



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 04/01/2024 through 06/30/2024.

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

COMMUNITY COLLEGES

[Lamar, Jr. – April 2, 2024 \(OP-2024-00002\)](#)

Generally speaking, the total tuition for out-of-state residents attending Mississippi community colleges “shall not be less than the average cost per student from appropriated funds.” Miss. Code Ann. § 37-103-25(2). However, Mississippi Code Annotated Section 37-103-25(4) sets forth when a community college board of trustees may implement a policy waiving out-of-state tuition: “The board of trustees of any community college or junior college may develop and implement a policy for waiving out-of-state tuition for the college if the policy is determined by the board to be in accordance with the educational mission of the college and if a local industry or business or a state agency agrees to reimburse the college for the entire amount of the out-of-state tuition that will be waived under the policy.” Whether a proposed policy fits within Section 37-103-25(4)’s statutory requirements is a determination to be made by the governing authorities of the community college.

COMMUNITY HOSPITALS

[Moore – April 8, 2024 \(OP-2024-00021\)](#)

This office has previously opined that “the board of trustees of a community hospital is empowered to lease the hospital.” MS AG Op., *Dearman* at *2 (Oct. 15, 2007).

In MS AG Op., *Dukes* (Apr. 2, 2010), this office opined that the procedures for notice and advertisement for bids set out in Section 41-13-15(7)-(10) were not applicable when one community hospital owner leased said hospital to another owner. For the same reasons as stated in that opinion, the advertisement and bidding procedures set forth in Section 41-13-15(7)-(10) are likewise not required when a community hospital is leased to its wholly owned nonprofit subsidiary without changing ownership.

A corporate entity may receive coverage under the Mississippi Tort Claims Act (“MTCA” or “Act”) if it is determined to be an “instrumentality of a governmental entity.” MS AG Op., *Hill* at *3 (Dec. 8, 2017). However, the question of “[w]hether a nonprofit is an instrumentality of a governmental entity involves an in depth factual examination on a case by case basis.” *Id.* This office may only opine upon questions of state law and may not make such factual determinations. Miss. Code Ann. § 7-5-25.

COUNTIES

[Barber – April 2, 2024 \(OP-2023-00229\)](#)

There is no authority for a Board of Supervisors or the Sheriff’s Department to enter into an agreement with a private, non-profit school to provide additional law enforcement protection and be reimbursed for the associated costs. While there is no authority for a county or sheriff’s department to contract with a nonprofit, private entity to provide increased police protection, there is nothing prohibiting a private school from hiring private security services, and Mississippi Code Annotated Section 17-25-11 allows certified law enforcement officers to “wear the official uniform and . . . utilize the official firearm and the official vehicle issued by the employing jurisdiction while in the performance of private security services in off-duty hours.”

[Mord – April 2, 2024 \(OP-2024-00036\)](#)

Mississippi Code Annotated Section 23-15-281(2) does not authorize the Walthall County Board of Supervisors to purchase and install culverts and cover them to improve private property used for a polling place.

[Lee, Jr. – April 3, 2024 \(OP-2023-00230\)](#)

Outside of indemnity, Mississippi Code Annotated Section 17-25-11 does not directly address reimbursement to the county by a certified law enforcement officer using an official vehicle for an off-duty private security guard. However, an employing jurisdiction may make reimbursement of incurred expenses due to gasoline, wear and tear, etc., a condition of approval for a certified law enforcement officer to utilize his or her official vehicle for an off-duty private security job.

[Rogers – April 3, 2024 \(OP-2024-00033\)](#)

Mississippi Code Annotated Section 41-13-15(11), “Establishing, leasing and conveying assets of community hospitals,” provides, in part: “If no board of trustees is then existing, the owner [here, the board of supervisors] shall have the right to enter into a lease upon such terms and conditions as agreed upon by the parties.” Therefore, the County, as owner of the premises, may enter into a lease for the renewal period upon such terms and conditions as agreed upon by it and Baptist.

The Attorney General’s Office neither validates nor invalidates past action or interprets contractual agreements by official opinion. We cannot opine on how the Union County Board of Supervisors (“County”) can comply with a lease that was originally executed in 1989 or on the terms and conditions within said renewal. Notably, if the parties are renewing the lease under the authority of Section 41-13-15, they must comply with the statutory requirements in that section, including Section 41-13-15(11)(a)-(e).

The County cannot by agreement alter the requirements of local and private legislation. The County must comply with 1989 Mississippi House Bill No. 1443 (“H.B. 1443”) until or unless it is amended by the Mississippi Legislature, or it is determined to be invalid by a court of competent jurisdiction.

[Holleman – April 18, 2024 \(OP-2023-00143\)](#)

Mississippi Code Annotated Section 25-32-5’s phrase “but in no event to exceed the compensation of the district attorney” applies to each category of full-time public defenders, i.e., “a public defender, who shall be full-time, representing an entire circuit court district . . . a public defender representing one (1) county . . . and . . . a public defender representing two (2) or more counties, but less than the entire circuit court district.”

[McWilliams – May 7, 2024 \(OP-2024-00023\)](#)

Pursuant to Mississippi Code Annotated Section 31-7-13(c)(i)(2), any “purchase of materials, supplies, equipment or goods for same and including buildings, roads and bridges” shall not use the reverse auction procedure. Because the statute exempts equipment, the Sunflower County Board of Supervisors is not required to use the reverse auction procedure set forth in Section 31-7-13(c)(i)(2) to purchase equipment, including a bulldozer, water truck, and front-end loader for use by the County Road Department in construction, improvement, and repair of public roads and bridges within the county.

[Hopkins, Jr. – May 10, 2024 \(OP-2024-00003\)](#)

A municipal court judge is authorized to administer oaths pursuant to Mississippi Code Annotated Section 11-1-1.

A municipal judge may administer an oath to an elected official from an adjoining county.

Both municipal judges and chief magistrates of a city are authorized by Mississippi Code Annotated Section 11-1-1 to administer oaths of office or swear in elected officials no matter where they are located.

Both municipal judges and notaries public are authorized by Mississippi Code Annotated Section 11-1-1 to administer oaths of office or swear in elected officials.

A sheriff is not authorized by Mississippi Code Annotated Section 11-1-1 to administer oaths.

[Hemphill – May 29, 2024 \(OP-2024-00032\)](#)

Because the constable was not vested and did not retire under a state retirement system, he would not qualify as a retired law enforcement officer under Mississippi Code Annotated Section 45-9-131.

Because the constable would not qualify as a retired law enforcement officer under Mississippi Code Annotated Section 45-9-131 and did not serve ten continuous years, the Noxubee County Board of Supervisors (“County”) would not be authorized to sell him his firearm. However, if the County determines and declares that the sidearm is surplus county personal property, the County may dispose of the sidearm in accordance with Section 17-25-25.

DEPARTMENT OF INSURANCE

[Chaney – May 21, 2024 \(OP-2024-00066\)](#)

Information recovered from the Motor Vehicle Information Verification System (“MVIVS”) may be released to private entities if such action is authorized by the Department of Public Safety (“DPS”) in accordance with its rules as set forth in Mississippi Code Annotated Sections 63-16-3 and 63-16-7.

Although municipalities are not explicitly prohibited by Mississippi law from initiating and utilizing automatic license plate reader (“ALPR”) cameras to verify motor vehicle insurance coverage, certain factual and legal determinations, which are outside the scope of this opinion, must be considered in regard to the proposed uses of MVIVS under the applicable ALPR-based program.

Any fee-split agreement between a municipality, DPS, and a third-party private vendor for ALPR programs is a contractual matter upon which this office may not opine. *See* Miss. Code Ann. § 7-5-25.

[Chaney – May 21, 2024 \(OP-2024-00098\)](#)

Statutorily, the Commissioner of Insurance has the legal authority to cooperate in the establishment of the Motor Vehicle Insurance Verification System (“MVIVS”) but not to require insurers to provide motor vehicle liability policy status information. Rather, pursuant to Mississippi Code Annotated Sections 63-16-3(3)(f) and 63-16-7(2)(d), the Department of Public Safety (“DPS”) has the authority to direct the MVIVS program and promulgate its rules, which includes mandating the receipt of insurance information “not more often than every thirty (30) days.”

Information recovered from MVIVS may be released to private entities if and when such action is authorized by DPS in accordance with its rules as set forth in Sections 63-16-3 and 63-16-7.

ELECTIONS

[Morris – May 10, 2024 \(OP-2024-00055\)](#)

For a voting precinct with 500 or fewer registered voters, the election commission must appoint

three poll managers pursuant to Mississippi Code Annotated Section 23-15-231 and may appoint up to three additional poll managers pursuant to Section 23-15-235, for a maximum number of six poll managers.

The statute does not provide any parameters for determining the additional number of poll managers needed under Section 23-15-235 other than to state that this is within the election commissioners' discretion.

JUSTICE COURT JUDGES

[McWilliams – May 24, 2024 \(OP-2024-00011\)](#)

Rule 7 of the Uniform Rules of Justice Court authorizes the circuit court judge of the district to appoint a justice court judge of another county when all of the justice court judges recuse themselves.

Rule 7(c) of the Uniform Rules of Justice Court authorizes only reimbursement of expenses pursuant to Mississippi Code Annotated Section 25-3-41 and as otherwise allowed by law. Outside of a justice court judge's set salary in Section 25-3-36 and the reimbursement of expenses in Section 25-3-41, we find no other authority allowing additional compensation.

The court rules and state statutes do not specify who is responsible for paying the substitute justice court judge, only that the judge is entitled to reimbursement of expenses.

Rule 1 states that rules 1-10 of the Uniform Rules of Justice Court apply to all cases in justice court regardless of their type.

MISSISSIPPI FIRE PERSONNEL MINIMUM STANDARDS AND CERTIFICATION BOARD

[Lampton – June 27, 2024 \(OP-2024-00052\)](#)

Since January 1, 1991, only if an individual has been certified as having completed the mandatory training, may that individual working as a full-time fire fighter be employed for a period exceeding one year or a *cumulative* period of employment exceeding two thousand eight hundred (2,800) compensated hours, unless an extension has been granted. Miss. Code Ann. § 45-11-203(1) (emphasis added). Therefore, being terminated and rehired does not restart the time limitation for certification.

Unless an extension has been granted by the Fire Personnel Minimum Standards and Certification Board, a fire fighter who has been “employed as a full-time fire fighter by any local government fire fighting unit for a period exceeding one (1) year, [or] for a cumulative time exceeding two thousand eight hundred (2,800) compensated hours” may not be rehired or employed “unless that person is certified as completing the mandatory training requirements in subsection (2).” Miss. Code Ann. § 45-11-203(1).

MUNICIPALITIES

[Depreo – April 2, 2024 \(OP-2024-00014\)](#)

Donations made for a restricted purpose may be returned to the donor if the donations cannot or will not be used for that specific purpose.

[Mitchell – April 8, 2024 \(OP-2023-00181\)](#)

A lawful debt owed to the municipality may not be disposed of except by payment into the proper treasury. However, if there is a dispute as to the amount owed for the services rendered, the city of Batesville, in its discretion, may reduce the bill to be consistent with the amount owed for the services rendered.

[Eaton – May 20, 2024 \(OP-2024-00050\)](#)

“A municipality may re-convey real property to an original donor without cost only if the instrument by which the property was originally conveyed to the municipality contained a proper reverter clause.” MS AG Op., *Lawrence* at *1 (June 9, 2006) (citing MS AG Op., *Sorrell* at *1 (Aug. 20, 2004)). However, the parties may be able to reform the underlying instrument if a mistake is found in the drafting of such. *Johnson v. Consolidated Am. Life Ins. Co.*, 244 So. 2d 400, 402 (Miss. 1971); see *Dilling v. Dilling*, 734 So. 2d 327, 335 (Miss. Ct. App. 1999) (explaining that “[a] scrivener’s error may be sufficient to warrant the reformation of an instrument.”).

[Giddy – May 24, 2024 \(OP-2024-00015\)](#)

If the city of Gluckstadt makes the factual determination that receiving the automatic license plate recognition cameras at the time the lease payment is made constitutes good and valuable consideration, the payment would not be unlawful.

[Tucker – May 24, 2024 \(OP-2024-00037\)](#)

The city of Booneville is required to collect underbilled amounts from “code 15 customers” who did receive a bill and did pay the amount that was billed to them. “[A] utility debt may not be adjusted or forgiven when a customer has received the benefits of the utility service, regardless of a municipality’s error in billing.” MS AG Op., *Frieson* at *1 (Sept. 7, 2018) (citing MS AG Op., *Williams* at *1 (Sept. 12, 2008)).

The city of Booneville shall go as far back as necessary in collecting the underbilled amounts.

[Bruni – June 24, 2024 \(OP-2024-00062\)](#)

A municipality may not name a third party as an additional insured on its liability insurance policy.

[Stuart II – June 24, 2024 \(OP-2024-00046\)](#)

A municipality has the authority to settle valid claims pursuant to Mississippi Code Annotated Section 25-1-47 if the municipality determines that it is legally obligated for the claim and the claim is not exempt from liability. Whether the claim for the alleged mistakenly paid fines described in your request can be settled pursuant to Section 25-1-47 is a factual determination to be made by the governing authorities of the city of Guntown and is outside the scope of an official opinion.

SCHOOLS

[Clark – June 24, 2024 \(OP-2024-00082\)](#)

Mississippi Code Annotated Section 37-15-9(2) does not authorize a Mississippi public school district to accept a transfer student who resides out of state.

SECRETARY OF STATE

[Watson – April 9, 2024 \(OP-2023-00212\)](#)

The Secretary of State’s authorization for the placement of breakwaters is only necessary when a tidelands lease is needed. Generally, “[p]ermanent structures . . . may not be erected on state[-]owned waterbottoms unless done so pursuant to a lease with the Secretary of State.” MS AG Op., *Nelson* at *1 (Sept. 18, 1998). However, pursuant to Mississippi Code Annotated Section 29-15-5(2), “[r]esidential property owners shall not be required to obtain a tidelands lease for exercising common law and statutory littoral and riparian rights.” If it is determined that a breakwater constitutes an “other structure” as set forth in Section 49-15-9, and is thus a littoral right of property owners, Section 29-15-5(2) authorizes the placement of breakwaters on tidelands without requiring residential upland owners to lease the land under the footprint of the breakwater.

There is no statutory provision specifically authorizing the Secretary of State to require agreements with the private landowner establishing the current high-water mark as the boundary of public trust tidelands and excluding artificial accretions from ownership/title. However, Section 29-15-7(2) provides that “natural” accretions increase the land owned by the contiguous upland owner, but it does not afford upland owners the same increase in land as a result of “artificial” accretions.

Aside from the provisions mentioned herein, we are aware of no other state law that would limit the Secretary of State from consenting to living shoreline breakwaters on tidelands. However, the Secretary of State’s authorization and/or consent is only necessary to the extent a tidelands lease is needed.

Mississippi General Permits from the Army Corps of Engineers or Wetlands Permits issued by the Mississippi Department of Marine Resources (“DMR”) are wholly separate and distinct from public trust tidelands leases entered with the Secretary of State. Consent from the Secretary of State is not a requirement of DMR’s permitting process.

SHERIFFS

[Rushing – April 4, 2024 \(OP-2024-00030\)](#)

We are not aware of any statutory authority or case law stating that a city prisoner becomes a county prisoner upon being bound over to the county grand jury at a preliminary hearing.

If a county and municipality choose to contract with one another for the holding of municipal prisoners in the county jail pursuant to Mississippi Code Annotated Section 47-1-39, said contract should include the terms negotiated between the parties in accordance with the law. We are unable to officially opine as to the terms or interpretation of a contract.

INTERLOCAL AGREEMENTS APPROVED

Rackley – April 16, 2024 (OP-2024-00049)

The Interlocal Cooperation Agreement between Mississippi State University and Pontotoc County, Mississippi regarding the management of the Pontotoc County – Mississippi State University Extension Services is approved.

Riley – May 29, 2024 (OP-2024-00054)

The Interlocal Cooperation Agreement between Holmes County, Mississippi and the City of Lexington, Mississippi regarding street repair, dilapidated property, and storm debris is approved.

Shepard – May 29, 2024 (OP-2024-00060)

The Interlocal Cooperation Agreement between George County, Mississippi and the City of Lucedale, Mississippi regarding city baseball field improvements is approved.

Shepard – May 29, 2024 (OP-2024-00063)

The Interlocal Cooperation Agreement between George County, Mississippi and the City of Lucedale, Mississippi regarding survey and engineering for proposed city soccer complex and proposed expansion of city baseball complex is approved.

Yarborough, Jr. – May 29, 2024 (OP-2024-00056)

The Interlocal Cooperation Agreement between Hancock County, Mississippi and the City of Diamondhead, Mississippi regarding the collection of solid waste fees is approved.

Yarborough, Jr. – May 29, 2024 (OP-2024-00057)

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

Yarborough, Jr. – May 29, 2024 (OP-2024-00058)

The Interlocal Cooperation Agreement between Hancock County, Mississippi and the City of Bay Saint Louis, Mississippi regarding the collection of taxes is approved.

Yarborough, Jr. – May 29, 2024 (OP-2024-00059)

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

Ashley – June 17, 2024 (OP-2024-00092)

The Interlocal Cooperation Agreement between Jones County, Mississippi and the City of Laurel, Mississippi regarding the collection of delinquent tax payments is approved.

Ashley – June 17, 2024 (OP-2024-00093)

The Interlocal Cooperation Agreement between Jones County, Mississippi and the City of Ellisville, Mississippi regarding the collection of delinquent tax payments is approved.

Ashley – June 17, 2024 (OP-2024-00094)

The Interlocal Cooperation Agreement between Jones County, Mississippi and the Town of Sandersville, Mississippi regarding the collection of delinquent tax payments is approved.

Gaylor – June 17, 2024 (OP-2024-00067)

The Interlocal Cooperation Agreement between Hinds County, Mississippi and the City of Jackson, Mississippi regarding the funding for renovations and additions to the Jackson Planetarium is approved.

Holleman – June 17, 2024 (OP-2024-00069)

The Interlocal Cooperation Agreement between Harrison County, Mississippi and the City of Biloxi, Mississippi regarding governmental services for the Years 2024-2028 is approved.

Holleman – June 17, 2024 (OP-2024-00070)

The Interlocal Cooperation Agreement between Harrison County, Mississippi and the City of Biloxi, Mississippi regarding tax assessments and collections for the Year 2024-2025 is approved.

Holleman – June 17, 2024 (OP-2024-00071)

The Interlocal Cooperation Agreement between Stone County, Mississippi; Harrison County, Mississippi; and the City of Biloxi, Mississippi regarding the housing of City of Biloxi prisoners and detainees at the Stone County Regional Correctional Facility for the Years 2024-2028 is approved.

Holleman – June 17, 2024 (OP-2024-00072)

The Interlocal Cooperation Agreement between Harrison County, Mississippi and the City of D'Iberville, Mississippi regarding governmental services for the Years 2024-2028 is approved.

Holleman – June 17, 2024 (OP-2024-00073)

The Interlocal Cooperation Agreement between Harrison County, Mississippi and the City of D'Iberville, Mississippi regarding tax assessments and collections for the Year 2024-2025 is approved.

Holleman – June 17, 2024 (OP-2024-00074)

The Interlocal Cooperation Agreement between Harrison County, Mississippi and the City of Gulfport, Mississippi regarding governmental services for the Years 2024-2028 is approved.

Holleman – June 17, 2024 (OP-2024-00075)

The Interlocal Cooperation Agreement between Harrison County, Mississippi and the City of Gulfport, Mississippi regarding tax assessments and collections for the Year 2024-2025 is approved.

Holleman – June 17, 2024 (OP-2024-00076)

The Interlocal Cooperation Agreement between Harrison County, Mississippi and the City of Long Beach, Mississippi regarding governmental services for the Years 2024-2028 is approved.

Holleman – June 17, 2024 (OP-2024-00077)

The Interlocal Cooperation Agreement between Harrison County, Mississippi and the City of Long Beach, Mississippi regarding tax assessments and collections for the Year 2024-2025 is approved.

Holleman – June 17, 2024 (OP-2024-00078)

The Interlocal Cooperation Agreement between Stone County, Mississippi; Harrison County, Mississippi; and the City of Long Beach, Mississippi regarding the housing of City of Long Beach prisoners and detainees at the Stone County Regional Correctional Facility for the Years 2024-2028 is approved.

Holleman – June 17, 2024 (OP-2024-00079)

The Interlocal Cooperation Agreement between Harrison County, Mississippi and the City of Pass Christian, Mississippi regarding governmental services for the Years 2024-2028 is approved.

Holleman – June 17, 2024 (OP-2024-00080)

The Interlocal Cooperation Agreement between Harrison County, Mississippi and the City of Pass Christian, Mississippi regarding tax assessments and collections for the Year 2024-2025 is approved.

Holleman – June 17, 2024 (OP-2024-00081)

The Interlocal Cooperation Agreement between Harrison County, Mississippi and Hancock County, Mississippi regarding governmental services for the Years 2024-2028 is approved.

Holleman – June 17, 2024 (OP-2024-00086)

The Interlocal Cooperation Agreement between Stone County, Mississippi; Harrison County, Mississippi; and the City of Pass Christian, Mississippi regarding the housing of City of Pass Christian prisoners and detainees at the Stone County Regional Correctional Facility for the Years 2024-2028 is approved.

Holleman – June 17, 2024 (OP-2024-00087)

The Interlocal Cooperation Agreement between Stone County, Mississippi; Harrison County, Mississippi; and the City of D'Iberville, Mississippi regarding the housing of City of D'Iberville prisoners and detainees at the Stone County Regional Correctional Facility for the Years 2024-2028 is approved.

Reed – June 17, 2024 (OP-2024-00107)

The Interlocal Cooperation Agreement between the City of Tupelo, Mississippi and Itawamba County, Mississippi regarding the housing of inmates is approved.

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