



Lynn Fitch
ATTORNEY GENERAL

OFFICIAL OPINIONS PROCESS OVERVIEW AND OPINIONS UPDATE

**Mississippi Association of Supervisors
Fall Educational Workshop
October 21, 2021**

Presented by:

**Whitney Lipscomb
Deputy Attorney General**

**Kyle Williams
Director, Opinions and Policy Division**



Lynn Fitch
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- General Fitch is the chief legal officer and advisor for the State of Mississippi on both civil and criminal matters.
- Her responsibility is to represent public officials and governmental agencies and to issue legal opinions that interpret state law. Most importantly, she represents the people of the State of Mississippi.
- General Fitch earned a Bachelor of Business Administration and a Juris Doctorate at the University of Mississippi. She has over 30 years of both private and government law experience.





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The Opinions and Policy Division

The Division's duties include:

- Issuing official Attorney General's opinions
- Reviewing interlocal agreements
- Legislative Affairs and Policy Development for the Attorney General
- Reviewing firearms complaints filed pursuant to Section 45-9-53



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OPINIONS

June 26, 2020

Moran M. Pope, III, Esq.
Attorney for the City of Hattiesburg
Post Office Box 17527
Hattiesburg, Mississippi 39404-7527

Re: Refund of "Initialization Fee"

Dear Mr. Pope:

The Office of the Attorney General is in receipt of your request for the issuance of an official opinion.

Question Presented

Would the refund of an "initialization and startup fee" by the City of Hattiesburg, initially paid to the City by a limited liability company pursuant to a contract, constitute a donation in violation of Article 4, Section 66 of the Mississippi Constitution?

Background Facts

A limited liability company entered into a contract with the City of Hattiesburg for the development of a subdivision to be located outside of the city limits. Pursuant to the contract, the LLC paid to the City an "initialization and start-up fee" of \$10,000.00 for the purpose of connecting the subdivision to the City's wastewater system. No provision is made in the contract for the refund of this fee if no wastewater is sent into the City's system.

A copy of the referenced contract was not provided to the Office of the Attorney General. Thus, our background facts are based solely upon the recitation of facts as set forth in your written request submitted for the issuance of an official opinion.

Brief Response

Your request is predicated upon a contract, such that the money was paid by an LLC to the City and services were to be provided by the City for the benefit of the LLC in exchange therefore,



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Official Opinions

- Mississippi Code Annotated Section 7-5-25 directs the Attorney General to issue official written opinions upon request by designated public officials and bodies, subject to some limitations. Official opinions represent the official position of the Attorney General’s Office on the topic(s) discussed within the opinion.
- Official opinions analyze questions of state law, with prospective application only.
- Attorney General’s opinions are not binding on courts, but they may be considered persuasive authority.¹ The Supreme Court of Mississippi has found that opinions are entitled to careful consideration² and are “useful in providing guidance to” the court.³
- **Where an opinion is issued, if the requestor provides all relevant facts when seeking the opinion and, in good faith, acts in accordance with the opinion, such requestor enjoys civil and criminal immunity.**⁴

¹ *Ball v. Mayor & Bd. of Aldermen of City of Natchez*, 983 So. 2d 295, 306 (Miss. 2008).

² *McGhee v. Johnson*, 868 So. 2d 1051, 1053 (Miss. Ct. App. 2004).

³ *SASS Muni-V, LLC v. DeSoto Cty.*, 170 So. 3d 441, 447 (Miss. 2015).

⁴ Miss. Code Ann. § 7-5-25.



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Official Opinions

To whom can an opinion be issued?

- The Legislature and any Legislator
- Governor
- Secretary of State
- State Auditor
- State Treasurer
- Insurance Commissioner
- Commissioner of Agriculture & Commerce
- State Superintendent of Education
- Adjutant General
- Commissioner of the Department of Corrections
- Public Service Commission
- Commissioner of the Department of Revenue
- Transportation Commission
- Trustees and heads of universities and colleges
- Any other state officer, department or commission
- District Attorneys
- Superintendents of Education
- **Boards of Supervisors**
- **Sheriffs**
- **Chancery Clerks**
- **Circuit Clerks**
- **Tax Assessors**
- **County Surveyors**
- **County Attorneys and Board Attorneys**
- **All other county officers**
- Mayor and council or board



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Official Opinions

The Attorney General may not issue an opinion on any of the following:

- Questions requiring interpretation of **federal law**
- Questions requiring interpretation of **contracts** or agency **regulations**
- Questions requiring **factual determinations**
- Questions of executive, legislative, or administrative **policy**
- Questions on matters pending before a **court** or **administrative forum**
- Questions involving the official **duties of someone other than the requestor**
- Questions the official or agency has already acted on (**past actions**)



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Official Opinions

From the “Opinions and Policy” page on the Attorney General’s website, visitors can access:

- Opinion Process Document
- Opinion request form
- Recently issued opinions (since January 1, 2020)
- Quarterly summaries of recently issued opinions
-Sign up to receive summaries
- Opinion search database

We ask that all requests for an official opinion be submitted through our website.

The screenshot shows the website's navigation bar with the Attorney General's logo and name, and links for HOME, ABOUT, MEDIA, and DIVISIONS. The main heading is "OPINIONS AND POLICY". A sub-heading "Opinions" is followed by a paragraph: "The Attorney General issues official opinions pursuant to Section 7-5-25, Miss. Code Ann. The official opinion process can be found [here](#)." Below this is a link: "Request form for an official Attorney General's opinion". Another paragraph states: "Submit the request form and your request letter on official letterhead [here](#). If you are in need of the opinion on short notice, please note that and the specific circumstances that necessitate an expedited opinion in your request." This is followed by: "Recently published opinions can be found [here](#)." and "Search Attorney General opinions [here](#)." A bolded section header reads: "The Attorney General's Office publishes opinion outlines, as well, summarizing recent opinions and interlocal agreements." Below this are three bullet points: "The outline covering January 1, 2020 through June 30, 2020 can be found [here](#).", "The outline covering July 1, 2020 through December 31, 2020 can be found [here](#).", and "The outline covering January 1, 2021 through March 31, 2021 can be found [here](#)." At the bottom, there is a button: "+ Receive Opinions Outlines by Email".



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Official Opinions

The Process

- The Division will aim to turn around requests between 75 to 100 days after receipt. For emergency requests, the Division's goal is 30 to 45 days after receipt. Of course, this time frame could be changed depending upon the nature of the request.
 - Please note within the request any need for emergency consideration, including a date by which you need the opinion, or any other relevant dates.
- Draft opinions go through a rigorous review process prior to issuance by the Attorney General including, but not limited to, review by the Opinions Committee, which consists of:
 - Deputy Attorney General over Opinions
 - Solicitor General
 - Director, Civil Litigation Division
 - Director, Criminal Appeals Division
 - Director, State Agencies Division
 - Director, Opinions and Policy Division



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Interlocal Agreements

- The Interlocal Cooperation Act of 1974 authorizes local governmental units to make the most efficient use of their powers by enabling them to contract with other local governmental units or certain state entities to carry out governmental functions.¹
 - “Any power, authority or responsibility exercised or capable of being exercised by a local governmental unit of this state may be exercised and carried out jointly with any other local governmental unit of this state, any state board, agency or commission”²
- Every interlocal agreement must be submitted to the Office of the Attorney General for a determination of whether the agreement is in proper form and compatible with Mississippi law.
- Section 17-13-9 sets forth specific requirements that must be included within interlocal agreements. If a state board or commission is a party to an interlocal agreement, the official meeting minutes authorizing the entry into such agreement should be provided with the agreement.
- Detailed information related to interlocal agreements may be found on the Attorney General’s website. On the Opinions and Policy Division’s page, click the “Interlocal Agreements” tab.

¹ Miss. Code Ann. § 17-13-1 *et seq.*

² Miss. Code Ann. § 17-13-7.



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MS AG Op., *Roberson* (Sept. 30, 2021)

Questions Presented

1. When a county passes an ordinance, how many times must it advertise in the local newspaper?
2. Must all ordinances be advertised in their entirety, or may they be shortened and posted on a website?

Brief Answers

1. For ordinances dealing with a subject matter that is not governed by specific statutory publication requirements, the Mississippi Code does not prescribe a specific number of times that a county must advertise such an ordinance.
2. Ordinances dealing with a subject matter not governed by a publication requirement may be shortened for dissemination. If a statute requires publication in a specific manner, the ordinance must be published in such manner. In the absence of a statutorily required medium of publication, the board of supervisors may disseminate on a website.



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MS AG Op., *Barton* (Sept. 30, 2021)

Question Presented

Does the board of supervisors have authority to increase the statutory base salary of the county prosecutor by adding secretarial expenses to the salary, thereby increasing the financial obligations of the county regarding retirement and taxes for the elected official?

Brief Answer

No. The salary of the county prosecutor is separate from secretarial expenses paid by the board of supervisors to the county prosecutor.



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MS AG Op., *Killebrew* (Sept. 30, 2021)

Questions Presented

1. May a county provide healthcare benefits to employees who work part-time or do not receive a salary?
2. May a county provide healthcare benefits to certain employees and not to others?

Brief Answers

1. A county may provide healthcare benefits to full time employees who are paid directly by the county.
2. A county may elect to provide group health insurance only for specified groups of employees.



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MS AG Op., *Munn* (June 30, 2021)

Questions Presented

1. What is the Board’s responsibility regarding the fee paid to constables for cases where the state fails in the prosecution—the fee for “state fail” cases?
2. Must the Board determine, prior to the end of the calendar year, whether the constable is or is not entitled to the fee?
3. In the absence of making a finding in the minutes that a constable is entitled to the fee, what is the Board’s responsibility?

Brief Answers

1. If a constable performs all the duties required by Section 25-7-27(1)(f), the Board must pay the “state fail fee” to the constable. A constable is ineligible to collect the fee where the Board determines, consistent with the facts, that the constable did not do the following in cases in which the state failed in the prosecution: (1) serve, or diligently attempt to serve, all warrants and other process presented to him or her for service; and (2) attend all trials, unless lawfully excused or otherwise unavailable for a legitimate reason.



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MS AG Op., *Munn* (June 30, 2021) cont'd

2. We find no requirement that the Board make a finding that the constables in question are not entitled to the fee. On an annual basis, if the Board determines, consistent with the facts, that the constables performed the required duties and are entitled to the fee, the Board should, prior to paying the fee, make an affirmative finding of such entitlement. Though the fee, if earned, must be paid on an annual basis, we find no requirement that such allowance be made prior to the end of a calendar year.
3. As noted in response to the second question, before paying a constable the fee, the Board is responsible for making an affirmative finding, consistent with the facts, that the constable in question performed the required duties and is entitled to the fee.



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MS AG Op., *Ross* (May 3, 2021)

Question Presented

May a board of supervisors engage a firm to conduct a feasibility study to determine whether the redevelopment of a vacant school building for the purpose of attracting and housing resident artists thereby enhancing the county's image as a tourist and vacation destination and pay for a portion of the feasibility study?

Brief Answer

Yes. Pursuant to the county "home rule" statute, the Board may engage a firm to conduct a feasibility study and pay for a portion of the study, provided it finds that the expenditure will benefit the county.



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MS AG Op., *Eldridge* (Jan. 5, 2020)

Questions Presented

1. Does the Uniform Electronic Transactions Act, or any other law, authorize the County to utilize electronic signatures for the signature and attestation of the Board of Supervisors' minutes, resolutions or orders?
2. Does the Uniform Electronic Transactions Act, or any other law, authorize the County to utilize electronic signatures for the associated contracts, correspondence, etc., provided that the County adopt standards and all parties agree to conduct transactions by electronic means?
3. Does the Uniform Electronic Transactions Act, or any other law, authorize the County to utilize electronic signatures for purchase orders?

Brief Answer

Electronic signatures satisfy requirements for signatures and attestations on boards of supervisors' minutes and signatures on boards of supervisors' resolutions, orders, contracts, correspondence and purchase orders.



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MS AG Op., *Allen* (Dec. 8, 2020)

Questions Presented

1. Does the Uniform Electronic Transactions Act, or any other law, authorize the County to utilize electronic signatures for the signature and attestation of the Board of Supervisors' minutes, resolutions or orders?
2. Does the Uniform Electronic Transactions Act, or any other law, authorize the County to utilize electronic signatures for the associated contracts, correspondence, etc., provided that the County adopt standards and all parties agree to conduct transactions by electronic means?
3. Does the Uniform Electronic Transactions Act, or any other law, authorize the County to utilize electronic signatures for purchase orders?

Brief Answer

Electronic signatures satisfy requirements for signatures and attestations on boards of supervisors' minutes and signatures on boards of supervisors' resolutions, orders, contracts, correspondence and purchase orders.



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MS AG Op., *Slover* (Nov. 10, 2020)

Questions Presented

1. Does the term “employee” in House Bill 1647 (2020 Regular Session) include elected officials such as chancery clerks, circuit clerks and constables?
2. What is the meaning of “leave with pay” as used within House Bill 1647 (2020 Regular Session)?

Brief Answers

1. No. House Bill 1647 does not contemplate the inclusion of elected officials, who are not subject to county leave policies or those separate leave policies adopted by such officials for their own respective employees.
2. “Leave with pay,” as used within House Bill 1647 (2020 Regular Session), refers to “administrative leave,” and means that county employees who are subject to the county’s leave policies may be granted such leave by the board of supervisors, while receiving the compensation to which employees are entitled when they are on regular leave as provided in the respective county’s leave policies, formally adopted by the board of supervisors pursuant to Mississippi Code Annotated Sections 19-3-63 and 25-11-103(i).



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MS AG Op., *Roberson* (July 31, 2020)

Question Presented

Does a board of supervisors have the right to clean out and fix levies on a creek that runs through private property?

Brief Answer

Upon a determination that the health, comfort and convenience of the inhabitants of the county will be promoted, the board of supervisors may provide the labor, materials and supplies to clean or clear the creek on private property to prevent additional flooding. However, the board must satisfy the prerequisites of Mississippi Code Annotated Section 19-5-92.1(2).



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MS AG Op., *Miller* (June 26, 2020)

Question Presented

Are there exceptions to the rule provided by Mississippi Code Annotated Section 27-41-11 requiring the payment of penalties and interest on delinquent taxes?

Brief Answer

Yes. If the board of supervisors determines that an error was made by the tax assessor in not having properly assessed the taxpayer for the correct parcel of real property, then the board would have authority to determine that the property owner does not owe penalties and interest for the unpaid taxes.



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ATTORNEY GENERAL'S OPINIONS UPDATE

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