, Fulton, Okolona, Saltillo, and Baldwin and the Counties of Chickasaw, Itawamba, Lee, Monroe, and Prentiss regarding the 2023-2024 North Mississippi Narcotics Unit is approved.

Gaylor – May 1, 2023 (OP-2023-00041)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the Town of Edwards, Mississippi regarding Public Infrastructure Project 2022-03R (Park Development & Fire Station) is approved.

Permenter – June 26, 2023 (OP-2023-00074)

The Interlocal Cooperation Agreement between Madison County, Mississippi and the Town of Flora, Mississippi regarding the paving of Pocahontas Road is approved.

REGIONAL ECONOMIC DEVELOPMENT ALLIANCES (REDA)

Sugg – April 25, 2023 (OP-2023-00049)

The Amended and Restated Regional Economic Development Act Agreement between the City of Pascagoula, Mississippi and Jackson County, Mississippi regarding the Denny Avenue Project is approved.

Harkins – June 14, 2023 (OP-2023-00073)

The Regional Economic Development Act Agreement between the Town of Gloster, Mississippi and Amite County, Mississippi regarding Project Valley Creek 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.**