



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 01/01/2025 through 03/31/2025.

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,

A handwritten signature in black ink that reads "Lynn Fitch". The signature is fluid and cursive, with the first and last names being clearly legible.

Lynn Fitch  
Attorney General  
State of Mississippi

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## COMMUNITY COLLEGES

[\*Lamar, Jr.\* – February 3, 2025 \(OP-2024-00147\)](#)

The State Fire Marshal promulgates the Mississippi Fire Prevention Code ("MFPC"), which applies to all state-owned buildings, all buildings used for public assembly, and those buildings that are seventy-five feet tall or taller, so long as there is not a local fire code that is not less stringent than the MFPC. Miss. Code Ann. § 45-11-101(1)(a), (b), (c). Otherwise, the local code will apply, and the local fire marshal will have enforcement authority and jurisdiction. *See* Miss. Code Ann. § 45-11-101.

Because we have previously opined that community and junior college buildings are not state-owned and therefore not subject to Subsection (1)(a), the local fire code would generally apply, and the local fire marshal would have jurisdiction. MS AG Op., *Dale* at \*1 (Sept. 27, 2000). Whether the building will be used for public assembly and/or is seventy-five feet or taller are

factual determinations to be made by the governing board of the community college. Whether any local fire code is not less stringent than the MFPC is a determination to be made by the State Fire Marshal. Miss. Code Ann. § 45-11-101(2).

## COUNTIES

### [Miller – January 30, 2025 \(OP-2024-00224\)](#)

While Mississippi Code Annotated Section 27-19-57 does not require a Mississippi driver's license as a condition for the registration of a vehicle, it does acknowledge that the county tax collector may require proof of identification. In such instances, neither a consulate ID nor a foreign passport is sufficient.

### [Morris-Harris – January 30, 2025 \(OP-2024-00215\)](#)

Generally, counties are prohibited from using public funds, equipment, and supplies for private purposes, which would include providing in-kind services to a private water association. However, counties are allowed to “provid[e] labor, materials, and supplies to clean or clear drainage ditches, creeks or channels or conduits, both natural and man-made and to prevent erosion of such ditches, creeks or channels[.]” Miss. Code Ann. § 19-5-92.1. Whether this exception applies to a specific situation is a factual determination for a county to make and should be spread upon the minutes of the board of supervisors.

### [Morris-Harris – February 19, 2025 \(OP-2024-00216\)](#)

Pursuant to Mississippi Code Annotated Section 19-7-7, as interpreted in *Adams v. Helms*, 48 So. 290 (Miss. 1909), a board of supervisors does not have the authority to deposit surplus insurance proceeds into the county general fund.

### [Emerson – March 18, 2025 \(OP-2024-00246\)](#)

Mississippi Code Annotated Section 25-1-99 provides that the clerks of the circuit and chancery courts, among other county officials, shall keep their offices at the courthouse of their respective counties if offices shall be there provided for them. Section 19-3-11 requires the board of supervisors to hold meetings at the courthouse absent specific circumstances. Further, Section 25-1-99 provides that if offices are not provided for the chancery and circuit clerks at the courthouse, then their offices must be located within one-half (1/2) mile of the courthouses of their respective counties.

Subject to the geographic limitations of Section 25-1-99, a board of supervisors has the authority to assign courthouse space to various county officials and may lawfully designate one building for chancery court functions and one building for circuit court functions. A board of supervisors may also assign additional workspace for the circuit clerk at a separate building, but the clerk must maintain his or her primary office at the county courthouse so long as the Board provides such space at the courthouse.

Finally, the jury selection process is managed by the county jury commission, under the supervision and control of the court. Miss Code Ann. § 13-5-6. Subject to Section 31 of the Mississippi Constitution of 1890, state law, and the Mississippi Rules of Civil and Criminal Procedure, the circuit court has jurisdiction over jury trials in its own court. A board of supervisors is not the proper entity to impanel a jury.

## MISSISSIPPI REVISED UNIFORM ANATOMICAL GIFT ACT

[Harkins – February 19, 2025 \(OP-2024-00120\)](#)

If an individual has registered as an organ donor or otherwise authorized donation consistent with the Mississippi Revised Uniform Anatomical Gift Act (“MS UAGA”), Mississippi Code Annotated Sections 41-39-101 *et seq.*, then no one else, including a family member or a hospital health care provider, has the right to revoke the designation as an organ donor in order to prevent the donation process from moving forward —without a legal or clinical justification.

Under the MS UAGA, a hospital must cooperate with an organ procurement organization (“OPO”) to facilitate the organ donation process. The MS UAGA protects a hospital from liability so long as it acts in good faith in compliance with the law to support the donation process and to work with the OPO to carry out the wishes of the donor. However, this protection would not extend to a hospital that knowingly fails to carry out the wishes of the donor without legal or clinical justification. *See* Miss. Code Ann. § 41-39-135(a).

It is the responsibility of the OPO to determine whether a patient at or near death has authorized, amended, or revoked an anatomical donation. Miss. Code Ann. § 41-39-139 (c). If the patient has not authorized donation, then it is the OPO’s responsibility to search for the individuals listed in Section 41-39-117 who may authorize donation on the patient’s behalf. Miss. Code Ann. § 41-39-127(g).

## MUNICIPALITIES

[Brock, Jr. – January 31, 2025 \(OP-2024-00250\)](#)

There is no authority for a city to donate the use of municipal utility and light poles or the use of municipal equipment and labor to a private, for-profit individual at no cost to the individual.

Pursuant to a city’s authority over its property, finances, streets, sidewalks, and parks, a city has discretion regarding projects and events that promote the city. However, under Mississippi Code Annotated Section 17-3-1, a city must determine that the project fulfills a proper municipal purpose and is not for the benefit of a private individual(s). While the ownership of materials for a given project, which in this case consists of banners to be hung from municipal light poles, may be a factor in determining whether a project benefits a private individual(s) or benefits the city, it is not determinative of that issue. Ultimately, a city may only expend municipal funds for a proper municipal function in accordance with state law.

[Mallette – March 18, 2025 \(OP-2024-00264\)](#)

In accordance with Mississippi Code Annotated Sections 19-25-73(3), 47-5-901(2) and (3), and 47-5-909, a municipality is authorized to pay a county up to twenty-five dollars (\$25) per day for days one through thirty and thirty-two dollars and seventy-one cents (\$32.71) for days thirty-one or greater for holding a municipal pretrial detainee or prisoner in the county jail.

[Turnage – March 18, 2025 \(OP-2024-00213\)](#)

The Mississippi Supreme Court has opined that a probable cause determination is dependent upon the applicable case-specific facts. *Benjamin v. Hooper Elec. Supply Co.*, 568 So. 2d 1182, 1190 (Miss. 1990). Pursuant to Section 7-5-25, this office may only issue opinions on questions of state law.

In MS AG Op., *Purdie*, this office opined that municipalities are “not explicitly prohibited by Mississippi law from initiating and utilizing an ALPR-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.” MS AG Op., *Purdie* at \*1 (Aug. 4, 2024). Section 21-17-5(1), known as the Home Rule statute, “grants municipalities the right to adopt ordinances with regard to their ‘municipal affairs’ . . . if said ordinances are not inconsistent with state legislation and/or the Mississippi Constitution.” *Jones v. City of Canton*, 278 So. 3d 1129, 1133 (Miss. 2019) (quoting *Maynard v. City of Tupelo*, 691 So. 2d 385, 387 (Miss. 1997)). Subject to the specific exceptions set forth in Section 21-17-5(2), none of which are applicable here, “the powers granted to governing authorities of municipalities in this section are complete without the existence of or reference to any specific authority granted in any other statute or law of the State of Mississippi.” Miss. Code Ann. § 21-17-5(1).

While retaining the position stated in MS AG Op., *Miller* at \*1 (Mar. 3, 1993) (“[A] misdemeanor affidavit, including a traffic ticket, can only be dismissed in accordance with Section 99–15–51 of the Mississippi Code”), ultimately, whether a particular program is consistent with a state statute is a factual determination to be made by a city or a court of law.

Section 63-9-11 “provides first-time violators of Chapter 3, 5, or 7 of Title 63 the option to complete a traffic safety violator course.” MS AG Op., *Purdie* at \*4 (Aug. 30, 2024). But “Sections 63-15-4(4), relating to the failure to have proof of insurance, and 63-16-13(1), relating to the failure to maintain insurance, while not prohibiting such a diversion program, also do not specifically contemplate a diversion program.” *Id.* Whether a particular program is consistent with a state statute is a factual determination to be made by a city or a court of law.

Whether a city may lawfully contract with a company to operate a municipal court diversion program for driving without insurance is also dependent upon the applicable facts. As provided in MS AG Op., *Purdie* at \*5, whether a diversion program ultimately meets all statutory requirements is a question of fact upon which this office may not opine.

## **SCHOOLS**

### [Palmer – February 19, 2025 \(OP-2024-00222\)](#)

Mississippi Code Annotated Section 37-9-21 prohibits school board members from voting “for any person as a superintendent, principal or licensed employee who is related to him within the third degree by blood or marriage or who is dependent upon him in a financial way.” There is no exception to Mississippi’s public nepotism statute as set forth in Section 37-9-21 for procedural constraints such as a lack of quorum due to the necessary recusals of certain board members.

### [Turner – March 5, 2025 \(OP-2024-00223\)](#)

A school board may not adopt a donated leave policy more restrictive than what is permitted by statute. The only statutory limitations on who may receive donated leave are that the recipient employee must work in the same district as the donor employee and must be suffering from a catastrophic injury or illness or have an immediate family member suffering from a catastrophic injury or illness. A school board policy requiring that in order to receive donated leave, the employee must have been employed by the District, on a full-time basis, for at least twelve months, and must have worked at least 1,250 hours during the twelve months immediately preceding his

or her leave of absence would prohibit what is otherwise allowed by statute and thus would be preempted by state law.

Further, a school board may not adopt a policy requiring the maximum amount of donated leave received in a calendar year be limited to sixty days. Because the statute allows the recipient employee to receive donated leave upon the determination that the illness meets the statutory catastrophic criteria and does not provide a maximum number of days that the recipient employee may receive, it is the opinion of this office that the school board cannot limit the maximum amount of donated leave that an employee may receive.

A school board may adopt a policy that prohibits recipient employees from receiving donated leave on a retroactive basis so long as the policy comports with Section 96 of the Mississippi Constitution and Mississippi Code Annotated Section 37-7-307(10). A school board may not impose a maximum number of days of donated leave that an employee can use for catastrophic illness or injury.

A policy prohibiting an employee from donating leave after tendering or receiving a notice of separation would also contradict the statute that allows any school district employee to donate leave, and thus, is preempted by state law. If, however, an individual is no longer employed by the district or has separated from employment, he or she would no longer be considered a school district employee and could not donate his or her leave under Section 37-7-307(10).

## **SEPARATION OF POWERS**

[Luke – January 30, 2025 \(OP-2025-00006\)](#)

Based on your city fire chief's described duties, including but not limited to managing all fire department services and activities, serving as the Civil Defense Director, and having the ability to hire and fire employees, it is the opinion of this office that the city's fire chief exercises core powers in the executive branch of government. This opinion is limited to the job description as provided in your request.

[Yarborough – March 13, 2025 \(OP-2025-00017\)](#)

Based on your county solid waste/zoning enforcement officer's described duties, including but not limited to conducting field investigations, issuing and posting warning notices, and receiving citizen complaints, it is the opinion of this office that the county solid waste/zoning enforcement officer does not exercise core powers. Because the County's solid waste/zoning officer does not exercise core powers, the separation of powers doctrine does not prohibit the County's solid waste/zoning enforcement officer from keeping employment if elected to a city council position.

## **TAXES**

[Watkins/O'Donnell – February 19, 2025 \(OP-2024-00240\)](#)

To apply the appraisal procedure set forth in Mississippi Code Annotated Section 27-35-50(4)(d), a residential development must meet the definition of "affordable rental housing" as set forth in Section 27-35-50(4)(d)(i). Whether a particular residential development that qualifies as an "affordable housing development" under a city ordinance would be considered "affordable rental housing" as set forth in Section 27-35-50(4)(d)(i) is a question of fact upon which this office may not opine.

## **WATER DISTRICTS**

[Davis – March 18, 2025 \(OP-2024-00253\)](#)

Tax assessments are not limited to lands previously included within the boundaries of a drainage district. Pursuant to Mississippi Code Annotated Section 51-29-29, “[i]f the commissioners, at any time either before or after the organization of the district, find that other land not embraced within the boundaries of the district will be benefited by the proposed improvement or improvements already made, they *shall* assess the estimated benefit to such lands.” (emphasis added).

## **INTERLOCAL AGREEMENTS APPROVED**

[Hopkins, Jr. – January 17, 2025 \(OP-2024-00236\)](#)

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

[Karanja – January 17, 2025 \(OP-2024-00257\)](#)

The Interlocal Cooperation Agreement between Leflore County and the City of Greenwood regarding the Ramada Inn TIF project is approved.

[Riley – January 17, 2025 \(OP-2024-00262\)](#)

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

[Phillips – January 17, 2025 \(OP-2024-00260\)](#)

The Interlocal Cooperation Agreement between Lamar County, Forrest County, and the City of Hattiesburg regarding the modification and use of Lamar County property as a crisis stabilization unit is approved.

[Shepard – January 17, 2025 \(OP-2024-00261\)](#)

The Interlocal Cooperation Agreement between George County and the City of Lucedale regarding sports and recreation facilities is approved.

[Slover – January 17, 2025 \(OP-2024-00239\)](#)

The Interlocal Cooperation Agreement between Adams County and the City of Natchez regarding fire protection is approved.

[Slover – January 17, 2025 \(OP-2024-00245\)](#)

The Interlocal Cooperation Agreement between Adams County and the City of Natchez regarding consolidated emergency dispatch is approved.

Berry – January 28, 2025 (OP-2024-00248)

The Interlocal Cooperation Agreement between the City of Richland and the City of Pearl regarding law enforcement support is approved.

Hammack – January 28, 2025 (OP-2024-00249)

The Interlocal Cooperation Agreement between Clarke County and the Town of Enterprise regarding law enforcement support is approved.

Hammack – January 28, 2025 (OP-2024-00252)

The Interlocal Cooperation Agreement between Clarke County and the Town of Stonewall regarding law enforcement support is approved.

Dole – February 26, 2025 (OP-2024-00258)

The Interlocal Cooperation Agreement between the Simpson County School District and the City of Mendenhall regarding the use of recreational facilities is approved.

Thaggard – February 26, 2025 (OP-2025-00013)

The Regional Economic Development Act Agreement between Lauderdale County, the Lauderdale County Economic Development District, and the City of Meridian regarding Project Thor and the continued development of the I-20/59 Industrial Park is approved.

Teller – March 20, 2025 (OP-2025-00009)

The Interlocal Cooperation Agreement between Warren County and the Culkin Water District regarding water facilities at the county jail is approved.

Sugg – March 20, 2025 (OP-2025-00020)

The Interlocal Cooperation Agreement between Oktibbeha County and the City of Starkville regarding the Candlewood Suites Project is approved.

Fortenberry – March 20, 2025 (OP-2025-00015)

The Interlocal Cooperation Agreement between Rankin County and the City of Flowood for the planning, engineering, and construction of Fanny Cook Parkway is approved.

Davis, Jr. – March 20, 2025 (OP-2025-00016)

The Interlocal Cooperation Agreement between Alcorn County and the City of Corinth for the provision of animal control services and animal sheltering is approved.

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