



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 07/01/2023 through 09/30/2023.

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

COURTS

[*Hemphill – July 20, 2023 \(OP-2023-00055\)*](#)

As used in the Mississippi Compulsory School Attendance Law, codified as Mississippi Code Annotated Section 37-13-91(7), “a court of competent jurisdiction as it pertains to parent or child” is any court that would have jurisdiction over child-neglect matters – the underlying determination or the resulting criminal prosecution – as it pertains to parent or child.

CRIMINAL LAW

[Howell – July 20, 2023 \(OP-2023-00039\)](#)

Upon expungement or dismissal of any criminal affidavit, complaint, or charge in justice court, the justice court may impose a fee not exceeding \$50.00 pursuant to Mississippi Code Annotated Section 25-7-25(2). Additionally, in the case of a petty misdemeanor, justice courts may require payment of court costs when proceedings are dismissed pursuant to Section 99-15-51. Neither statute dictates which party should pay.

ELECTIONS

[Dionne – July 20, 2023 \(OP-2023-00087\)](#)

Where there is no statutory definition of a term, the term’s common and ordinary meaning applies. Applying the Merriam-Webster Dictionary definition to Mississippi Code Annotated Section 23-15-549 that deals with assisting voters, a “disability” is “a physical, mental, cognitive, or developmental condition that impairs, interferes with, or limits a person’s ability to engage in certain tasks or actions or participate in typical daily activities and interactions” so as to necessitate assistance in order to vote.

[Watson – August 2, 2023 \(OP-2023-00104\)](#)

If an election bailiff determines, based on the scene before him or her, that the use of a noise amplifying device is creating a disturbance about the voting place, causing an improper intrusion upon the voting place, or interfering with the election, he or she has the authority pursuant to Mississippi Code Annotated Section 23-15-241 to take action, with the assistance of local law enforcement if necessary, to stop the disturbance and to enable all qualified voters, who have not voted and who desire to vote, to have unobstructed access to the polls.

LAW ENFORCEMENT

[Burch – September 21, 2023 \(OP-2023-00084\)](#)

We find no authority for a deputy sheriff to issue a municipal citation returnable through municipal court while acting in the capacity of and being paid as deputy sheriff.

MISSISSIPPI DEPARTMENT OF CORRECTIONS

[Cain – September 6, 2023 \(OP-2023-00086\)](#)

Conditional medical release in Mississippi Code Annotated Section 47-7-4 is separate and distinct from parole as set forth in Section 47-7-3 and pertains to inmates determined to be “medically frail.” Unlike Section 47-7-3, Section 47-7-4 does not explicitly exclude habitual offenders from eligibility for conditional medical release. Therefore, a habitual offender is eligible for conditional medical release under Section 47-7-4 if the offender is determined to be “medically frail” as

defined by Section 47-7-4(2)(b) and also meets the conditions in Section 47-7-4(2)(c), including that the offender was not sentenced to capital punishment, was not convicted as a criminal sex offender, and does not pose a public safety risk or flight risk.

MISSISSIPPI REAL ESTATE COMMISSION

[Praytor – July 20, 2023 \(OP-2023-00051\)](#)

Mississippi Code Annotated Section 73-53-21(6) does not repeal the Mississippi Real Estate Commission’s power to refuse, suspend, or revoke a license under Section 73-35-21(1) for the prohibited acts listed in Subsections (1)(a)-(n).

MISSISSIPPI STATE DEPARTMENT OF HEALTH

[Edney – August 17, 2023 \(OP-2023-00085\)](#)

Whether a child care entity —affiliated with a national youth support organization— receiving funding through a child care subsidy program would equate to “receiv[ing] monthly, weekly or daily payments for services,” as provided in Mississippi Code Annotated Section 43-20-5(a)(iv), is a question of fact that must be determined on a case-by-case basis. If it is determined that such entity receives “monthly, weekly or daily payments” from a subsidy program, the entity will not meet the requisite exemption requirements of Section 43-20-5(a)(iv).

MISSISSIPPI DEPARTMENT OF MENTAL HEALTH

[Bailey – August 24, 2023 \(OP-2023-00036\)](#)

Mississippi Code Annotated Section 41-21-77(1) not only gives the Mississippi Department of Mental Health the authority to certify county facilities pursuant to Section 41-4-7(kk), but it is a mandatory requirement that the Mississippi Department of Mental Health certify “[a]ny county facility used for providing housing, maintenance and medical treatment for involuntarily committed persons pending their transportation and admission to a state treatment facility” This said, as it is the county’s determination as to what facilities will be used, there is no requirement to proactively certify county facilities that may be, but are not currently, used in this manner.

Mississippi Code Annotated Section 41-4-7(kk) provides that the State Board of Mental Health has the power and duty “[t]o certify and establish minimum standards and minimum required services” for county holding facilities. However, read in conjunction with Section 41-21-77(1), the two statutes indicate that it is the responsibility of the Mississippi Department of Mental Health to ensure each county holding facility meets the certification standards and requirements set forth by the State Board of Mental Health.

Mississippi Code Annotated Section 41-21-77(1)’s certification requirement applies to “[a]ny county facility providing housing, maintenance and medical treatment for involuntarily committed persons pending their transportation and admission to a state treatment facility” (emphasis added). There is no exception to this requirement for county hospitals.

MUNICIPALITIES

[Bruni – July 20, 2023 \(OP-2023-00057\)](#)

If census data is published six months or more before the first municipal party primary, those reapportioned wards become the basis for representation effective immediately upon adoption by the council.

[Watkins – July 20, 2023 \(OP-2023-00048\)](#)

A mayor's written veto is not required to be filed and accepted by the city clerk or presented for discussion at a board meeting to be considered a public record. A veto is subject to disclosure under the Mississippi Public Records Act of 1983 once it meets the definition of a "public record" under Mississippi Code Annotated Section 25-61-3(b).

The Mississippi Public Records Act of 1983 requires that public records must "be available for inspection by *any person*." Miss. Code Ann. § 25-61-2 (emphasis added).

A written veto is considered a public document even if the vote being vetoed by the Board of Aldermen was a vote taken in executive session; however, if the veto contains material that is exempt from disclosure under the Mississippi Public Records Act of 1983, the governing authorities of the city must "redact the exempted material and make the nonexempted material available for inspection." Miss. Code Ann. § 25-61-5(2).

[Thomas – July 25, 2023 \(OP-2023-00007\)](#)

A donation made to a municipality for a restricted purpose and which cannot or will not be used for that specified purpose may be returned to the donor. In accordance with the authority prescribed in Mississippi Code Annotated Section 7-7-211, we refer you to the Office of the State Auditor for best practices and procedures on the return of any donated funds.

[Hudson – August 17, 2023 \(OP-2023-00010\)](#)

The term "personal property" as used in Mississippi Code Annotated Section 21-19-11 includes dilapidated vehicles on private property.

In the instance a dilapidated vehicle is removed from a property pursuant to Mississippi Code Annotated Section 21-19-11 and is later determined to be an abandoned motor vehicle as defined in Section 63-23-3, it may then be sold or disposed of in accordance with Sections 63-23-5, 63-23-7, and 63-23-9.

[Turnage – August 17, 2023 \(OP-2023-00081\)](#)

The city of Columbus may exercise the authority it has in regard to fire departments and systems as set forth in Mississippi Code Annotated Section 21-25-3(1) and adopt an ordinance allowing the chief of the Columbus Fire and Rescue Department to close a fire station when he determines that there is insufficient manpower to respond to fires and then temporarily reassign the employees of that station to a neighboring station(s) until sufficient staff is on hand. However, if the Columbus charter addresses the issue, then the charter controls.

[Gilbert – September 6, 2023 \(OP-2023-00065\)](#)

Pursuant to Mississippi Code Annotated Section 43-33-7, the town of Summit may appoint individuals to serve as commissioners on the Summit Housing Authority Board. Such individuals must reside within the territorial jurisdiction of the housing authority, which, as defined by Section 43-33-1(g), includes the town of Summit “and the area within five (5) miles of the territorial boundaries thereof.”

[Holleman – September 14, 2023 \(OP-2023-00093\)](#)

The prohibition against a city adopting a county’s purchasing contract does not prevent a city from acting jointly with a county, by way of an otherwise lawful interlocal agreement, for the paving of roads.

[Mitchell – September 14, 2023 \(OP-2023-00103\)](#)

While there is no explicit authority for the city of Batesville to donate its ownership interest in the real property to Panola County without consideration, Mississippi Code Annotated Section 17-25-25 may provide a method of disposal at no cost if the city of Batesville makes the requisite finding of zero fair market value and enters such finding on its minutes.

[Moak – September 14, 2023 \(OP-2023-00101\)](#)

The Brookhaven Board of Aldermen has the authority pursuant to Mississippi Code Annotated Sections 21-13-1 *et seq.*, to amend, repeal, or rescind its ordinance and return the office of chief of police back to an elected position.

[Wilson – September 14, 2023 \(OP-2023-00102\)](#)

Because the civil service secretary is appointed by the civil service commission and is required to “keep the records and preserve all reports made to the commission, and also a record of all examinations held under the direction of the board of examiners, and perform such other duties as the commission may prescribe” in accordance with Mississippi Code Annotated Section 21-31-7, it is the opinion of this office, with respect to commission work, that the civil service commission controls the day-to-day activities of the civil service secretary.

With respect to the civil service secretary’s work for the civil service commission, the civil service commission has the authority to evaluate the performance of and suspend or discharge the civil service secretary in accordance with Mississippi Code Annotated Sections 21-31-7 and 21-31-5(2).

The mayor does not have control of the civil service secretary's work for the civil service commission.

OTHER STATE AGENCIES, BOARDS & COMMISSIONS

[Brady – August 17, 2023 \(OP-2023-00072\)](#)

The Columbus-Lowndes Convention and Visitors Bureau may provide funding to the Columbus Cultural Heritage Foundation for the operation of the Tennessee Williams Welcome Center in Columbus in accordance with 2011 Mississippi House Bill No. 1552, which created and provided the powers of the Columbus-Lowndes Convention and Visitors Bureau.

PUBLIC SERVICE COMMISSION

[Carter – August 1, 2023 \(OP-2022-00225\)](#)

It is lawful for a Public Service Commission (“PSC”) Commissioner, candidate, or employee to accept a campaign contribution from an attorney working in a law firm that currently represents a regulated entity unless the Commissioner, candidate, or employee knows that the attorney has an interest as owner, agent, or representative of any telephone company, gas or electric utility company, or any other public utility that shall come under the jurisdiction or supervision of the PSC or knows that the attorney is acting in any respect for such owner, agent, or representative.

It is lawful for a PSC Commissioner, candidate, or employee to accept a campaign contribution from an attorney working in a multi-state law firm in which an out-of-state office currently represents a regulated entity unless the Commissioner, candidate, or employee knows that the attorney has an interest as owner, agent, or representative of any telephone company, gas or electric utility company, or any other public utility that shall come under the jurisdiction or supervision of the PSC or knows that the attorney is acting in any respect for such owner, agent, or representative.

It is lawful for a PSC Commissioner, candidate, or employee to accept a campaign contribution from an attorney who, in the past, represented a regulated entity unless the Commissioner, candidate, or employee knows that the attorney has a current interest as owner, agent, or representative of any telephone company, gas or electric utility company, or any other public utility that shall come under the jurisdiction or supervision of the PSC or knows that the attorney is acting in any respect for such owner, agent, or representative.

It is lawful for a PSC Commissioner, candidate, or employee to accept a campaign contribution from the spouse of an attorney who, in the past, represented a regulated entity unless the Commissioner, candidate, or employee knows that the spouse has a current interest as owner, agent, or representative of any telephone company, gas or electric utility company, or any other public utility that shall come under the jurisdiction or supervision of the PSC or knows that the spouse is acting in any respect for such owner, agent, or representative.

It is lawful for a PSC Commissioner, candidate, or employee to accept a campaign contribution from a contract lobbyist with multiple clients where one of the other clients has issues that could be heard by PSC unless the Commissioner, candidate, or employee knows that the contract lobbyist

has an interest as owner, agent, or representative of any telephone company, gas or electric utility company, or any other public utility that shall come under the jurisdiction or supervision of the PSC or knows that the contract lobbyist is acting in any respect for such owner, agent, or representative.

It is lawful for a PSC Commissioner, candidate, or employee to accept a campaign contribution from a nonprofit intervenor that appears before the PSC unless the Commissioner, candidate, or employee knows that the nonprofit intervenor has an interest as owner, agent, or representative of any telephone company, gas or electric utility company, or any other public utility that shall come under the jurisdiction or supervision of the PSC or knows that the nonprofit intervenor is acting in any respect for such owner, agent, or representative.

SCHOOLS

[Revere – July 20, 2023 \(OP-2023-00063\)](#)

If the South Panola School District determines that statewide athletic passes are necessary expenses or travel costs for employee chaperones to attend school-related programs that are beneficial to official or extracurricular programs of the district, the school district may expend its activity funds on statewide athletic passes.

[Griffin – August 17, 2023 \(OP-2023-00082\)](#)

The Board of Trustees for the West Bolivar Consolidated School District may not relocate the central office, together with the superintendent and staff, from Rosedale to Benoit without obtaining prior approval of the Mississippi Legislature. Mississippi Code Annotated Section 37-7-104.1(1) requires that the central administrative office of the West Bolivar Consolidated School District be located in Rosedale, Mississippi.

We find no authority for the Board of Trustees for the West Bolivar Consolidated School District to locate any part of the central administrative office anywhere but Rosedale, Mississippi.

SECRETARY OF STATE

[Watson – July 7, 2023 \(OP-2023-00105\)](#)

The plain text of S.B. 2353 indicates that the January 1, 2024 effective date included in the second amendment of Section 1(1) applies only to that amendment and does not apply to any other portion of S.B. 2353. Accordingly, the rest of S.B. 2353, including Sections 1(2), (3), (4), and (5), took effect July 1, 2023 pursuant to Section 4.

SUPERVISORS

Clark – August 3, 2023 (OP-2023-00067)

Although Mississippi Code Annotated Section 27-35-143(1) gives the Holmes County Board of Supervisors the power to amend tax assessments in certain circumstances, because no amendment was requested prior to the statutory deadline, the amendment period set forth in Section 27-35-143(1) has passed for this matter.

Whether the Northside Haven Association, Inc., a 501(c)(3) nonprofit corporation, was exempt from paying 2020 taxes pursuant to Mississippi Code Annotated Section 27-31-1(dd) is a mixed question of fact and law; therefore, this office may not confirm such exemption via official opinion. Beyond this, Section 27-43-3 is the only authority that specifically addresses voiding a tax sale; it provides that a tax sale “shall be void” when the requisite notice requirements for the expiration of the redemption period as set forth in Section 27-43-3 are not satisfied.

Crow – August 23, 2023 (OP-2023-00058)

Borrow and expend are not synonymous. If the Yalobusha County Board of Supervisors makes the factual determination that payment on the General Obligation Note is an “expen[se] on the [P]roject,” the Yalobusha County Board of Supervisors may use the Emergency Road and Bridge Repair funds to make such payments that become due *after* the date the Yalobusha County Board of Supervisors received the Emergency Road and Bridge Repair funds.

The Yalobusha County’s Emergency Road and Bridge Repair funds may not be used to reimburse the budget of the Yalobusha County Supervisory District 5 for the General Obligation Note payment remitted on February 1, 2022, and/or for the General Obligation Note payment remitted on February 1, 2023. Even assuming the Yalobusha County Board of Supervisors makes the factual determination that payment towards the General Obligation Note is an “expen[se] on the [P]roject,” the Yalobusha County Board of Supervisors may not reimburse itself for any amount that it expended on the Project prior to the date it received the Emergency Road and Bridge Repair funds.

INTERLOCAL AGREEMENTS APPROVED

Hickman – July 17, 2023 (OP-2023-00098)

The Interlocal Cooperation Agreement between the Town of Scooba, Mississippi and East Mississippi Community College regarding the Pedestrian Accessibility Improvements Project is approved.

Allen – July 24, 2023 (OP-2023-00088)

The Interlocal Cooperation Agreement between Lincoln County, Mississippi and the City of Brookhaven, Mississippi regarding 911 emergency dispatching communications and other services is approved.

Nailor – July 31, 2023 (OP-2023-00096)

The Interlocal Cooperation Agreement between the City of Vicksburg, Mississippi and Warren County, Mississippi regarding the U.S. Department of Transportation Federal-State Partnership for Intercity Passenger Rail Grant Program is approved.

Nowak – July 31, 2023 (OP-2023-00106)

The Interlocal Cooperation Agreement between DeSoto County, Mississippi and the municipalities of Hernando, Horn Lake, Olive Branch, Southaven, and Walls regarding the assessment and collection of municipal taxes is approved.

Clouse – August 22, 2023 (OP-2023-00110)

The Interlocal Cooperation Agreement between Itawamba County, Mississippi and the City of Fulton, Mississippi regarding the collection of taxes is approved.

Reed – August 22, 2023 (OP-2023-00120)

The Interlocal Cooperation Agreement between Lee County, Mississippi and the City of Tupelo, Mississippi regarding the collection of taxes is approved.

Dobbins – September 22, 2023 (OP-2023-00119)

The Interlocal Cooperation Agreement between the City of Leakesville, Mississippi and Greene County, Mississippi for the provision of police protection is approved.

Wiggins – September 22, 2023 (OP-2023-00118)

The Interlocal Cooperation Agreement between Kemper County, Mississippi and the Town of DeKalb, Mississippi regarding police protection and law enforcement services 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.**