MISSISSIPPI MUNICIPAL ATTORNEYS ASSOCIATION

2025 SUMMER CLE SEMINAR

Attorney General Opinions Update

(for January 1, 2025 – June 30, 2025)

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I. PREFACE

The Mississippi Attorney General ("AG") is compelled to give written (official) opinions (without fee) to various public officials. This duty is set forth in Miss. Code Ann. § 7-5-25 (Rev. 2019). Section 7-5-25 lists the specific officials who can request these opinions. Included in this list, among others, are the "boards of supervisors of the several counties, the sheriffs, the chancery clerks, the circuit clerks, the superintendents of education, the tax assessors, county surveyors, the county attorneys, the attorneys for the boards of supervisors, mayor or council or board of aldermen of any municipality of this state, and all other county officers (and no others)...." According to the statute (§ 7-5-25), requests for these opinions must be "in writing." The requirement that the AG issue these official opinions is "upon any question of law relating to [these officials'] respective offices."[1]

Again, the process for requesting and receiving opinions has changed within the past several years. Requests for opinions must be submitted electronically through the AG's website and via a set digital form in addition to a written letter on letterhead of the requesting party (see Exhibits 1 and 2 attached hereto). According to the AG's website, opinions are attempted to be issued within 100 days after receipt. For qualifying requests that are "emergencies," opinions are attempted to be issued within 45 days after receipt. In order to request an expedited opinion, the requesting party must minimally set forth: (1) the specific circumstances that necessitate an expedited opinion; and (2) the date by which the expedited opinion is needed. If the AG determines the emergency to be legitimate, "reasonable efforts shall be made to accommodate the request for an expedited response."[2]

Why an AG Opinion? Attorneys representing elected officials of political subdivisions may have several different reasons for requesting an official opinion from the AG. Section 7-5-25 provides the primary reason:

> *"When any officer, board, commission, department or person authorized by this section to require such written opinion of the Attorney General shall have done so and shall have stated all the facts to govern such opinion, and the Attorney General*

[1]Section 7-5-23 of the Mississippi Code requires the Attorney General to keep an "opinion book," "in which he shall record or cause to be recorded each and every opinion given by him, or by his assistants, in pursuant of law. Each of his opinions shall be prefaced with a clear and concise statement of the facts upon which it is predicated. The 'opinion-book' shall be kept well indexed, both as to subject matters and parties."

[2]For a copy of the AG's protocol for requesting official opinions (from the AG's website), see Exhibit 3 attached hereto.

> *has prepared and delivered a legal opinion with reference thereto,* ***there shall be no liability, civil or criminal, accruing to or against any such officer, board, commission, department or person who, in good faith, follows the direction of such opinion and acts in accordance therewith*** *unless a court of competent jurisdiction, after a full hearing, shall judicially declare that such opinion is manifestly wrong and without any substantial support. However, if a court of competent jurisdiction makes such a judicial declaration about a written opinion of the Attorney General that applies to acts or omissions of any licensee to which Section 63-19-57, 75-67-137 or 75-67-245 applies, and the licensee has acted in conformity with that written opinion, the liability of the licensee shall be governed by Section 63-19-57, 75-67-137 or 7567-245, as the case may be. No opinion shall be given or considered if the opinion is given after suit is filed or prosecution begun."*

Miss. Code Ann. § 7-5-25 (Rev. 2019) (emphasis added). If a court of competent jurisdiction (after a full hearing) determines that an opinion is manifestly wrong and without substantial support, the opinion provides no protection. *See e.g.*, City of Durant v. Laws Construction Co., Inc., 721 So. 2d 598, 603 (Miss. 1998). The Supreme Court, when determining that an AG opinion is erroneous, has historically applied the correct construction prospectively, thereby not penalizing a party's reliance on the erroneous opinion. *See e.g.*, Meeks v. Tallahatchie County, 513 So. 2d 563, 568 (Miss. 1987).

However, a party is insulated from liability only when they are relying on an opinion specifically written (addressed) **to them** – and not to someone else. For example, the Supreme Court found that AG's opinions were manifestly wrong in City of Durant v. Laws Construction Co., Inc. and the City then argued that it should not be penalized because it had relied on them. The Court was quick to point out, though, that a municipality cannot merely rely on opinions issued to others.

In addition, AG opinions that might slip through and be issued on matters that are already in litigation are ineffectual. *See e.g.*, SASS Muni-V, LLC v. DeSoto County, 170 So. 3d 441, 447, n. 5 (Miss. 2015). Also, opinions have to be in writing (phone conversations do not meet the statutory requirement). *See e.g.*, Meeks v. Tallahatchie County, 513 So. 2d 563, 567, n. 1 (Miss. 1987).

Plus, an AG opinion that is based on a request that did not provide all of the relevant facts necessary for such an opinion is equally ineffectual. *See e.g.*, State ex rel. Summer v. Denton, 382 So. 2d 461, 467-68 (Miss. 1980).

Moreover, reliance on an AG opinion is no defense to failure to comply with a court order. See Donaldson v. Cotton, 336 So. 2d 1099, 1113 (Miss. 2022).

With respect to litigation, the Supreme Court has recognized that, while AG opinions are not binding, "they are certainly useful in providing guidance to this Court." In re Assessment of Ad Valorem Taxes on Leasehold Interest Held by Reed Manufacturing, Inc. ex rel Itawamba County Board of Supervisors, 854 So. 2d 1066, 1071 (Miss. 2003); *see also* Madison County v. Hopkins, 857 So. 2d 43, 50 (Miss. 2003).

Some Courts, when reviewing past actions taken by municipalities, have even made mention of whether city officials had previously sought an opinion from the AG. *See e.g.*, Hemphill Construction Company, Inc. v. City of Laurel, 760 So. 2d 720, 721 (Miss. 2000).

II. VARIOUS ATTORNEY GENERAL OPINIONS ISSUED FROM JANUARY 1, 2025, THROUGH JUNE 30, 2025

1.	**Luke – AG Opinion Issued on January 30, 2025 (OP-2025-00006)** Based on a 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), the AG's Office opined that the city's fire chief here exercised core powers in the executive branch of government. The AG's Office noted that this opinion (and similar opinions in this area) is limited to the job description provided in the request.
2.	**Morris-Harris – AG Opinion Issued on January 30, 2025 (OP-2025-00215)** 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.
3.	**Brock – AG Opinion Issued on 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 Miss. Code Ann. § 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 consisted 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.

4.	**Lamar – AG Opinion Issued on 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 the AG's Office has previously opined that community and junior college buildings are not state-owned and therefore not subject to § 45-11-101(1)(a), a local fire code would generally apply, and the local fire marshal would have jurisdiction. MS ATT'Y GEN. OP., *Dale* at *1 (Sept. 27, 2000). Whether a 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).
5.	**Palmer – AG Opinion Issued on 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 § 37-9-21 for procedural constraints such as a lack of quorum due to the necessary recusals of certain board members.
6.	**Watkins/O'Donnell – AG Opinion Issued on February 19, 2025 (OP-2024-00240)** To apply the appraisal procedure set forth in Miss. Code Ann. § 27-35-50(4)(d), a residential development must meet the definition of "affordable rental housing" as set forth in § 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 § 27-35-50(4)(d)(i), is a question of fact upon which the AG's Office will not opine.
7.	**Yarborough – AG Opinion Issued on March 13, 2025 (OP-2025-00017)** The AG's Office opined here - based on the particular county employee's job description (a county solid waste/zoning enforcement officer), which included conducting field investigations, issuing and posting warning

	notices, and receiving citizen complaints – that this county employee did not exercise core powers. Because of this, the separation of powers doctrine did not prohibit the County's solid waste/zoning enforcement officer from keeping employment if elected to a city council position.
8.	**Turnage – AG Opinion Issued on 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 § 7-5-25, the AG only issue opinions on questions of state law. In MS AG Op., *Purdie*, the AG 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 ATT'Y GEN. OP., *Purdie* at *1 (Aug. 4, 2024). Section 21-17-5(1) - 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 § 21-17-5(2), none of which were 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). The AG's Office opined here that, while retaining the position stated in its prior March 3, 1993, Opinion issued to Miller ("[A] misdemeanor affidavit, including a traffic ticket, can only be dismissed in accordance with Section 99–15–51 of the Mississippi Code"), 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. In addition, § 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 ATT'Y GEN. OP., *Purdie* at *4 (Aug. 30, 2024). However, "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. 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. Moreover, 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 set out in the AG Opinion issued on August 30, 2024, to Purdie, whether a diversion program ultimately meets all statutory requirements is a question of fact upon which the AG's Office will not opine.
9.	**Mallette – AG Opinion Issued on March 18, 2025 (OP-2024-00264)** In accordance with Miss. Code Ann. §§ 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.
10.	**Chambers – AG Opinion Issued on April 3, 2025 (OP-____)** Liens imposed on property for cleanup costs and penalties under Miss. Code Ann. § 21-19-11 remain enrolled until paid. However, when a municipality does not impose or file a lien on the property prior to an individual's purchase of the property from the State, and said individual has no actual or constructive notice of a lien, such lien is not binding on the individual. The municipality may still collect cleanup costs and penalties from the previous landowner as a civil debt pursuant to § 21-19-11(3).
11.	**Sims – AG Opinion Issued on April 4, 2025 (OP - ___)** As noted by the Mississippi Court of Appeals, the "Legislature took care to use the most expansive word it could when prohibiting sex offenders from living near playgrounds by forbidding residency by 'any playground.'" In determining whether a specific piece of property is a playground, the Court looked to how an ordinary person would see the defined area in question. However, whether a specific park, forest, walking track or trail constitutes a playground or recreational facility for the purposes of the Mississippi Sex Offenders Registration Law is a factual determination to be made by the local authorities.
12.	**Johnson – AG Opinion Issued on April 17, 2025 (OP – ____)** Generally, the expenditure of county resources for personal or private use is prohibited by state law. The AG has found no statutory authority excepting a county employee's use of a county vehicle for business travel associated with a separately elected, compensated position on a state board. As to whether such use constitutes an ethical conflict of interest, the AG referred the requesting party to the Mississippi Ethics Commission.

13.	**Purdie – AG Opinion Issued on April 17, 2025 (OP -)** Section 19-25-73(3) provides that municipalities may only pay up to the amount "provided under state law for the keeping in the county jail of persons committed, sentenced or otherwise placed under the custody of the Department of Corrections." Specifically, "for holding a municipal pretrial detainee or prisoner in the county jail, a municipality is authorized to pay a county up to $25 per day for days one through thirty and up to $32.71 for days thirty-one or greater." MS AG Op., *Mallette* at *2 (March 18,2025).
14.	**Holleman – AG Opinion Issued on April 30, 2025 (OP-)** Pursuant to Article IV, Section 100 of the Mississippi Constitution, a Mississippi public community college may not fully and permanently extinguish student accounts receivable balances deemed uncollectible. Because the permanent extinguishment of balances deemed uncollectible is prohibited by the State Constitution, new legislative action would be required.
15.	**Nailor – AG Opinion Issued on May 1, 2025 (OP-)** Mississippi's Open Meetings Act requires that "final actions" of a board of aldermen be included in the official minutes of the board. However, the board also has the discretion to include information in the minutes outside of what the Open Meetings Act requires.
16.	**Hopson – AG Opinion Issued on May 1, 2025 (OP-)** A municipality cannot make a donation to a local homeless coalition effort involving a County (and in which the County was authorized to participate and provide funding to by way of local and private legislation) unless specifically authorized by another statute or law (general or local and private). While the wording of the County's L&P was worded to create a cap on the County's permitted donation to the coalition based on contributions by municipalities, there was nothing in this L&P that specifically granted authority to such cities to make any donations. A city may make funding allocations in accordance with Miss. Code Ann. § 21-19-65 or § 21-17-1(8), provided the same are consistent with requisite factual determinations made by the city's applicable governing authority.
17.	**Butler – AG Opinion Issued on May 1, 2025 (OP –)** The separation of powers doctrine prohibits a school board member from concurrent service as a city alderman because a school board member exercises core powers in the executive branch of government, and a city alderman exercises core powers in the legislative branch of government.

18.	**James – AG Opinion Issued on June 10, 2025 (OP-____)** An auxiliary deputy sheriff "who works on a volunteer basis, does not have any type of certification, and has not completed the law enforcement academy" is considered a part-time law enforcement officer and, therefore, must meet the training requirements and qualifications for part-time law enforcement officers, including the "authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime, the apprehension of criminals and the enforcement of the criminal and traffic laws of this state or the ordinances of any political subdivision thereof. Miss. Code Ann. § 45-6-3(d). Therefore, a person who has not been certified as a part-time law enforcement officer cannot serve as an auxiliary deputy sheriff.
19.	**Yancey – AG Opinion Issued on June 11, 2025 (OP-_____)** Except for products sold through a duly licensed medical cannabis dispensary and in strict accordance with the provisions of the Mississippi Medical Cannabis Act, the sale of a product derived from the "hemp" plant designed for human ingestion and/or consumption that is not approved by the United States FDA is prohibited under Mississippi's Uniform Controlled Substance Law.