



COURTS AND AG OPINIONS

- * If a court determines an AG opinion is manifestly wrong and without substantial support, the opinion provides no protection.
- * The Supreme Court has historically applied the correct construction prospectively, thereby not penalizing a party's reliance on the erroneous opinion.
- * A party is insulated from liability only when they are relying on an opinion specifically written (addressed) to them – and not to someone else.
- * AG opinions issued on matters that are already in litigation are ineffectual.
- * AG opinion based on a request that did not provide all of the relevant facts necessary for the opinion is similarly ineffectual.
- * With respect to litigation, while AG opinions are not binding, "they are certainly useful in providing guidance to th[e] Court."



CHANGE IN FORM OF GOVERNMENT

MS Att'y Gen. Op. to Gene Barton, Esq. (June 14, 2022) (Op. No. 2022-00140)

- * Request was to change from a "Special Charter" form of government to a "Code Charter" form of government.
- * Section 21-31-1 of the Mississippi Code requires an election to change to a "Code Charter" form of government. While Miss. Code Ann. § 21-31-1 does not specify how to initiate the required election to determine whether the qualified electors of a municipality are in favor of a change in government, Section 23-15-859 sets forth the procedures to follow when a statute authorizes a municipal special election.



DISPOSAL OF SURPLUS PROPERTY

MS Att'y Gen. Op. to Bobby Mook, Esq. (July 11, 2022) (Op. No. 2022-00035)

- * A city is using property as a refuse location and "transfer location" but seeks to dispose of the same under Miss. Code Ann. § 57-7-1.
- * While § 57-7-1 governs the disposal of surplus airport land or other lands no longer needed for other governmental purposes, the authority to dispose of property under this statute is limited to the sale or lease of surplus property for commercial or industrial purposes.
- * Under this review, a city must determine whether property is "surplus," defined as meaning it is no longer needed for municipal purposes. Such determinations are factual ones to be made by the city itself subject to review by the State Auditor's Office.
- * Fair market value" not required for sales/leases under § 57-7-1, but such disposal should be made for "good and valuable consideration" and may not be such as would constitute a donation.



ACCESS TO PERSONNEL RECORDS

MS Att'y Gen. Op. to Gregory R. Holcomb, Esq. (July 11, 2022) (Op. No. 2021-00219)

- * Under a code charter form of government, Miss. Code Ann. § 21-3-15 gives the mayor executive power of the municipality and "superintending control of all the officers and affairs of the municipality."
- * AG has previously opined that "superintending control" means "general oversight and supervision of municipal departments and employees...." and that members of a city's governing authority have "full rights of access to information which is necessary to perform their duties...."
- * In order for a mayor to exercise general oversight and supervision of city employees, it is necessary for the mayor to have access to city employee personnel records.



RESTRICTED USE OF ON-STREET PARKING

(MS Att'y Gen. Op. to Charles Bruce Brown, Esq. (August 2, 2022) (Op. No. 2020-00145))

- * A city cannot deem a public right-of-way "surplus" (no longer needed for municipal purposes) and then lease the same to a private entity or individual for use as an outdoor dining area by a restaurant. The only way for an adjoining property owner to utilize an alleyway is to "close and vacate" the same pursuant to Miss. Code Ann. § 21-37-7.
- * Absent a declared emergency in which certain municipal powers may be expanded, a municipality is not authorized to allow on-street parking spaces to be utilized exclusively by the patrons of a private business to the exclusion of other members of the public.

In what City is this City Hall?






MUNICIPAL DRUG TESTING

MS Att’y Gen. Op. to David Ringer, Esq. (August 2, 2022) (Op. No. 2021-00186)


- * Section 71-7-1, et seq. of the Mississippi Code governs employer alcohol and drug testing policies.
- * Part of this statutory scheme is the mandate that if any employer voluntarily chooses to follow the chapter, the employer must implement the statute fully. See Miss. Code Ann. § 71-7-3(1).
- * A government employer does NOT have the authority to require all employees to submit to drug and alcohol screening as a condition of employment or continued employment. Instead, the employer may only require neutral selection testing of employees engaged in law enforcement, security, and/or activities affecting the public health or safety. See Miss. Code Ann. § 71-7-7(2).
- * This Opinion briefly mentions the Mississippi Medical Cannabis Act and refers municipalities to §§ 7, 8, and 910 in the legislation to keep in mind when crafting a drug testing policy.



MEDICAL CANNABIS ACT: “SCHOOL”

MS Att’y Gen. Op. to J. Kirkham Povall, Esq. (August 2, 2022) (Op. No. 2022-00069)

- * The AG’s Office was asked whether a “dance studio” should be considered a “school” under the Mississippi Medical Cannabis Act.
- * “School” is specifically defined in Section 2(gg) in the Act (Senate Bill 2095), and this definition is similar to the definition of “school” in the Mississippi Compulsory Attendance Law (Miss. Code Ann. § 37-13-91).
- * The AG opined that both laws used the phrase “school year” to define “school,” which differentiates this sort of institution from other programs that may offer “some form of instruction” to people but which does not “promote children from grade to grade.”
- * Also, the fact that the Act sets the distance requirement from schools “as well as child care facilities” is significant as this indicates the Legislature’s intent that “school” does NOT include all places where children may receive instruction.



AMENDMENTS TO WASTE DISPOSAL CONTRACT

MS Att’y Gen. Op. to Tommie S. Cardin, Esq. (August 11, 2022) (Op. No. 2022-00090)

- * A solid waste management district entered into a contract with a company after issuance of a request for proposals pursuant to Miss. Code Ann. § 31-7-13(f) for “operations and construction services” involving solid waste (disposal).
- * The specifications in the request for proposals included a provision allowing the contractor to request an annual adjustment to the contracted waste disposal rate based on a consumer price index subject to a three (3) percent cap. The Due to unprecedented increases in costs, the contractor sought an annual adjustment in excess of the cap. As the proposed adjustment was not contemplated by the parties when the original request for proposals was issued or when the parties agreed to the contract, the district would have to “enter a new contract after going through the proper procurement procedure.”



TRANSIENT VENDOR LICENSING

MS Att'y Gen. Op. to Honorable Shelton Shannon (August 22, 2022) (Op. No. 2022-00042)

- * The municipal tax collector has the authority to determine the proper classification of municipal businesses and shall issue the required license(s). See Miss. Code Ann. § 27-17-451 and § 27-17-453. A municipal governing board does not have the authority to "reclassify" or change a taxing classification.
- * A "transient vendor" is defined as "any person who transacts transient business in this state either in one locality or by traveling from place to place in this state. The term includes a vendor who for the purposes of carrying on such business hires, leases, uses or occupies any building, structure, motor vehicle, railroad car or real property." Miss. Code Ann. § 75-85-1(a).
- * Even if a business is sited at one specific location, if it is in operation for less than six months (e.g., a fireworks stand), it is considered a transient business and the owner is a transient vendor. Whether a specific fireworks business is a "transient vendor" is a determination that must be made by the municipal tax collector.

In what City is this City Hall?





FORGIVENESS OF FINES AND COSTS

MS Att'y Gen. Op. to Honorable Wes Curry (August 25, 2022) (Op. No. 2022-00033)

- * A municipal court judge has the general statutory authority under Miss. Code Ann. § 21-23-7(5) to suspend fines in misdemeanor cases upon such terms as may be set by the court.
- * Therefore, a judge can suspend fines previously adjudicated by the court on condition that a defendant attend and complete a GED class or workforce development class. However, a judge cannot grant "amnesty" or forgive or discount old fines as this would amount to an unlawful donation pursuant to Article 4, Section 66 of the Mississippi Constitution.



DONATION OF SICK LEAVE

MS Att'y Gen. Op. to C. Gaines Baker, Esq. (September 6, 2022) (Op. No. 2022-00057)

- * A governmental entity had a "donated sick leave" policy under which employees could donate sick and vacation leave to a fellow worker who suffers from a catastrophic injury or illness. The question here was whether such an employee who was "mistakenly" granted more sick leave by their governmental employer than they had accumulated be permitted to "repay" the employer through use of "donated" sick leave pursuant to the leave donation policy.
- * The AG opined that such employee could utilize "donated" sick leave to repay the governmental employer and this would not amount to a "retroactive salary increase nor extra compensation." The AG noted that this is consistent with prior opinions from its Office that "erroneous payments made because of an administrative error may be corrected."



DONATION OF MUNICIPAL PROPERTY

MS Att'y Gen. Op. to Derek Dewayne Hopson, Jr., Esq. (September 21, 2022) (Op. No. 2021-00223)

- * In this opinion, it was represented that a Mississippi town had previously promised to construct homes for citizens under the community block grant program, which did not occur, and that the citizens were subsequently promised by an earlier mayor that municipally-owned property that they resided in for a long time would be deeded to them. The town sought approval from the AG to convey this municipal property to these citizens.
- * The AG opined that such a conveyance would amount to an unlawful donation. However, if the town is still a participant in the "Community Block Grant Program," it could be afforded the additional authority granted by Miss. Code Ann. § 43-35-503 ("power to buy, lease or sell real or personal property obtained through the use of or in connection with such grant or grants").



EXCAVATIONS INVOLVING UNDERGROUND UTILITIES

MS Att'y Gen. Op. to J. Lane Greenlee, Esq. (October 11, 2022) (Op. No. 2022-00058)

- * Every entity or individual owning or operating underground utility lines or underground facilities is required to mark the approximate location of the underground lines and facilities in accordance with Miss. Code Ann. § 77-13-9(1) when notice is received of the pending excavation.
- * A town, as owner/operator of an underground utility or facility, could meet an excavator at the site and its verbal indication of the location of its utility lines may satisfy the requirements of Miss. Code Ann. § 77-13-9(2), it would not cover all of the town's duties under other provisions of the "E811" Act (e.g., Miss. Code Ann. §§ 77-13-9(1), 77-13-9(5), 77-13-12(2), and 77-13-17(7)).

In what City is this City Hall?





INCENTIVE PAY

MS Att'y Gen. Op. to Honorable Keith Gaskin (October 11, 2022) (Op. No. 2022-00046)

- * "Incentive pay" for future performance is contracted for prior to the date when services are to be performed, determined in accordance with objective standards of measurement, and earned by personal services performed by the employees, then a city is authorized to make such payments.
- * Sections 66 and 96 of Article IV of the Mississippi Constitution prohibits a public entity from paying employees "extra compensation" for past services because the same would amount to an unlawful donation.
- * Permitted incentive pay must be "(1) contracted for between the parties or with the employee prior to the date when services are to be performed; (2) determined in accordance with objective standards of measurement; and (3) earned by personal services performed by the employees." Such incentive pay is excluded from "earned compensation" for purposes of PERS.



MUNICIPAL COURT JUDGES

MS Att'y Gen. Op. to Honorable Michelle Douglas (October 11, 2022) (Op. No. 2022-00049)

- * State law (Miss. Code Ann. § 21-23-1) requires all municipalities to establish a municipal court. Whether a city is required to have a municipal judge depends on its population. Section 21-23-5 holds that municipalities with a population of less than 10,000 according to the latest available federal census are not required to have a municipal judge or prosecuting attorney appointed. However, without such a judge, the city would not be able to enforce its ordinances, including those involving speeding or related to moving violations.



USE OF MUNICIPAL POLICE OFFICERS IN SERVING JUSTICE COURT WARRANTS

MS Att'y Gen. Op. to Honorable Steve Ross (October 21, 2022) (Op. No. 2021-00149)

- * Rule 3 of the Mississippi Rules of Criminal Procedure holds that arrest warrants may be served by any lawful officer with arrest powers. Section 99-3-1 of the Mississippi Code provides that police officers may only serve arrest warrants within their municipal jurisdiction.
- * So, a justice court judge can use municipal police officers to serve contempt warrants issued by the justice court judge. However, the "constable's fee" authorized under Miss. Code Ann. § 25-7-27 cannot be collected by the justice court and then paid to the city.



RETROACTIVE TAX EXEMPTIONS

MS Att'y Gen. Op. to Michael R. Moore, Esq. (October 28, 2022) (Op. No. 2022-00130)

- * Section 27-31-101 of the Mississippi Code authorizes municipal governing authorities, in their discretion, to grant exemptions from ad valorem taxation to certain manufacturers and other new enterprises as determined by the Mississippi Department of Revenue and enumerated in Miss. Code Ann. § 27-31-101(3). Whether an entity is entitled to a tax exemption for replacement equipment pursuant to Miss. Code Ann. § 27-31-105 is a factual determination that may only be made by the city.
- * A municipality may only grant tax exemptions for the then current tax year and the years remaining within the ten-year total period and not for previous tax years. See Miss. Code Ann. § 27-31-105.

In what City is this City Hall?





TERMINATION OF WATER SERVICE FOR NONPAYMENT

MS Att'y Gen. Op. to Honorable Leslie Childress (October 31, 2022) (Op. No. 2022-00026)

- * A city that provides sewer service but not water service outside of the city's jurisdictional limits does not have the authority to terminate water service for nonpayment of sewer service.
- * A city can provide utility services to citizens within five (5) miles outside its corporate limits. See Miss. Code Ann. § 21-27-39. And the city can discontinue any or all of the services it provides upon failure to pay for the services. See Miss. Code Ann. § 21-27-23(e). According to § 21-27-23(e), the authority to discontinue services is limited to services provided by the municipality.



COMPENSATION OF CITY ATTORNEY FOR SERVICE TO TOURISM COMMISSION

MS Att'y Gen. Op. to Honorable Carolyn McAdams (November 8, 2022) (Op. No. 2022-00066)

- * Local and private legislation created a tourism commission and set out that the "city attorney" shall be the attorney for the commission. A question arose over who should be responsible for paying the fees for this attorney.
- * City governing authorities are statutorily authorized to annually appoint and employ an attorney for the city. See Miss. Code Ann. § 21-15-25. This same statute provides that the city attorney may be paid additional compensation for duties outside the scope of the contracted-for duties and services. Therefore, the city attorney is to be paid by the municipality for the services he/she provides. The determination as to whether a particular service is outside the scope of regular duties of the city attorney is a factual one to be made by the city's governing authorities.



POLLING PLACE LOCATIONS

MS Att'y Gen. Op. to Kimberly Nailor, Esq. (November 23, 2022) (Op. No. 2022-00122)

- * A city governed by a special charter whose special charter is silent on the number of polling places is governed by general law (Miss. Code Ann. § 23-15-557), which requires the city to establish polling places equal to its number of precincts.
- * Section 23-15-557 also authorizes a municipality to create one precinct for the entire municipality, in which case there would be only one polling place for all qualified electors to cast their ballots.
- * There is no statutory authority for a municipality to establish a municipal polling place outside its municipal limits.



FORGIVENESS OF PAST DUE GARBAGE CHARGES

MS Att'y Gen. Op. to Rocky W. Eaton, Esq. (January 3, 2023)

- * Section 21-27-27 expressly prohibits a municipality from providing "free" utilities to any private person. In addition, there is no authority for a municipality to forgive delinquent garbage fees where there is no dispute as to garbage services provided to the address.
- * If a citizen owes a municipality for past due garbage charges, but some of these charges were incurred during a period of time when the city had removed the citizen's garbage can and the citizen did not receive garbage collection services as a result thereof, then the citizen would not owe a debt for an unpaid charge associated with the services that were not received.

In what City is this City Hall?






MOTOR-ASSISTED STAND-UP SCOOTERS


MS Att'y Gen. Op. to Robert W. Wilkinson, Esq. (January 3, 2023)

- * At present, there are no general statutes governing the operation of "motor-assisted stand-up scooters" on public roads and sidewalks. There is general legislation that addresses the operation of "electric bicycles" and "electric personal assistive mobility devices," both of which are excluded from the definition of "motor vehicle" found in Miss. Code Ann. § 63-3-103.
- * The AG opined that whether a "motor-assisted stand-up scooter" falls within the definition of an "electric personal assistive mobility device" is a question of fact to be determined by a city's governing authorities. If a city governing authority makes such a finding, then Miss. Code Ann. § 63-3-208 sets out where these may be operated. The AG advised that if no such finding is made, then a city "would need to pursue local and private legislation in order to enact ordinances regulating the operation of motor-assisted stand-up scooters."




REGULATION OF RESIDENTIAL PROPERTY
MS Att'y Gen. Op. to Brock Campbell, Esq. (January 19, 2023)

- * Sections 21-17-5 and 21-19-1 grant municipalities general authority to adopt ordinances and amend the same with respect to municipal affairs so long as such ordinances are not inconsistent with the State's constitution and other statutory provisions and Section 21-19-1 authorizes municipal governing authorities to make regulations to secure the general health of the municipality and prevent, remove, and abate nuisances. Section 21-19-15 grants cities the power to preserve good order and peace and to prevent injury to, destruction of, or interference with public or private property.
- * Under this statutory scheme, a city is entitled to adopt a lawful ordinance and carry out its regulatory authority with respect to rental properties. Whether residential property governed by an installment sales contract or contract for deed between a landlord and a third party is actually a rental contract is a fact question to be decided on a case-by-case basis.



POSSESSION OF TOBACCO ON SCHOOL GROUNDS
MS Att'y Gen. Op. to Honorable Lewie G. "Skip" Negrotto, IV (January 19, 2023)

- * Section 97-32-9 of the Mississippi Code prescribes punishment for persons under twenty-one (21) years of age who are found to be in possession of tobacco or alternative nicotine product and found to be in violation of "any other" statute.
- * A Municipal Court has jurisdiction to adjudicate students cited for offenses under this statute. However, a Municipal Court is not authorized to charge and punish a student solely for possessing tobacco or an alternative nicotine product on educational property. See *Miss. Code Ann.* § 97-32-9.
- * While § 97-32-9 prohibits students from possessing tobacco or alternative nicotine product on any educational property (as defined in § 97-37-17), the criminal punishment set out in § 97-32-9 is limited to those persons under twenty-one (21) years of age who are found by the court to be in violation of "any other statute" other than § 97-32-9 AND who are also found to be in possession of tobacco or alternative nicotine product.



**TAX EXEMPT STATUS OF LEASEHOLD INTEREST
HELD IN MUNICIPAL PROPERTY**
MS Att'y Gen. Op. to Jeffrey S. Bruni, Esq. (January 20, 2023)

- * Pursuant to *Miss. Code Ann.* § 27-31-1(d), all property belonging to a historical society that is used exclusively for the association and not for profit is exempt from taxation. In addition, in most cases, real property belonging to a municipality is tax exempt under *Miss. Code Ann.* § 27-31-1(b). However, a leasehold interest in municipal property is subject to ad valorem taxes unless a specific statutory exemption from the same exists. And such exemptions are strictly construed in favor of taxation and against the exemption.
- * While leasehold interests are specifically addressed and included in other exemptions listed in *Miss. Code Ann.* § 27-31-1, leasehold interests held by a historical society are not addressed in the exemption provided in *Miss. Code Ann.* § 27-31-1(d), nor is there a separately stated exemption for leasehold interests held by historical societies.

In what City is this City Hall?



QUESTION OF CONTEMPT ARISING OUT OF MUNICIPAL COURT
MS Att'y Gen. Op. to Honorable Anthony Nowak (January 24, 2023)

- * This opinion involved the assessment of whether something constituted a "civil contempt" or a "criminal contempt" in Municipal Court. The AG opined that whether a matter constitutes civil or criminal contempt is a mixed question of fact and law on which it could not provide an official opinion. However, the issue is determined by "looking at the primary purpose of the contempt order." (Quoting *Donaldson v. Cotton*, 336 So. 3d 1099, 1109 (Miss. 2022) (internal citations and quotation marks omitted)).
- * Notwithstanding, a Municipal Court has the authority to imprison someone in a civil contempt "in order to coerce the performance of a decree." (Quoting *Masonite Corp. v. International Woodworkers of America*, AFL-CIO, 206 So. 2d 171, 179 (Miss. 1967)).

INCENTIVE PAY
MS Att'y Gen. Op. to Peter C. Abide, Esq. (January 24, 2023)

- * A municipality can make or provide incentive payments for future performance when it is contracted for prior to the date when services are to be performed, determined in accordance with objective standards of measurement, and earned by personal services performed by the employees.
- * The AG opined here that whether proposed incentive payments for "wellness checks" meet the requirements for allowance of incentive payments is a determination to be made by the municipality consistent with fact and spread upon the minutes of the city's governing authority. The city here sought to pay employees \$200 a year for those who received an annual "wellness check" with their primary care physician.



PRIVATE INVITATIONS TO BID

MS Att'y Gen. Op. to Renetha L. Frieson, Esq. (January 24, 2023)

- * Section 31-7-13(c)(i) of the Mississippi Code sets out the mandatory bidding procedure for purchases over \$75,000. If no bids are received in response to an invitation to bidders, then the procedure set out therein must be re-initiated. The AG opined that a private party (here, a design consultant/contractor) cannot solicit "bids" on its own (in lieu of the statutory requirements involving publication and notification, etc.) and then provide its recommended successful bidder to the city for approval. In addition, a municipality must comply with the requirements for determining the lowest and best bid in Miss. Code Ann. § 31-7-13(d)(i) and cannot rely on determinations made by others (e.g., a private consultant/contractor).




VOLUNTARY UTILITY BILL "ROUND UP" OPTION

MS Att'y Gen. Op. to Lee Turner, Esq. (February 9, 2023)

- * As is well known, donations by a municipality are unlawful unless otherwise prescribed by law. Also, a city does not have the authority to intentionally collect a surplus of utility system revenues. See MS Att'y Gen. Op. to Blocker (Mar. 28, 2003). Section 21-27-23 of the Mississippi Code authorizes a municipality to "establish, maintain and collect rates for the facilities and services offered" by a municipal utility system and Sections 21-27-57 and 21-27-61 prescribe how a city is to use the revenues collected for its utility system. The use of "if any" in these statutory provisions regarding surplus revenues indicates that cities should not intentionally collect surplus revenues.
- * As a result, a city does not have the authority to implement a voluntary option for a citizen / customer to "round up" his or her monthly water and sewer bill to the nearest dollar and then donate the proceeds to a local community action agency.

In what City is this City Hall?






**AUTHORITY TO CREATE COMMUNICATION POLICY WITHIN
MUNICIPAL MARSHAL DEPARTMENT**

MS Att'y Gen. Op. to Christopher D. Hemphill, Esq. (February 24, 2023)


- * A town marshal (chief of police) is the municipality's "chief law enforcement officer" having "control and supervision of all police officers employed by [the] municipality." See Miss. Code Ann. § 21-21-1. The AG opined here that a town marshal, as the chief law enforcement officer, "may create and enforce an internal communication policy and employment protocols."
- * It was pointed out that the AG is precluded from opining on the specifics of local policies and proposed local policies. And therefore did not evaluate the whether the town marshal's policy requiring his/her employees to not discuss police business with any other municipal official, including the town attorney, without first discussing the same within their "chain of command."



DONATION TO BOYS AND GIRLS CLUB

MS Att'y Gen. Op. to Ben L. Gilbert, Jr., Esq. (April 26, 2023)

- * Section 21-19-67 (a) expressly provides in part that a municipality may donate funds to a chartered chapter of the Boys and Girls Club of America "located within the municipality..." The question here was whether a town could donate to a chapter that was not physically located within the corporate limits of the town but was located in nearby areas and did provide services to inhabitants of this town.
- * The AG pointed out that it had previously found that Miss. Code Ann. § 21-19-67(a) does not require that a chartered chapter have its principal office located within the municipality and that "operation of the club within the municipality " is sufficient to meet the requirements of this statute. See MS Att'y GEN. OP. TO MITCHELL (Nov. 16, 2018).



"UNANIMOUS VOTE" ON UTILITY AUTHORITY

MS Att'y Gen. Op. to James C. Simpson, Jr., Esq. (April 26, 2023)

- * Pursuant to Miss. Code Ann. § 49-17-429, a utility authority may only enter a contract for solid waste services by unanimous vote of all members of its governing board.
- * An abstention by one member of the authority's governing board prevents a unanimous vote needed to enter into the contract.
- * Generally, abstentions are counted with the prevailing side. However, if a statute provides specific voting requirements, those requirements apply over general parliamentary procedures. See Oakman v. Town of Florence, 624 So. 2d 995, 997 (Miss. 1993).



SECONDARY EMPLOYMENT FOR POLICE CHIEF

MS Att'y Gen. Op. to Tonya Franklin, Esq. (April 26, 2023)

- * There is no separation of powers violation when an individual simultaneously serves in two different positions within the same branch of government. See Miss. CONST. ART. I, § 2.
- * Since a municipal police chief is in the "executive" branch of government and employment in the city's utility department would similarly be within the executive branch, the official could serve in his part-time role as chief of police while also serving as an assistant water utility worker. However, the AG has previously opined that the police chief can be engaged in secondary public employment "only during hours he is not on duty and being compensated as Chief of Police." See MS ATT'Y GEN OP. TO CARNATHAN (Aug. 30, 2019).

In what City is this City Hall?






APPLICABILITY OF MUNICIPAL ZONING ORDINANCE ON UTILITY AUTHORITY


MS Att'y Gen. Op. to Michael R. Moore, Esq. (May 10, 2023)

- * A utility authority created pursuant to Miss. Code Ann. § 49-17-731 is generally subject to municipal zoning ordinances. Whether a particular ordinance is enforceable against the utility authority is a factual determination that must be made by the municipal governing authority and is subject to judicial review. While reasonable municipal zoning restrictions may be enforced, the city may not enact an ordinance that would have the effect of prohibiting the utility authority from fulfilling its statutory obligations. See MS ATT'Y GEN. OP. TO LITCHLITER (May 15, 2009).
- * While a municipality has authority to adopt an ordinance to regulate or restrict the emission of nuisance odors under Miss. Code Ann. § 17-1-3(1), the city has "no authority" to enforce such an ordinance against a company located outside of the city's municipal boundaries. See also MS ATT'Y GEN. OP. TO JONES (Aug. 17, 1994).



AUTHORITY TO REQUIRE SECURITY CAMERA SYSTEMS
MS Att’y Gen. Op. to H. Donald Brock, Jr., Esq. (May 18, 2023)

- * While the authority afforded municipalities under Miss. Code Ann. § 21-17-5 and § 21-19-15(1) is broad in scope, this is limited by the requirement that municipal actions comply and be consistent with the Mississippi Constitution, the Mississippi Code, and “any other statute or law of the State of Mississippi.” See Miss. Code Ann. § 21-17-5(1).
- * The AG opined that a municipality could not adopt an ordinance that requires the installation of security camera systems or the maintenance and storage of security camera recordings for a certain period of time as the same would exceed municipal authority under State law. The AG pointed to various constitutional provisions associated with privacy and security of individuals against arbitrary invasions by governmental officials (constituting a “search”) and cited Okuyesen v. City of Starkville, 333 So. 3d 573, 582 (Miss.App. 2022) for the proposition that a “municipal ordinance cannot authorize a search that the Mississippi Constitution prohibits.”



WITHHOLDING OF TAXES
MS Att’y Gen. Op. to Thomas L. Tullios, Esq. (May 18, 2023)

- * Salaries paid to municipal elected officials are considered “wages paid to a salaried employee” of the city for purposes of taxation. The AG has also previously opined that for purposes of workers’ compensation coverage, even though aldermen are elected instead of hired under a contract of employment, “elected officials receive a salary and perform duties on behalf of the municipality, and this being the case, are to be considered ‘employees’ of the municipality...” See MS Att’y Gen. Op. to Tullios (Dec. 19, 2003).
- * Whether an official working for the city serves as an “employee” or a “contractor” is a determination of fact to be made by the city’s governing authority based on the circumstances surrounding the work arrangement.

In what City is this City Hall?

