



Lynn Fitch

ATTORNEY GENERAL
OPINIONS AND POLICY

The purpose of the Opinion Outline is to inform State, county, and municipal officials and other interested persons of official opinions issues by the Attorney General's Office. This outline contains synopses of opinions issues from 07/01/2024 through 09/30/2024.

The synopses that follow are based upon opinions that were issues 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, [here](#).**

Sincerely,

Lynn Fitch
Attorney General
State of Mississippi

COUNTIES

[Webb – September 18, 2024 \(OP-2024-00084\)](#)

Pursuant to Mississippi Code Annotated Section 19-7-3(1), any real estate belonging to a county that has ceased to be used for county purposes may be sold, conveyed, or leased by the county once the requisite findings in Section 19-7-3(4) have been made and the processes and procedures in Section 19-7-3 have been followed.

However, a county may not accept just any bid when selling such property. A county may reject all bids, accept the highest and best bid, or hold an auction among those who submitted bids with the starting bid being the highest bid received in response to the advertisement. If the county chooses to hold an auction, no bidder in the auction shall be shown any preference pursuant to Section 19-7-3(2)(a).

In the disposition of the property, the county may consider past consideration only in conjunction with future consideration. Ultimately, what is sufficient as

“good and valuable consideration” is within the discretion of the board of supervisors.

Pursuant to its general contracting authority in Section 19-3-41, a county could enter into an agreement with an entity for the operation and management of a public park. In addition, a county may authorize an entity to retain profits from the sale of concessions and/or rentals in order to defray the entity’s expenses.

Finally, governing authorities may not bind their successors in office to contracts that take away their successors’ rights and powers as conferred by law. Any contract that extends beyond the term of the governing board(s) without express statutory authority is voidable at the discretion of the successors.

HEMP

Yancey – September 9, 2024 (OP-2024-00142)

Mississippi Code Annotated Section 97-31-5 states that it is unlawful, unless otherwise legalized under state law, to sell any drug, elixir, or compound that “when drunk to excess, in the form sold, will produce intoxication.” Accordingly, because there is no state law that specifically legalizes hemp beverages, should a factual determination be made that hemp beverages would produce intoxication if drunk to excess, then the sale of the same would be unlawful.

Beverages containing a THC concentration of greater than 0.3% would be classified as marijuana beverages. Such beverages are illegal under state law unless purchased in accordance with the Mississippi Medical Cannabis Act.

MUNICIPALITIES

Turnage – July 30, 2024 (OP-2024-00109)

Assuming a city’s special charter is silent on the question, a county resident’s continued and uninterrupted period of residency in an area that is annexed by a city should be considered residency within the city for the purposes of determining whether the requirements in Mississippi Code Annotated Section 23-15-300(1) have been met.

Assuming a city’s special charter is silent on the question, if a city’s ward lines change prior to the election, an individual whose residency is continuous and uninterrupted may apply his or her previous period of residency in his or her former district to the period he or she has resided in the newly created district to satisfy the residency requirements in Section 23-15-300(1).

Hubbard – July 31, 2024 (OP-2024-00117)

The governing authorities of a municipality may make the decision to purchase playground equipment for a park on city property pursuant to Mississippi Code Annotated Section 21-17-5(1). However, a municipality may not provide funding to a private citizen to purchase playground equipment for a park on city property.

Gates – August 23, 2024 (OP-2024-00105)

If the governing authorities of a municipality determine that an elected official’s requested access to records is reasonable and required for the elected official to perform his or her official duties, then the elected official does not have to pay for copies of such records.

Dumas – August 30, 2024 (OP-2024-00104)

Mississippi Code Annotated Section 17-25-25 sets forth the ways in which a municipality may dispose of personal property that is no longer being used for a public purpose. Section 17-25-25 does not limit who may purchase the personal property. If a city makes a factual determination that the governing authority is no longer using a police vehicle, it may sell the vehicle to a county constable, fire chief, or any other individual or entity so long as it complies with that Section.

Purdie – August 30, 2024 (OP-2024-00161)

A city is not explicitly prohibited by Mississippi law from initiating and utilizing an automatic license plate reader-based motor vehicle insurance enforcement program. However, certain factual and legal determinations, which are outside the scope of this opinion, must be considered in regard to the proposed program, including but not limited to, the proposed uses of the Motor Vehicle Insurance Verification System.

Featherstone – September 17, 2024 (OP-2024-00131)

If a duly reelected member of a city's board of aldermen has not been sworn in for each new term but was initially sworn in under a previous administration, then at a minimum, the subject aldermen would be considered a de facto officer, and a de facto officer's official acts are valid and binding.

Hicks – September 17, 2024 (OP-2024-00113)

Upon making the appropriate factual determinations, a city has the power under Mississippi Code Annotated Section 21-19-13(2) to repair a drainage ditch on private property to prevent erosion.

Further, a city has the power to pay necessary expenses in providing labor, materials, and supplies for those repairs made pursuant to Section 21-19-13(2).

SCHOOLS

Karmacharya – July 9, 2024 (OP-2024-00999)

The Mississippi Charter Schools Act of 2013 allows charter schools to provide virtual classes to its students subject to the approval of the Mississippi Charter School Authorizer Board. While the Act contemplates a physical location for charter schools, it is silent on the question of virtual-only, online instruction. Thus, the Authorizer Board has the authority to determine whether allowing virtual-only, online instruction complies with the Act. If the Authorizer Board makes such determination, the operation of charter schools with virtual-only, online instruction must comply with the provisions of the Act and any applicable regulations adopted by the Authorizer Board.

Caves – July 30, 2024 (OP-2024-00161)

A school district is not required to create a record that does not currently exist in response to a public records request.

Compton – July 31, 2024 (OP-2024-00088)

If a school district finds, consistent with the facts and spread upon the minutes, that an employee was underpaid due to an administrative error, the employee may be paid the difference between the salary she was paid and the salary the district finds that she is owed.

SECRETARY OF STATE

Watson – August 15, 2024 (OP-2024-00108)

Section 249A of the Mississippi Constitution of 1890 is expressly limited to voting “in person at the polls or in person in the office of the circuit clerk,” and thus, it does not prohibit a legislative or constitutional expansion of voter identification requirements for mail-in absentee voters.

The voter identification requirements of Mississippi Code Annotated Section 23-15-563 apply only to in-person voting: “[e]ach person who appears to vote *in person at a polling place or the registrar’s office* shall be required to identify himself or herself to a poll manager or the registrar by presenting current and valid photo identification before such person shall be allowed to vote.” (emphasis added).

SHERIFFS

Shepard – July 31, 2024 (OP-2024-00112)

A sheriff may use money from an Inmate Canteen Fund authorized in Mississippi Code Annotated Section 19-3-81 for the purchase of prisoner uniforms and mattresses.

White – August 15, 2024 (OP-2024-00053)

A sheriff may set bail for persons arrested for misdemeanors when bond has not been fixed and approved by a judicial officer and set the amount of bond for felony offenses under emergency circumstances as set forth in Mississippi Code Annotated Section 19-25-67.

Pursuant to Section 99-5-9, it is the decision of the committing court whether to allow or disallow cash bail bonds from defendants.

SOLID WASTE DISTRICTS

Cardin – August 30, 2024 (OP-2024-00164)

If a solid waste management authority’s board of commissioners makes a factual determination that a proposed landfill gas utilization project meets the statutory definition of “project,” Mississippi Code Annotated Section 17-17-317(h) authorizes them to enter a contract binding the authority’s board of commissioners and a developer for a term not to exceed thirty (30) years.

STATE BOARD OF MENTAL HEALTH

Wilkerson – August 12, 2024 (OP-2024-00065)

According to the opinion request, Region 11 is a regional mental health commission. As such, its medical records are not hospital records as defined in Mississippi Code Annotated Section 41-9-61(b), but instead are governed by the applicable provisions of Sections 41-19-31, *et seq.*, for regional mental health commissions.

Further, as a regional mental health commission, Region 11 falls under the purview of the State Board of Mental Health and should follow its guidance with respect to the disposition of medical records.

SUPERVISORS

Mississippi Code Annotated Section 19-3-40(1) provides a county board of supervisors the general authority to adopt ordinances. So long as the proposed ordinance is not otherwise contradictory to state law, a county board of supervisors may enact an ordinance that would require landowners to include additional filing information, such as a property indexing number (PIN), on deeds filed with the chancery clerk as part of the requisite indexing instructions.

INTERLOCAL AGREEMENTS APPROVED

McWilliams – August 27, 2024 (OP-2024-00134)

The Interlocal Cooperation Agreement between Sunflower County and the City of Indianola regarding the administration of the United States Department of Housing and Urban Development Community Project Funding Grant No. B-23-CP-MS-0925 is approved.

McWilliams – August 27, 2024 (OP-2024-00139)

The Interlocal Cooperation Agreement between Sunflower County and the Town of Sunflower regarding the administration of the United States Department of Housing and Urban Development Community Project Funding Grant No. B-23-CP-MS-0925 is approved.

McWilliams – August 27, 2024 (OP-2024-00140)

The Interlocal Cooperation Agreement between Sunflower County and the City of Drew regarding the administration of the United States Department of Housing and Urban Development Community Project Funding Grant No. B-23-CP-MS-0925 is approved.

McWilliams – August 27, 2024 (OP-2024-00141)

The Interlocal Cooperation Agreement between Sunflower County and the City of Ruleville regarding the administration of the United States Department of Housing and Urban Development Community Project Funding Grant No. B-23-CP-MS-0925 is approved.

McWilliams – August 27, 2024 (OP-2024-00161)

The Interlocal Cooperation Agreement between Sunflower County and the Town of Doddsville regarding the administration of the United States Department of Housing and Urban Development Community Project Funding Grant No. B-23-CP-MS-0925 is approved.

McWilliams – August 27, 2024 (OP-2024-00158)

The Interlocal Cooperation Agreement between Sunflower County and the City of Ruleville regarding improvements to the Fannie Lou Hamer Memorial Park and Gravesite is approved.

Whaley-Smith – August 27, 2024 (OP-2024-00165)

The Interlocal Cooperation Agreement between Marshall County and the Town of Potts Camp regarding the collection of taxes is approved.

Tisdale – September 12, 2024 (OP-2024-00148)

The Interlocal Cooperation Agreement between Stone County, Harrison County, and the City of Gulfport regarding the housing of City of Gulfport prisoners and detainees at the Stone County Regional Correctional Facility for

the years 2024-2028 is approved.

Tisdale – September 12, 2024 (OP-2024-00149)

The Interlocal Cooperation Agreement between Harrison County and the Biloxi Public School District regarding governmental services for the years 2024-2028 is approved.

Tisdale – September 12, 2024 (OP-2024-00150)

The Interlocal Cooperation Agreement between Harrison County and the Gulfport School District regarding governmental services for the years 2024-2028 is approved.

Tisdale – September 12, 2024 (OP-2024-00151)

The Interlocal Cooperation Agreement between Harrison County and the Harrison County School District regarding governmental services for the years 2024-2028 is approved.

Tisdale – September 12, 2024 (OP-2024-00152)

The Interlocal Cooperation Agreement between Harrison County and the Long Beach School District regarding governmental services for the years 2024-2028 is approved.

Tisdale – September 12, 2024 (OP-2024-00153)

The Interlocal Cooperation Agreement between Harrison County and the Pass Christian School District regarding governmental services for the years 2024-2028 is approved.

Barry – September 12, 2024 (OP-2024-00137)

The Interlocal Cooperation Agreement between Kemper County and the Town of Scooba regarding the construction of a basketball court is approved.

Cummings – September 12, 2024 (OP-2024-170)

The Interlocal Cooperation Agreement between Tishomingo County and the City of Belmont regarding the collection of taxes is approved.

Fairbank – September 12, 2024 (OP-2024-174)

The Regional Economic Development Agreement between Lee County, the City of Tupelo, the Lee County Economic Development District, and the Tupelo Public School District regarding Project Wayfarer is approved.

Merchant – September 24, 2024 (OP-2024-00181)

The Interlocal Cooperation Agreement between the City of Indianola and the Sunflower County Consolidated School District regarding the B.B. King Road Project is approved.

Yarborough – September 24, 2024 (OP-2024-00101)

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

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