

- I. Mississippi Code Annotated Section 47-1-39(1) provides authority for municipalities to contract with a board of supervisors (not a sheriff) to use a county jail for detention of municipal arrestees. It grants municipalities the power to build their own facilities, or contract with board of supervisors for housing their pretrial detainees or prisoners. Section 47-1-39 does not limit or describe the scope of such contracts.
- II. Mississippi Code Annotated Section 21-17-5(2)(g) prohibits donations. The Attorney General has opined, therefore, that the amount that a city reimburses a county for expenses incurred on behalf of municipal prisoners must be reasonable. See, e.g., AG Opinion to Cossar, 1991 Miss. AG LEXIS 946, December 6, 1991
- III. Before 1991, Mississippi Code Annotated Section 19-25-73(3) limited what political subdivisions (including municipalities) could pay for county housing of municipal pretrial detainees to the amount allowed under Mississippi Code Annotated Section 47-5-112, for the keeping by counties of persons committed, sentenced or otherwise placed under custody of the Department of Corrections. So whatever the DOC could pay to counties under Section 47-5-112, is the maximum municipalities could pay.
- IV. In 1989, the legislature repealed Section 47-5-112 – the statute to which Section 19-25-73(3) referred, -- which set the maximum the DOC could pay. The repeal was effective in 1991.
- V. The history of this repeal and its impact on municipal/county jail contracts can be gleaned from two opinions to George Payne Cossar, the City attorney for Charleston, Mississippi – one in 1991, and one in 1995. In the first opinion (cited in Section II, above), Mr. Cossar asked whether the cap previously in place under Section 47-5-112 remained in place, since Section 19-25-73(3) still referred to that section, even though 47-5-112 had been repealed. The Attorney General responded that the “[r]epeal of § 47-5-112 takes the cap off the amount which cities may reimburse counties for feeding, housing and caring for municipal prisoners. Since § 21-17-5(2)(g) prohibits donations, the amount that a city reimburses a county for expenses incurred on behalf of municipal prisoners must be reasonable.”
- VI. Mr. Cossar asked a similar question four years later, and the Attorney General responded with essentially the same opinion, albeit acknowledging a new statute that arguably set a new cap on what political subdivisions could pay. In AG Opinion to Cossar, 1995 Miss. AG Lexis 119, March 8, 1995, the Attorney General was asked to opine on the effect of a new law (at the time), Section 47-5-901, et seq., which essentially replaced Section 47-5-112, and described the procedure by which the DOC could house its prisoners in county jails and, once again, the “cap” on what the DOC could pay for those services. The Attorney General, however, refused to “substitute” the new cap in Section 47-5-901 for the old reference to Section 47-5-112. Section 19-25-73(3) still referred to Section 47-5-112 – a repealed law – so the Attorney General opined

that the cap on what the DOC could pay under Section 47-5-901 did not apply to other political subdivisions housing prisoners in county jails.

- VII. This changed in 2019, with an amendment to Section 19-25-73(3). The legislature dropped the outdated reference to repealed Section 47-5-112, and replaced the reference to that particular (repealed) statute with the words "State law." As we know from Mr. Cossar's 1995 request for an opinion, such a State law exists in the form of Section 47-5-901, et seq., which sets the maximum the DOC may pay for housing state prisoners in county jails. Section 19-25-73(3) still applies the maximum to both the DOC and other political subdivisions, so the "cap" that was removed when Section 47-5-112 was repealed appears to be explicitly replaced by Section 47-5-901, et seq. So far as I am aware, the Attorney General has not been asked to address this change since the amendment of Section 19-25-73(3) in the year 2019.

Miss. Code Ann. § 47-1-39

\*\*\*Current with 2024 1st and 2nd Extraordinary Sessions and Regular Session legislation, including changes and corrections made by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.\*\*\*

**Mississippi Code 1972 Annotated > Title 47. Prisons and Prisoners; Probation and Parole (Chs. 1 — 7) > Chapter 1. County and Municipal Prisons and Prisoners (§§ 47-1-1 — 47-1-63)**

**§ 47-1-39. Municipal prison and prisoners; municipality to pay expenses of jail officer education courses.**

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(1) The governing authorities of municipalities shall have the power to construct and maintain a municipal prison, and to regulate the keeping of the same and the prisoners therein, and to contract with the board of supervisors, which is empowered in the premises, for the use of the county jail by the municipality; and to provide for the working of the streets by municipal prisoners, and to contract with the county for such work by county prisoners or the working of county roads by municipal prisoners, or for working same on the county farms. Municipal prisoners shall be worked on county roads or county farms only in the county in which the municipality is situated. Males and females shall be confined in separate cells or compartments.

(2) The municipality shall pay the tuition, living and travel expenses incurred by a person attending and participating in the basic and continuing education courses for jail officers.

**History**

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Codes, 1892, § 2954; 1906, § 3345; Hemingway's 1917, § 5842; 1930, § 2421; 1942, § 3374-135; Laws, 1950, ch. 491, § 135; Laws, 1964, ch. 543; Laws, 1968, ch. 552, § 1; Laws, 1973, ch. 319, § 2; Laws, 2000, ch. 515, § 12, eff from and after July 1, 2000.

Annotations

**Cross References —**

Separation of sexes, see § 47-1-23.

Jail owned jointly by county and municipality, see § 47-1-49 et seq.

Residency of prisoner as affected by incarceration in facility of Department of Corrections, see § 47-1-63.

**JUDICIAL DECISIONS**

## 1. In general.

Where defendant pleaded guilty for unlawful possession of intoxicating liquors in violation of municipal ordinance and received suspended sentence, the order revoking the suspended sentence of thirty days in county jail and providing that defendant should be committed to sheriff to serve sentence in county jail was not proper. Gage v. State, 219 Miss. 338, 68 So. 2d 417, 1953 Miss. LEXIS 393 (Miss. 1953).

Municipality held not liable for injury to prisoner, because of being forced to work on streets while shackled and chained. Warren v. Booneville, 151 Miss. 457, 118 So. 290, 1928 Miss. LEXIS 322 (Miss. 1928).

Under this section, Code 1942 § 3374-135, a city is not obliged to maintain its own jail, but may dispose of its prisoners in other ways. Marshall v. Mayor, etc., of Meridian, 103 Miss. 206, 60 So. 135, 1912 Miss. LEXIS 153 (Miss. 1912).

## OPINIONS OF THE ATTORNEY GENERAL

City that arrests persons through its municipal police department must either house them in its own city jail or enter into contract with county board of supervisors to house city prisoners in county jail; sheriff may be required to accept persons sentenced to jail by city court only if city has contract with board of supervisors for such. Brown, July 29, 1992, A.G. Op. #92-0561.

City is responsible for paying medical expenses of city prisoners housed in city jail, as long as they remain city prisoners; in felony cases, prisoner remains city prisoner until he waives preliminary hearing or is bound over to grand jury. Brewer, Oct. 7, 1992, A.G. Op. #92-0532.

Sheriff may work municipal prisoners on county work crew only if municipality has contract with county which provides that sheriff may work municipal prisoners on county work crew. McGrew, Jan. 12, 1994, A.G. Op. #93-0966.

County may refuse to accept municipal prisoners in absence of agreement between county and municipality. Crawford, March 31, 1994, A.G. Op. #94-0187.

A municipality may provide meals for county prisoners working on city streets pursuant to a contract between the city and the county executed pursuant to Section 47-1-39. Gale, March 1, 1995, A.G. Op. #95-0053.

A municipality may furnish labor and all equipment necessary to install water/sewer lines and electrical services for a jail under an interlocal agreement as long as the municipality receives adequate consideration under the terms of the agreement. See Sections 17-5-1 and 21-17-1. Doty, December 13, 1995, A.G. Op. #95-0834.

The board of supervisors of a county is granted sole authority to contract with a municipality for the housing of municipal prisoners and the sheriff is bound thereby; the sheriff may be required to accept persons sentenced to jail by the city court only if the city has a contract with the board of supervisors for such. Richardson, June 12, 1998, A.G. Op. #98-0291.

A city may contract with a county regional correctional facility through the county board of supervisors to house city inmates and provide guard service for inmate work crews for the working of streets and other municipal projects in the city by entering into an interlocal agreement under the provisions of the Interlocal Cooperation Act of 1974. Inmate work crews would have to consist of municipal inmates from the city or county inmates if the board of supervisors has authorized such work under [Section 47-1-9](#). Any guard that is employed by the facility to oversee such work crews would have to be deputized by the county sheriff. Putman, Aug. 19, 2005, A.G. Op. 05-0410.

A county board of supervisors is, by [Section 47-1-39](#), granted sole authority to contract with a municipality for the housing of municipal prisoners and the sheriff is bound thereby. The sheriff may then accept persons sentenced to jail by the city court only if the city has a contract with the board for such. However, the county jail would not be allowed to house prisoners of a city, located outside of the county, unless an interlocal agreement is formed between the county and city pursuant to [Sections 17-13-1](#) et seq. Kemp, Mar. 17, 2006, A.G. Op. 06-0072.

A sheriff is only required to accept municipal prisoners in the county jail if the municipality has a contract with the board of supervisors to house that municipality's prisoners. In addition, a board of supervisors is not required to enter into a contract with a municipality for the housing of the municipality's prisoners. Tanner, Oct. 13, 2006, A.G. Op. 06-0504.

Where a preliminary hearing is provided to a defendant charged for a felony and held as a municipal prisoner, the defendant should be bound over to a grand jury and thereby become a county prisoner after the hearing, if the judge so determines. Wiggins, March 2, 2007, A.G. Op. #07-00075, [2007 Miss. AG LEXIS 78](#).

## RESEARCH REFERENCES

### Am. Jur.

*60 Am. Jur. 2d, Penal and Correctional Institutions §§ 176 et seq.*

### CJS.

72 C.J.S., Prisons and Rights of Prisoners §§ 17, 19-21, 23-25, 27, 28, 31, 32, 37, 42, 43, 46-49, 63, 97, 102.

Mississippi Code 1972 Annotated  
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Miss. Code Ann. § 21-17-5

\*\*\*Current with 2024 1st and 2nd Extraordinary Sessions and Regular Session legislation, including changes and corrections made by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.\*\*\*

**Mississippi Code 1972 Annotated > Title 21. Municipalities (Chs. 1 — 47) > Chapter 17. General Powers (§§ 21-17-1 — 21-17-19)**

**§ 21-17-5. Powers of governing authorities.**

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(1) The governing authorities of every municipality of this state shall have the care, management and control of the municipal affairs and its property and finances. In addition to those powers granted by specific provisions of general law, the governing authorities of municipalities shall have the power to adopt any orders, resolutions or ordinances with respect to such municipal affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi, and shall likewise have the power to alter, modify and repeal such orders, resolutions or ordinances. Except as otherwise provided in subsection (2) of this section, 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. Unless otherwise provided by law, before entering upon the duties of their respective offices, the aldermen or councilmen of every municipality of this state shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to five percent (5%) of the sum of all the municipal taxes shown by the assessment rolls and the levies to have been collectible in the municipality for the year immediately preceding the commencement of the term of office of said alderman or councilman; however, such bond shall not exceed One Hundred Thousand Dollars (\$100,000.00). For all municipalities with a population more than two thousand (2,000) according to the latest federal decennial census, the amount of the bond shall not be less than Fifty Thousand Dollars (\$50,000.00). Any taxpayer of the municipality may sue on such bond for the use of the municipality, and such taxpayer shall be liable for all costs in case his suit shall fail. No member of the city council or board of aldermen shall be surety for any other such member.

(2) Unless such actions are specifically authorized by another statute or law of the State of Mississippi, this section shall not authorize the governing authorities of municipalities to (a) levy taxes of any kind or increase the levy of any authorized tax, (b) issue bonds of any kind, (c) change the requirements, practices or procedures for municipal elections or establish any new elective office, (d) change the procedure for annexation of additional territory into the municipal boundaries, (e) change the structure or form of the municipal government, (f) permit the sale, manufacture, distribution, possession or transportation of alcoholic beverages, (g) grant any donation, or (h) without prior legislative approval,

regulate, directly or indirectly, the amount of rent charged for leasing private residential property in which the municipality does not have a property interest.

(3) Nothing in this or any other section shall be construed so as to prevent any municipal governing authority from paying any municipal employee not to exceed double his ordinary rate of pay or awarding any municipal employee not to exceed double his ordinary rate of compensatory time for work performed in his capacity as a municipal employee on legal holidays. The governing authority of any municipality shall enact leave policies to ensure that a public safety employee is paid or granted compensatory time for the same number of holidays for which any other municipal employee is paid.

(4) The governing authority of any municipality, in its discretion, may expend funds to provide for training and education of newly elected or appointed municipal officials before the beginning of the term of office or employment of such officials. Any expenses incurred for such purposes may be allowed only upon prior approval of the governing authority. Any payments or reimbursements made under the provisions of this subsection may be paid only after presentation to and approval by the governing authority of the municipality.

(5) The governing authority of any municipality may lease the naming rights to municipal property to a private commercial entity.

## History

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Codes, 1892, § 2925; 1906, § 3316; Hemingway's 1917, § 5813; 1930, § 2393; 1942, § 3374-114; Laws, 1950, ch. 491, § 114; Laws, 1985, ch. 487; Laws, 1989, ch. 526, § 1; Laws, 1990, ch. 418, § 1; Laws, 1992, ch. 430 § 1; Laws, 1998, ch. 315, § 1; Laws, 2000, ch. 363, § 2; Laws, 2000, ch. 515, § 2; Laws, 2006, ch. 419, § 1; Laws, 2007, ch. 546, § 2; Laws, 2009, ch. 467, § 11; Laws, 2016, ch. 327, § 1, eff from and after July 1, 2016.

### Annotations

#### RESEARCH REFERENCES

ALR.

Am. Jur.

#### Joint Legislative Committee Note —

Section 2 of ch. 363, Laws of 2000, effective from and after July 1, 2000 (approved March 17, 2000), amended this section. Section 2 of ch. 515, Laws of 2000, effective from and after July 1, 2000 (approved March 30, 2000), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 515, Laws of 2000, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the sections are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

**Editor's Notes —**

On June 12, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1998, ch. 315, § 1.

Laws, 1989, ch. 526, § 3, effective from and after July 1, 1989, removed the provision for the repeal of this section effective October 1, 1989.

**Amendment Notes —**

The first 2000 amendment (ch. 363) had inserted a subsection (2) and redesignated the remaining subsections accordingly.

The second 2000 amendment (ch. 515) added (4).

The 2006 amendment substituted "municipalities" for "a municipality" following "governing authorities of" in (2); added the second sentence in (3); and in (4), substituted "governing authority" for "governing authorities," and made a minor stylistic change.

The 2007 amendment, in (3), substituted the present last sentence for the former last sentence, which read: "The governing authority of any municipality, in its discretion, may enact leave policies to ensure that public safety employees receive the same holiday benefits as other municipal employees when the public safety employee's regular day off occurs on a legal holiday."

The 2009 amendment in (1), deleted "the amount of" preceding "One Hundred Thousand Dollars (\$100,000.00)" and added the second-to-last sentence.

The 2016 amendment added (5).

**Cross References —**

Moving municipality's site of government in emergency resulting from enemy attack, see §§ 17-7-1 et seq.

Uniform system for issuance of negotiable notes or certificates of indebtedness, see § 17-21-51.

Jurisdiction and powers of boards of supervisors, see § 19-3-41.

Duties of mayors under various forms of government, see §§ 21-3-15 (code-charter); 21-5-7 (commission); 21-7-13 (council); 21-8-15 (mayor-council); 21-9-37 and (council-manager).

Duty of mayor generally, see §§ 21-15-7 et seq.

Authority to lease lands to the United States for the purpose of securing construction of air national guard armories, see § 33-11-15.

Establishing bridge and park commission and related matters, see §§ 55-7-1 et seq.



Airport authorities law, see §§ 61-3-1 et seq.

Provisions of municipal airport law, see §§ 61-5-1 et seq.

## **JUDICIAL DECISIONS**

### **I. Under Current Law.**

#### **1. In general.**

#### **2. Power to adopt particular order, resolution or ordinance.**

#### **3. Judicial review.**

#### **4.-5. [Reserved for future use.]**

### **II. Under Former Law.**

#### **6. In general.**

### **I. Under Current Law.**

#### **1. In general.**

Board of aldermen of a city lacked the authority to remove appellant as a trustee of a school district. In addition, the board's decision was made without notice or hearing, leaving appellant to the whims of the board in violation of appellant's due-process rights. *Jones v. City of Canton*, 278 So. 3d 1129, 2019 Miss. LEXIS 347 (Miss. 2019).

City council was within its discretion to discharge a police chief because the chief allowed public property to be used for private employment in violation of *Miss. Code Ann. § 21-17-5(2)(g)* and the instructions of a city council and vice mayor, and the chief was provided with notice and a hearing in accordance with the city code. *Patterson v. City of Greenville*, 117 So. 3d 630, 2013 Miss. App. LEXIS 74 (Miss. Ct. App. 2013).

City was not authorized to make challenged expenditures for volunteer appreciation dinners, travel advances, police dinners, or City Beautiful Commission meeting absent entry approving expenditures in minutes of the Board of Alderman, regardless of whether expenditures were for lawful purpose; public board speaks and acts only through its minutes. *Nichols v. Patterson*, 678 So. 2d 673, 1996 Miss. LEXIS 299 (Miss. 1996).

Payment of extra checks to city employees at end of year was prohibited donation which city was not authorized to make. *Nichols v. Patterson*, 678 So. 2d 673, 1996 Miss. LEXIS 299 (Miss. 1996).

Home rule statute gives municipalities discretion in managing municipal affairs. *Nichols v. Patterson*, 678 So. 2d 673, 1996 Miss. LEXIS 299 (Miss. 1996).

Expenditures made by city are unlawful when made without express authorization in minutes of city's board, resulting in actual loss to public body. Nichols v. Patterson, 678 So. 2d 673, 1996 Miss. LEXIS 299 (Miss. 1996).

The duties of municipal officers cannot be extended by implication to acts not authorized by law. City of Hazlehurst v. Mayes, 96 Miss. 656, 51 So. 890, 1910 Miss. LEXIS 199 (Miss. 1910).

A municipality has a right to pass all authorized ordinances that are reasonable, not inconsistent with the general and not destructive to lawful business. Johnson v. Philadelphia, 94 Miss. 34, 47 So. 526, 1908 Miss. LEXIS 14 (Miss. 1908).

The powers of a municipality are to be exercised in conformity to and consistent with the general laws of the state. Crittenden v. Booneville, 92 Miss. 277, 45 So. 723, 1908 Miss. LEXIS 177 (Miss. 1908).

The action of a de facto officer of a municipal corporation is valid. Greene v. Rienzi, 87 Miss. 463, 40 So. 17, 1905 Miss. LEXIS 172 (Miss. 1905).

Municipal ordinances cannot be avoided by the imputation of bad faith in their passage. State ex rel. Vicksburg v. Washington Steam Fire Co., 76 Miss. 449, 24 So. 877, 1898 Miss. LEXIS 109 (Miss. 1898).

## **2. Power to adopt particular order, resolution or ordinance.**

In an election contest filed by a mayor's opponent, the city council was authorized to hire counsel because the city council did so to represent the city's interests, even if counsel's representation of the city and the mayor might overlap. McAdams v. Perkins, 204 So. 3d 1257, 2016 Miss. LEXIS 506 (Miss. 2016).

Madison, Mississippi, Rental Inspection and Property Licensing Act (RIPLA), providing for the licensing and inspection of rental properties, did not violate Miss. Code Ann. § 21-17-5(2)(h) because RIPLA did not directly or indirectly regulate rent, as (1) RIPLA did not set a minimum or maximum rental rate, establish a formula to aid in establishing rental rates, or require the landlord to submit rental rates, and (2) Mississippi statutory law supported RIPLA's surety requirements. Crook v. City of Madison, 168 So. 3d 1169, 2014 Miss. App. LEXIS 536 (Miss. Ct. App. 2014), rev'd, 168 So. 3d 930, 2015 Miss. LEXIS 352 (Miss. 2015).

Development impact fees constituted a tax that a city had no authority to assess; the state's home rule statute, Miss. Code Ann. § 21-17-5, did not authorize the city to impose a tax unless such tax was specifically authorized by another statute or state law. Mayor & Bd. of Aldermen v. Homebuilders Ass'n of Miss., Inc., 932 So. 2d 44, 2006 Miss. LEXIS 319 (Miss. 2006).

Ordinance prohibiting commercial establishments from allowing consumption of alcoholic beverages between midnight and 7:00 a.m., which defined "consumption" to include possession in open containers as well as ingestion, was not preempted by statute expressly permitting possession of alcoholic beverages in "wet" municipalities absent clear expression of legislative intent to permit consumption, as opposed to mere possession, without limitation in wet areas,

given broad grant of authority to municipalities to regulate impact of alcoholic beverages upon public health, morals, and safety and public policy favoring prevention of alcohol-related altercations and motor vehicle accidents, as limiting possession of opened containers was reasonable and necessary to enforce limitations on consumption. Maynard v. City of Tupelo, 691 So. 2d 385, 1997 Miss. LEXIS 94 (Miss. 1997).

“Brown bag” ordinance prohibiting commercial establishments from allowing consumption of alcoholic beverages between midnight and 7:00 a.m. was valid exercise of police power, as object of ordinance was promotion of public safety and welfare and manner in which ordinance promoted those objectives was not oppressive, arbitrary, or discriminatory. Maynard v. City of Tupelo, 691 So. 2d 385, 1997 Miss. LEXIS 94 (Miss. 1997).

Municipality’s powers are limited to those expressly delegated, and cannot be extended by mere implication; municipal enactment of comprehensive obscenity legislation is beyond municipality’s power in absence of specific statutory authorization enabling municipality to enact obscenity ordinance; municipal obscenity ordinance which is inconsistent with state statute exceeds municipality’s statutory authority even though changes were allegedly made by city to correct possible constitutional flaws. Videophile, Inc. v. Hattiesburg, 601 F. Supp. 552, 1985 U.S. Dist. LEXIS 23425 (S.D. Miss. 1985).

A city cannot be estopped by an ultra vires contract. Edwards H. & C. R. Co. v. Jackson, 96 Miss. 547, 51 So. 802, 1910 Miss. LEXIS 193 (Miss. 1910).

Municipal authorities have the power to order the closing of a street where the public safety requires it, and a private citizen cannot interfere therewith, for the reason that he has recourse against the municipality for his damages. Poythress v. Mobile & O. R. Co., 92 Miss. 638, 46 So. 139, 1908 Miss. LEXIS 217 (Miss. 1908).

Yazoo City has the authority to own and operate an electric railway and to issue bonds therefor under legislative authority. Love v. Holmes, 91 Miss. 535, 44 So. 835 (Miss. 1907).

### **3. Judicial review.**

Exemptions under a city ordinance before they can be allowed must be made in the clearest and most unambiguous terms. Edwards H. & C. R. Co. v. Jackson, 96 Miss. 547, 51 So. 802, 1910 Miss. LEXIS 193 (Miss. 1910).

The court itself should construe a municipal ordinance and not submit it to a jury for construction. Town of Pass Christian v. Washington, 81 Miss. 470, 34 So. 225, 1902 Miss. LEXIS 211 (Miss. 1902).

Contemporaneous construction by municipal authorities may be considered in cases of doubtful ordinances, but not when they are clear. Town of Wesson v. Collins, 72 Miss. 844, 18 So. 360, 1895 Miss. LEXIS 36 (Miss. 1895).

The Supreme Court will not take judicial notice of town ordinances. Naul v. State, 70 Miss. 699, 12 So. 903 (Miss. 1893).

**4.-5. [Reserved for future use.]****II. Under Former Law.****6. In general.**

Where a statute authorizing municipalities to issue bonds for the purpose of locating a state normal college was constitutional, a municipality had power to issue bonds to induce the location of the State Normal College. Turner v. Hattiesburg, 98 Miss. 337, 53 So. 681, 1910 Miss. LEXIS 66 (Miss. 1910); Turner v. County of Forrest, 53 So. 684 (Miss. 1910).

The establishment and maintenance by municipalities are for municipal purposes. Turner v. Hattiesburg, 98 Miss. 337, 53 So. 681, 1910 Miss. LEXIS 66 (Miss. 1910); Turner v. County of Forrest, 53 So. 684 (Miss. 1910).

A mandamus cannot be issued against a municipality to compel the levy of a tax therein beyond the statutory limit. Town of Jonestown v. Ganong, 97 Miss. 67, 52 So. 579, 1910 Miss. LEXIS 247 (Miss. 1910).

Under this section the mayor and board of aldermen of a city have full care, management and control of the property and finances thereof, but such powers must be exercised consistent with the laws of the state for the best interest of the inhabitants of the municipality. Montgomery v. State, 97 Miss. 292, 52 So. 357, 1910 Miss. LEXIS 230 (Miss. 1910).

In such exercise of authority a city has power to pass an ordinance providing for the establishment of city depositories fixing rate of interest thereon and securities therefor. Montgomery v. State, 97 Miss. 292, 52 So. 357, 1910 Miss. LEXIS 230 (Miss. 1910).

A treasurer depositing funds in a depository provided, and in the manner required for him, cannot be longer held responsible. Montgomery v. State, 97 Miss. 292, 52 So. 357, 1910 Miss. LEXIS 230 (Miss. 1910).

Powers delegated to a city operating under this section are to be exercised by the mayor and board of aldermen in power at the time, but their actions cannot bind their successors in office. Edwards H. & C. R. Co. v. Jackson, 96 Miss. 547, 51 So. 802, 1910 Miss. LEXIS 193 (Miss. 1910).

A municipality coming under this chapter is not required to republish its ordinances. Chrisman v. Jackson, 84 Miss. 787, 37 So. 1015, 1904 Miss. LEXIS 100 (Miss. 1904).

Where an ordinance creating an offense uses the common-law definition of a misdemeanor, an accessory before the fact to its violation may be punished as a principal. Reed v. State, 83 Miss. 192, 35 So. 178 (Miss. 1903).

A municipal ordinance fixing in its first section a rate of taxation on all property except banks and solvent credits and by its second section fixing a lower rate on banks and solvent credits, cannot be held to impose the greater rate on banks. The exception in the first section and the second section cannot be treated as surplusage. Adams v. Capital State Bank, 74 Miss. 307, 20 So. 881, 1896 Miss. LEXIS 130 (Miss. 1896).

A levy of a tax is indispensable to create a legal obligation to pay it. A taxpayer who has paid all taxes undertaken to be imposed upon his property is not in default for not having paid thereon. Adams v. Capital State Bank, 74 Miss. 307, 20 So. 881, 1896 Miss. LEXIS 130 (Miss. 1896).

## **OPINIONS OF THE ATTORNEY GENERAL**

Municipality may contract with private corporation to provide necessary equipment and monitoring services in order to operate Home Confinement Program. Haque, Jan. 31, 1990, A.G. Op. #90-0084.

Governing authorities of City of Biloxi have discretionary authority to continue agreement as contract for use of private organization's property for polling places, etc., for consideration called for in agreement, assuming that consideration is reasonable; continuation of agreement would not be considered donation prescribed by statute. Carter, Feb. 7, 1990, A.G. Op. #90-0069.

Where agency of federal government, which by guideline or regulation prohibits private entities from engaging in enterprise without involvement of local governmental entity, and further where no municipal funds will be expended for construction, operation and maintenance of park and marina facility and no income will be used for general municipal purposes, such involvement by City of Sardis is not inconsistent with existing state law. Shuler, March 15, 1990, A.G. Op. #90-0136.

There is no statute that requires bidders to post bid bonds when submitting bids to city for public construction works or public purchases; however, governing authorities of city may require bidders to post bid bonds on public construction works and/or public purchases. Johnson, April 18, 1990, A.G. Op. #90-0277.

Governing authorities in Okolona may not impose personal income tax on employees working in City. Gregory, May 14, 1990, A.G. Op. #90-0335.

City of Philadelphia may bid at public auction on parcel of real estate offered for sale by United States Postal Authority; municipal governing authorities may adopt order or resolution authorizing offer of up to specified dollar amount of municipal funds, consistent with value of property, for purpose of acquiring property at auction. Thomas, May 15, 1990, A.G. Op. #90-0321.

Statute prohibits city from adding fee to city water/sewer bill to be used exclusively for police protection and services, as such fee would in actuality be tax. Hancock, Oct. 4, 1990, A.G. Op. #90-0729.

Any use of municipal equipment or labor to maintain private cemetery would constitute illegal donation of public property for private benefit; there is no significant difference between maintaining private cemetery with public money and using county equipment to dig graves,

using county equipment to dig graves has been declared illegal. Lawrence, Oct. 26, 1990, A.G. Op. #90-0230.

Salary bonuses constitute unauthorized donations, and are therefore prohibited. Clements, Oct. 26, 1990, A.G. Op. #90-0363.

Municipalities possess home rule authority to enter contracts of employment and provide corresponding employee compensation and work schedule policies that are tailored to meet the special circumstances of certain groups of employees, such as garbage collection workers. Primeaux, Feb. 12, 1992, A.G. Op. #91-0978.

Individual who is not employed by municipality and who lives free of charge on municipal property constitutes impermissible donation; however, governing authorities may hire retired policeman in part time capacity as custodian or maintenance supervisor of municipal park and allow him to live rent free on municipal property adjacent to park as part of his compensation. Woods, August 5, 1992, A.G. Op. #92-0576.

Use of municipal funds to buy property and build parking lot for the benefit of private industry would constitute impermissible donation, although municipality is authorized to buy property and engage in enterprise if municipality has certificate from the Dept. of Economic Development. Shepard, Sept. 16, 1992, A.G. Op. #92-0729.

City may adopt ordinance prohibiting parking on square and providing penalties therefore when businesses and offices are closed. Williams, Sept. 23, 1992, A.G. Op. #92-0629.

Statutes do not authorize municipality to give financial assistance to nursing students to enable these students to come back to municipality after graduation to work as nurses or nurse practitioners. James, Oct. 28, 1992, A.G. Op. #92-0818.

Municipality may not adopt policy in which employees may pool vacation and sick leave benefits or donate vacation and/or sick leave benefits to other employees. Criss, Oct. 28, 1992, A.G. Op. #92-0837.

Monetary rewards or granting time off with pay to municipal employees for suggestions that are implemented constitute unauthorized donations. Spell, Nov., 4, 1992, A.G. Op. #92-0820.

Municipalities may adopt policies in which employees may be compensated at end of year for unused sick leave; however, municipality must not include any such compensation for purposes of retirement benefits or credit, and may not report such compensation to PERS for credit as either compensation or credit for time. Spell, Nov., 4, 1992, A.G. Op. #92-0820.

Municipality may by ordinance prohibit political signs on city property and rights-of-way. Ellis, Nov. 25, 1992, A.G. Op. #92-0893.

Payment of extra compensation to municipal employees in recognition of excellent service constitutes impermissible "donation" pursuant to Miss. Code § 21-17-5(2)(g). Hicks, Jan. 20, 1993, A.G. Op. #92-1006.

## Miss. Code Ann. § 21-17-5

Payment of travel expenses for individual who is not city employee or representative of city to attend meetings of nonprofit organization or corporation would constitute impermissible donation pursuant to Miss. Code Section 21-17-5(2)(g). Wansley, Feb. 25, 1993, A.G. Op. #93-0104.

Pursuant to Miss. Code Section 21-17-5(2)(a), municipalities may not levy taxes unless specifically authorized by another statute. Self, Mar. 3, 1993, A.G. Op. #93-0066.

Under Miss. Code Section 21-17-5, municipality could not pass ordinance upon matter which state has preempted, either through express language or through regulation of particular topic; most traffic regulations have been so preempted by state laws. Baker, Mar. 31, 1993, A.G. Op. #93-0036.

Legislative grant of home rule to municipalities, codified at Miss. Code Section 21-17-5, expressly empowers cities to adopt any orders, resolutions or ordinances with respect to municipal affairs which are not inconsistent with or preempted by state law. Mitchell, Apr. 23, 1993, A.G. Op. #93-0007.

Miss. Code Section 21-17-5 provides sufficient authority for municipality to adopt and implement ordinances regulating cable television service rates, but only to extent and in manner authorized under federal law which requires, among other things, prior FCC approval and certification of any local assertion of regulatory authority. Mitchell, Apr. 23, 1993, A.G. Op. #93-0007.

Although Miss. Code Section 21-17-5, commonly known as "home rule" statute, grants broad authority to municipalities, such authority may not be exercised in manner not consistent with Mississippi Constitution or existing statutes or laws. Gex, May 19, 1993, A.G. Op. #93-0332.

Miss. Code Section 21-17-5 provides sufficient flexibility and authority to conduct elections to determine will of electorate regarding issues falling within city's jurisdiction and on which legislature is silent, provided governing authorities determine that appropriation of public monies for such purposes is in city's best interest. Graves, May 26, 1993, A.G. Op. #93-0290.

Non-binding referenda concerning matters under jurisdiction of municipal governing authorities maybe placed on general election ballot pursuant to Miss. Code Section 21-17-5. Graves, May 26, 1993, A.G. Op. #93-0290.

Miss. Code Section 21-17-5 gives municipalities responsibility for the care, management and control of municipal property; therefore, municipality may, by ordinance, impose weight limit on trucks being driven on municipal streets. Clark, June 9, 1993, A.G. Op. #93-0348.

Miss. Code Section 21-17-5(2) provides that municipality must have specific authority to grant donation. McFatter, June 9, 1993, A.G. Op. #93-0405.

Donation either directly to public school system or indirectly to public school system through nonprofit organization for purpose of funding study of public school system is not donation to social and community service program, as contemplated by Miss. Code Section 21-17-5; there is no other statutory authority for municipality to make a donation to nonprofit organization for purpose of studying programs of public schools. McFatter, June 9, 1993, A.G. Op. #93-0405.

Municipal governing authority could authorize employment of legal counsel for purpose of intervening in election contest in order to protect city's interest. Ellis, July 14, 1993, A.G. Op. #93-0499.

In accordance with general grant of powers to municipality by Section 21-17-1, and authority to manage and control municipal property in its charge, City may contract with vendors for installation of ATM in city jail or any other city building. Mitchell, Jan. 12, 1994, A.G. Op. #93-0874.

City may establish new policy of paying employees for working on holiday instead of awarding compensatory time and city may pay employees for compensatory time accumulated prior to effective date of policy or accumulated prior to effective date of Section 21-17-5(3) as amended. Kerby, March 2, 1994, A.G. Op. #94-0047.

Although Miss. Code Sections 25-3-91 and 25-3-95, which permit state employees to donate a certain portion of their earned personal leave or major medical leave to another employee under some circumstances, do not apply to municipal employees, municipalities may adopt ordinances or resolutions providing for a similar program in a municipality in the absence of a state statute governing a similar municipal employee leave program. Stark, July 18, 1997, A.G. Op. #97-0361.

Municipal wastewater treatment systems may be operated by long-term contracts with private firms, provided the term of contract does not extend beyond the terms in office of the current governing authorities. Reno, March 6, 1998, A.G. Op. #98-0069.

Municipal governing authorities may authorize a police chief to take a police vehicle home outside the city limits at nights and on weekends only if they determine that such use would benefit and be in the best interest of the municipality; the police chief would not be authorized to use the vehicle for his own benefit, as in running personal errands or as transportation to part-time employment. Walker, March 6, 1998, A.G. Op. #98-0102.

A municipality does not have the authority to expend funds for a market research study to ascertain the feasibility of a nonprofit corporation such as the YMCA. Stockton, March 6, 1998, A.G. Op. #98-0110.

Term limits for city council members cannot be imposed by municipalities as Subsection 2(e) prohibits legislative acts that change the form or structure of government. Allen, March 27, 1998, A.G. Op. #98-0150.

A municipality is limited to paying an employee not to exceed double his ordinary rate of pay for working on a legal holiday. Aston, April 10, 1998, A.G. Op. #98-0091.

The language of the statute is prospective only and, therefore, applies only to aldermen and councilmen who take office after July 1, 1998, the effective date of the statute, and does not apply to officers who are already in office. Wise, April 10, 1998, A.G. Op. #98-0178.

Notwithstanding that a baseball park owned by a baseball association is located in a town, the town can not provide for the hauling of the dirt and/or the maintenance of the baseball park. Lanford, April 24, 1998, A.G. Op. #98-0189.



A county board of supervisors can not legally provide dirt for the use of a baseball association and/or provide for maintenance of any kind to the baseball field owned by the association. Lanford, April 24, 1998, A.G. Op. #98-0189.

The governing authorities may accept a donation for unspecified purposes for the police and/or fire department, and may place the funds in the municipal treasury and then appropriate the funds to the police or fire department in accordance with the intent of the donor(s) as long as the funds are used for statutorily authorized purposes; however, the governing authorities may not accept a donation and place the funds in a special account designated as a benevolent fund to be used for purposes beyond those authorized by statute for police and fire departments. Bruni, May 15, 1998, A.G. Op. #98-0264.

Police and fire departments do not have authority to enter into a contract or accept donations, but the governing authorities may accept donations for the police or fire department and may place the funds in an appropriate fund, whether general or special, and use them for the designated purpose as long as the purpose is authorized by statute. Bruni, May 15, 1998, A.G. Op. #98-0264.

Municipal governing authorities do not have authority to create an independent board, authority, or commission which can take official action pursuant to the home rule statute because the statute does not allow governing authorities to change the form or structure of municipal government and because the area of the law has been preempted by state statutes. McDonald, May 22, 1998, A.G. Op. #98-0275.

Local governmental units may individually contract with a private entity to provide the services enumerated pursuant to the Home Rule statute. Thompson, June 5, 1998, A.G. Op. #98-0270.

A municipal vehicle may not be used for the personal use of an employee since such use would constitute an impermissible donation; accordingly, if an employee is to be permitted to take a vehicle to his home for nights and/or weekends, the governing authorities of the municipality may authorize such use only if, in their determination, the duties of the employee necessitate such use and such use of the vehicle would benefit and be in the best interest of the municipality. Ferguson, August 7, 1998, A.G. Op. #98-0374.

Police officers may not ride their family around in the police car when off duty. Doty, August 28, 1998, A.G. Op. #98-0392.

Police officers may not use a police car for personal business when off duty, such as going to a grocery store, church, shopping, and things of that nature. Doty, August 28, 1998, A.G. Op. #98-0392.

Municipal governing authorities may permit police officers to use police cars to travel to their residences outside the city limits if they determine that such use of the vehicle would benefit and be in the best interest of the municipality. Doty, August 28, 1998, A.G. Op. #98-0392.

Municipal governing authorities may permit a police officer who is not the chief to use a police car to travel outside the county to his residence if they determine consistent with fact that his duties necessitate such use and that such use of the vehicle would benefit and be in the best interest of the municipality. Doty, August 28, 1998, A.G. Op. #98-0392.

## Miss. Code Ann. § 21-17-5

Providing banking services to the public is not a proper municipal purpose, and there is no authority for the purchase or lease-purchase of an automatic teller machine to be owned and serviced by a municipality. Horne, August 28, 1998, A.G. Op. #98-0511

A municipality may not lease a building and surrounding land in an industrial park for nominal consideration. Jones, September 4, 1998, A.G. Op. #98-0481.

While an individual may make a donation to a volunteer fire department, there is no authority for the governing authorities of a municipality to include a specific fee as a line item on water/sewer bills sent to municipal residents for the support of the volunteer fire department, even if payment of the fee is voluntary. Threatt, November 25, 1998, A.G. Op. #97-0068.

A city had the authority to enter into a management contract for the operation and maintenance of a city-owned multi-educational complex since the operation of the complex was in furtherance of a proper municipal purpose. Thomas, November 25, 1998, A.G. Op. #98-0723.

The provisions of §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, only mandate the use of tax assessment rolls and the avails to be collected from levies thereon in calculating the amount of the bonds therein required. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation of a bond pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all assessment rolls upon which a board of supervisors may levy ad valorem taxes. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all ad valorem tax levies listed on the certified levy sheet, including school district levies. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all classes of property upon which ad valorem taxes are levied and collected. Bryant, January 29, 1999, A.G. Op. #99-0011.

In calculating the amount of a bond pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, the total amount of ad valorem taxes to be collected, rather than the actual amount collected, must be used. Bryant, January 29, 1999, A.G. Op. #99-0011.

There is no authority for a municipality to donate funds to the Southern Poison Control Center. Snyder, April 23, 1999, A.G. Op. #99-0193.

No violation of this section is presented where a municipality provides funds to an economic development authority pursuant to local and private act specifically authorizing such contributions. Dorrill, May 14, 1999, A.G. Op. #99-0208.

A municipality may own and operate a historical museum and may lease the museum property to a nonprofit historical society to maintain and operate the museum on behalf of the city with a lease and management agreement. Carter, July 23, 1999, A.G. Op. #99-0284.

In the absence of any provision under state law for a municipal leave donation program, a municipality under the authority of home rule may adopt or enact a program similar to the one applicable to state employees under § 25-3-95(8). Mitchell, August 6, 1999, A.G. Op. #99-0372.

Pursuant to home rule, a municipality may advertise the fact that a particular business or other organization has donated a vehicle to the municipal police department by placing the name of the donating entity upon the vehicle; however, the donor's name must not be distracting and must be small enough so that the general public can readily and easily identify the vehicle as an official municipal police vehicle. Kinsey, August 6, 1999, A.G. Op. #99-0401.

City governing authorities did not have authority to donate funds to a foundation for scholarships for county residents at Jackson State University and Alcorn State University, make donations to churches, or give financial assistance to elderly county residents and did not have authority to donate funds to a foundation to administer a random drawing to give away ten air conditioning window units donated by the manufacturer to ten people. Rohman, May 19, 2000, A.G. Op. #2000-0245.

Counties and municipalities may sell advertising on their public web sites and may regulate the content, subject, and identity of its advertisers to promote the public safety, health, or welfare. McLeod, June 12, 2000, A.G. Op. #2000-0278.

Governing authorities do not have authority to create an independent board, authority, or commission which can take official action pursuant to the home rule statute, because this statute does not allow governing authorities to change the form or structure of municipal government and because the area of the law has been preempted by state statutes. Lynn, Mar. 29, 2002, A.G. Op. #02-0139.

There is no authority for a mayor or the governing authorities of a code charter municipality to appoint aldermen as commissioners over municipal departments. McKenzie, Aug. 30, 2002, A.G. Op. #02-0507.

An ordinance which prohibits potential contractors from the bidding process would be inconsistent with *Section 31-7-13*, which sets forth specific requirements for advertising and soliciting bids. McKissack, Dec. 13, 2002, A.G. Op. #02-0119.

Municipalities may donate to a Main Street Project and to local economic development organizations office space and in-kind services, however, there is no authority for a municipality to donate the time of a full-time or part-time employee who receives compensation and benefits from the municipality, but works for a Main Street Project or economic development organization, or to contract to provide a full-time or part-time municipal employee to a Main Street Project or local economic development organization for consideration. Farmer, Dec. 20, 2002, A.G. Op. #02-0603.

A municipality may lease space in a municipal building to a nonprofit corporation pursuant to Section 21-17-1. Farmer, Dec. 20, 2002, A.G. Op. #02-0603.

Local governing authorities may not pay for holidays when no work is performed, but are limited to allowing additional leave. Mitchell, Jan. 30, 2003, A.G. Op. #03-0008.

A municipal judge may file a criminal affidavit with the municipal court and must then recuse himself from the case; another municipal judge may hear the case, or the municipal judge may transfer the case to the justice court. Thomas, Jan. 17, 2003, A.G. Op. #03-0007.

Pursuant to Section 21-17-5, a Board of Aldermen has the authority to hold a nonbinding referendum on whether the Mayor's job should be full time or part time. Beckett, Jan. 31, 2003, A.G. Op. #03-0038.

A municipality, pursuant to its authority to establish salaries and benefits, may enlarge upon the amount of family and medical leave available to municipal employees. Bowman, Feb. 7, 2003, A.G. Op. #03-0771.

A city may not allow holiday pay for public safety employees who do not work on the holiday and, accordingly, may not allow holiday pay to accumulate through the year to be paid in a lump sum annually. Hewes, Feb. 14, 2003, A.G. Op. #03-0002.

Governing authorities have the authority to make the determination not to use radar speed detection devices to enforce municipal speed limits and to remove radar devices that have already been installed in municipal vehicles. Stuart, May 30, 2003, A.G. Op. 03-0245.

Section 21-17-5(2)(c) does not prohibit a municipality operating under a special charter having its own provisions for conducting municipal elections from following appropriate statutory authority (Section 21-17-11) in seeking to amend its charter with regard to those election provisions. McFatter, May 30, 2003, A.G. Op. 03-0247.

A municipal governing body may name a municipal building after a person that body wishes to recognize and honor. Brown, Oct. 23, 2003, A.G. Op. 03-0587.

Employees who work on a Saturday or Sunday may not receive compensatory time or compensatory pay regardless of the fact that the day is an "actual holiday." These employees should receive ordinary pay for work performed on an "actual holiday." Compensatory time or compensatory pay may be given for work performed on a "legal holiday," as long as there exists a policy providing for such at the time the work was performed. Hammack, Jan. 23, 2004, A.G. Op. 02-0605.

It is within the authority of the governing authorities of a city to enact a policy which authorizes the payment of up to double a police officer's regular rate of pay for the hours worked on a legal holiday. Likewise, a policy could be established authorizing the accrual of compensatory time at double the regular accrual rate for compensatory time for hours worked on a legal holiday. James, Mar. 12, 2004, A.G. Op. 04-0098.

Municipal governing authorities are not mandated by subsection (3) of this section to provide additional pay or leave for employees working on legal holidays. However, if they do, the manner of payment or accrual of leave is to be calculated on an hour for hour basis. James, Mar. 12, 2004, A.G. Op. 04-0098.

A legal holiday begins at 12:00 a.m. and ends at 11:59 p.m. James, Mar. 12, 2004, A.G. Op. 04-0098.

## Miss. Code Ann. § 21-17-5

If municipal employees having a work schedule of 8:00 a.m. to 5:00 p.m. work a full regular work schedule on a legal holiday, then for pay purposes they are entitled to "holiday pay" or extra leave for working that eight hour period, if the municipal governing authorities have enacted policies providing for such extra pay or extra leave. If employees only work a portion of their regular work schedule on a holiday, they are only entitled to "holiday pay" or extra leave commensurate with the actual time. James, Mar. 12, 2004, A.G. Op. 04-0098.

If municipal employees having a work schedule from 7:00 a.m. to 7:00 p.m. work that regular work schedule on a legal holiday, then for pay purposes they are entitled to "holiday pay" or extra leave for working that twelve hour period, if the municipal governing authorities have enacted policies providing for such extra pay or extra leave. For employees having a work schedule of 7:00 p.m. to 7:00 a.m., the amount of "holiday pay" or extra leave earned would depend upon that portion of the legal holiday worked. James, Mar. 12, 2004, A.G. Op. 04-0098.

If a vehicle has been offered (donated) to the municipality, and there has been no acceptance of that vehicle, the vehicle should not be included in the city's inventory, and no duties exist with regard to that vehicle. McLaurin, July 16 2004, A.G. Op. 04-0356.

Authority for the donation of city funds to a voluntary relief organization for the benefit of those who suffered from Hurricane Katrina may be found in a number of provisions of the Mississippi Code. Trotter, Sept. 23, 2005, A.G. Op. 05-0484.

The authority of a city council to enact orders, ordinances and resolutions, as established by Section 21-17-5, applies to matters which are properly within the jurisdiction of the legislative branch. As such, a council may not lawfully enact policies with regard to the daily operations of municipal departments, a power which is firmly rooted in the executive branch of government. Smith, Oct. 21, 2005, A.G. Op. 05-0519.

A town may not donate water system improvements to a private community water association. Helmert, Oct. 28, 2005, A.G. Op. 05-0518.

Municipalities are prohibited from making donations absent specific statutory authority to do so. Thomas, Jan. 27, 2006, A.G. Op. 06-0014.

The award of compensatory time or "holiday pay" to employees not actually working on a holiday would constitute an unlawful donation. Kohnke, Apr. 7, 2006, A.G. Op. 06-0123.

As long as the provisions of a municipal ordinance requiring the registration of sex offenders supplement, and do not conflict, with the provisions of Section 45-33-21, a municipality is within the authority granted it by Section 21-17-5 to enact such an ordinance. Gibson, Apr. 21, 2006, A.G. Op. 05-0382.

A municipality may conduct a non-binding referendum on the adoption of zoning. Beckett, Sept. 29, 2006, A.G. Op. 06-0481.

A municipality may adopt an ordinance, consistent with its authority under Section 21-17-5, that permits payroll deduction of union membership dues. Evans, Dec. 13, 2006, A.G. Op. 06-0543.

Although Sections 63-3-201 and 63-9-11 provide that a violation of the rules of the road is a criminal violation, a city is not prohibited from enacting additional ordinances also making disobedience or disregard of a traffic control signal a civil offense. Mitchell, Dec. 13, 2006, A.G. Op. 06-0170.

A County Board of Supervisors can hold a non-binding referendum to ascertain the opinion of citizens of the county concerning a casino proposed by an Indian tribe on lands owned by the tribe in the county, and does not have to wait until the next regular election year. The issue is within the jurisdiction of the Board and justifies the use of the county's home rule powers to call for the referendum, but the Board must first make a finding that the use of public funds for such a referendum is in the county's best interest. Guice, March 7, 2007, A.G. Op. #07-00108, 2007 Miss. AG LEXIS 104.

For the Tunica County Utility District, which is county-owned, to fund the construction of connecting water lines to a privately owned utility company would constitute an unlawful donation under Miss. Code Ann. § 19-3-40 and Miss. Const. of 1890, Art. 4 § 66, unless the private utility gives adequate consideration, which may take into account the value of and cost to replicate the backup service that would be provided to the private utility. Dulaney, March 15, 2007, A.G. Op. #07-00123, 2007 Miss. AG LEXIS 62.

A County Board of Supervisors can hold a non-binding referendum to ascertain the opinion of citizens of the county concerning proposed gaming operations by an Indian tribe on lands owned by the tribe in the county. The issue is within the jurisdiction of the Board and justifies the use of the county's home rule powers to call for the referendum, but the Board must first make a finding that the use of public funds for such a referendum is in the county's best interest. Yancey, March 26, 2007, A.G. Op. #07-00178, 2007 Miss. AG LEXIS 123.

## RESEARCH REFERENCES

### ALR.

Validity of municipal regulation of storage or accumulation of lumber, straw, trash, or similar inflammable material. 64 A.L.R.2d 1040.

### Am. Jur.

23 Am. Jur. Pl & Pr Forms (Rev), Taxpayers' Actions, Form 1 (complaint, petition, or declaration to enjoin illegal expenditure of public funds).

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Miss. Code Ann. § 19-25-73

\*\*\*Current with 2024 1st and 2nd Extraordinary Sessions and Regular Session legislation, including changes and corrections made by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.\*\*\*

**Mississippi Code 1972 Annotated > Title 19. Counties and County Officers (Chs. 1 — 31) > Chapter 25. Sheriffs (§§ 19-25-1 — 19-25-87)**

**§ 19-25-73. Feeding of prisoners; alternative methods of funding.**

(1) In respect to the feeding of prisoners by the sheriff's office, the board of supervisors is authorized to choose one (1) of the following methods:

(a) It shall only contract with a local caterer or restaurant owner to bring in food for the prisoners, and the contract shall be awarded after taking bids as provided by law for other county contracts.

(b) The sheriff shall purchase, in the name of the county, all necessary food and related supplies to be used for feeding prisoners only in the county jail. All purchases of such food and supplies shall be invoiced to the county and placed on the claims docket of the board of supervisors for disposition in the same manner as all other claims against the county. All wages and other compensation for services rendered to the sheriff in connection with the feeding of prisoners shall be submitted to and approved by the board of supervisors as other wages or compensation paid to employees of the sheriff. The total expenditure for such purpose under this method shall not exceed Fifteen Dollars (\$15.00) per day per prisoner, except as provided in subsection (3) of this section. All payments and reimbursements from any source for the keeping of prisoners shall be received and paid into the general fund of the county.

(c) The board of supervisors may negotiate a contract with the board of trustees of the local public community hospital to bring in food for the prisoners.

(2) The board of supervisors may authorize the sheriff to maintain a bank account entitled "jail food allowance account" into which shall be deposited all receipts for feeding and keeping prisoners in the county jail, including payments from the board of supervisors at the rate not to exceed Fifteen Dollars (\$15.00) per prisoner per day and all such receipts from municipalities, the United States and any other jurisdictions required to pay the cost of feeding or keeping prisoners contained in the jail. He shall maintain a receipts journal and a disbursements journal, in a form to be prescribed by the State Department of Audit, which will provide the information necessary to determine the actual cost of feeding the prisoners, which shall not exceed Fifteen Dollars (\$15.00) per prisoner per day, except as provided in subsection (3) of this section. All costs and expenses for such feeding shall be paid from the jail food allowance account and supported by properly itemized invoices. Any funds accumulating in the jail food allowance account in excess of

the monthly average expenditures, plus ten percent (10%) for contingencies, shall be paid into the county general fund at least once each calendar quarter.

(3) In the event that prisoners are housed in the county jail by any political subdivision of the state, the county may charge the political subdivision for housing, feeding and otherwise caring for such prisoners an amount not to exceed the payments 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. Nothing in this section shall be construed to affect payments by the Department of Corrections set by state law for the keeping in the county jail of persons committed, sentenced or otherwise placed under the custody of the Department of Corrections.

## History

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Codes, 1942, § 4259.5; Laws, 1972, ch. 463, § 1; Laws, 1976, ch. 457, § 1; Laws, 1979, ch. 481; Laws, 1982, ch. 337; Laws, 1991, ch. 460, § 1, eff from and after July 1, 1991; Laws, 2019, ch. 371, § 1, eff from and after July 1, 2019.

### Annotations

### Amendment Notes —

The 2019 amendment substituted “Fifteen Dollars (\$15.00)” for “an amount equal to Six Dollars (\$6.00)” in the next-to-last sentence of (1)(b); in (2), substituted “rate not to exceed Fifteen Dollars (\$15.00)” for “rate of Six Dollars (\$6.00)” in the first sentence and “Fifteen Dollars (\$15.00)” for “Six Dollars (\$6.00)” in the second sentence; and substituted “state law” for “Section 47-5-112, Mississippi Code of 1972” in the first and second sentences of (3).

### Cross References —

Restrictions on governmental purchases of foreign beef, see §§ 31-7-61 to 31-7-65.

## JUDICIAL DECISIONS

### 1. Rescission of contract.

Board of supervisors’ capricious rescission of a caterer’s contract for prisoner catering services was in error because it was arbitrarily based upon consideration of matters outside of the bid specifications; the board rescinded the award of the contract despite the caterer’s compliance with bid requirements and certifications, and it based its decision upon the testimony of the sheriff, which lacked a credible basis upon which it could base its decision. Howell v. Bd. of Supervisors, 179 So. 3d 34, 2015 Miss. App. LEXIS 187 (Miss. Ct. App.), cert. denied, 178 So. 3d 729, 2015 Miss. LEXIS 566 (Miss. 2015).

## OPINIONS OF THE ATTORNEY GENERAL



## Miss. Code Ann. § 19-25-73

Miss Code Section 19-25-73(1) lists different methods which may be used to feed prisoners, including contract with local caterer; it is possible that private hospital is in position of caterer; since examination of whether hospital could reasonably be found to be caterer for purposes of Miss. Code Section 19-25-73(1) is for determiner of fact, which in this case is board of supervisors, subject to judicial review. Barry, Mar. 9, 1993, A.G. Op. #92-0032.

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**Miss. Code Ann. § 47-5-112**

\*\*\*Current with 2024 1st and 2nd Extraordinary Sessions and Regular Session legislation, including changes and corrections made by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.\*\*\*

**Mississippi Code 1972 Annotated > Title 47. Prisons and Prisoners; Probation and Parole (Chs. 1 — 7) > Chapter 5. Correctional System (§§ 47-5-1 — 47-5-1517) > Offenders (§§ 47-5-110 — 47-5-183)**

**§ 47-5-112. Repealed.**

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Repealed by Laws of 1989, ch. 488, § 1, eff from and after July 1, 1991.

§ 47-5-112. [Laws, 1977, ch. 479, § 8; Laws, 1978, ch. 447, § 1; Laws, 1979, ch. 372, § 1; reenacted, Laws, 1980, ch. 310; reenacted and amended, Laws, 1981, ch. 465, § 59; am, Laws, 1982, ch. 386; 1983, ch. 390; Laws, 1984, ch. 392; Laws, 1984, ch. 488, § 225; reenacted and amended, Laws, 1985, ch. 507; reenacted and amended, Laws, 1987, ch. 336; Laws, 1988, ch. 504, § 25; Laws, 1989, ch. 488, § 81]

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Miss. Code Ann. § 47-5-901

\*\*\*Current with 2024 1st and 2nd Extraordinary Sessions and Regular Session legislation, including changes and corrections made by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.\*\*\*

*Mississippi Code 1972 Annotated > Title 47. Prisons and Prisoners; Probation and Parole (Chs. 1 — 7) > Chapter 5. Correctional System (§§ 47-5-1 — 47-5-1517) > State Offenders Serving Sentences in County Jails (§§ 47-5-901 — 47-5-911)*

**§ 47-5-901. Service of sentence in county jail if space unavailable in state facility or upon request of sheriff or president of board of supervisors; reimbursement of costs; governmental liability [Repealed effective July 1, 2027].**

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(1)

(a) Any person committed, sentenced or otherwise placed under the custody of the Department of Corrections, on order of the sentencing court and subject to the other conditions of this subsection, may serve all or any part of his sentence in the county jail of the county wherein such person was convicted if the Commissioner of Corrections determines that physical space is not available for confinement of such person in the state correctional institutions. Such determination shall be promptly made by the Department of Corrections upon receipt of notice of the conviction of such person. The commissioner shall certify in writing that space is not available to the sheriff or other officer having custody of the person. Any person serving his sentence in a county jail shall be classified in accordance with Section 47-5-905.

(b) Any person committed, sentenced or otherwise placed under the custody of the Department of Corrections, on order of the sentencing court and subject to the other conditions of this subsection, may serve all or any part of his or her sentence in the county jail of the county wherein such person was convicted if the sheriff or president of the board of supervisors, requests such inmate or inmates. Upon such request, the department may allow such inmate or inmates to serve all or any part of such inmate's or inmates' sentence(s), as the case may be, in the county of conviction of the inmate or inmates or the county of request of a sheriff or board of supervisors outside the county of conviction. Such determination shall be promptly made by the Department of Corrections upon receipt of notice of the conviction of such person. Whenever a request is denied for an inmate or inmates, then the commissioner shall certify in writing to the sentencing court, sheriff, or president of the board of supervisors of a county, as the case may be, that such inmate or inmates does not qualify to serve the sentence or sentences in the county jail. Any person serving his sentence in a county jail shall be classified in accordance with Section 47-5-905.

**(2)** If state prisoners are housed in county jails due to a lack of capacity at state correctional institutions, the Department of Corrections shall determine the cost for food and medical attention for such prisoners. The cost of feeding and housing offenders confined in such county jails shall be based on actual costs or contract price per prisoner. In order to maximize the potential use of county jail space, the Department of Corrections is encouraged to negotiate a reasonable per day cost per prisoner, which in no event may exceed Twenty-five Dollars (\$25.00) per day per offender, except as authorized in Section 47-5-909(2).

**(3)**

**(a)** Upon vouchers submitted by the board of supervisors of any county housing persons due to lack of space at state institutions, the Department of Corrections shall pay to such county, out of any available funds, the actual cost of food, or contract price per prisoner, not to exceed Twenty-five Dollars (\$25.00) per day per offender, except as authorized in Section 47-5-909(2), as determined under subsection (2) of this section for each day an offender is so confined beginning the day that the Department of Corrections receives a certified copy of the sentencing order or five (5) days after the sentencing order is sent, in writing, by such county to the department, whichever is earlier, and will terminate on the date on which the offender is released or otherwise removed from the custody of the county jail. The department, or its contracted medical provider, will pay to a provider of a medical service for any and all incarcerated persons from a correctional or detention facility an amount based upon negotiated fees as agreed to by the medical care service providers and the department and/or its contracted medical provider. In the absence of negotiated discounted fee schedule, medical care service providers will be paid by the department, or its contracted medical service provider, an amount no greater than the reimbursement rate applicable based on the Mississippi Medicaid reimbursement rate. The board of supervisors of any county shall not be liable for any cost associated with medical attention for prisoners who are pretrial detainees or for prisoners who have been convicted that exceeds the Mississippi Medicaid reimbursement rate or the reimbursement provided by the Department of Corrections, whichever is greater. This limitation applies to all medical care services, durable and nondurable goods, prescription drugs and medications. Such payment shall be placed in the county general fund and shall be expended only for food and medical attention for such persons.

**(b)** Upon vouchers submitted by the board of supervisors of any county housing offenders in county jails pending a probation or parole revocation hearing, the department shall pay the reimbursement costs provided in paragraph (a).

**(c)** If the probation or parole of an offender is revoked, the additional cost of housing the offender pending the revocation hearing shall be assessed as part of the offender's court cost and shall be remitted to the department.

**(4)** A person, on order of the sentencing court, may serve not more than twenty-four (24) months of his sentence in a county jail if the person is classified in accordance with Section 47-5-905 and the county jail is an approved county jail for housing state inmates under federal court order. The sheriff of the county shall have the right to petition the

Commissioner of Corrections to remove the inmate from the county jail. The county shall be reimbursed in accordance with subsection (2) of this section.

(5) The Attorney General of the State of Mississippi shall defend the employees of the Department of Corrections and officials and employees of political subdivisions against any action brought by any person who was committed to a county jail under the provisions of this section.

(6) This section does not create in the Department of Corrections, or its employees or agents, any new liability, express or implied, nor shall it create in the Department of Corrections any administrative authority or responsibility for the construction, funding, administration or operation of county or other local jails or other places of confinement which are not staffed and operated on a full-time basis by the Department of Corrections. The correctional system under the jurisdiction of the Department of Corrections shall include only those facilities fully staffed by the Department of Corrections and operated by it on a full-time basis.

(7) An offender returned to a county for post-conviction proceedings shall be subject to the provisions of Section 99-19-42 and the county shall not receive the per-day allotment for such offender after the time prescribed for returning the offender to the Department of Corrections as provided in Section 99-19-42.

## History

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Laws, 1992, ch. 547, § 1; Laws, 1994 Ex Sess, ch. 26, § 16; Laws, 1995, ch. 566, § 2; reenacted without change, Laws, 1997, ch. 408, § 1; reenacted without change, Laws, 1998, ch. 419, § 1; reenacted without change, Laws, 2002, ch. 426, § 1; Laws, 2002, ch. 624, § 4; reenacted without change, Laws, 2003, ch. 421, § 1; reenacted and amended, Laws, 2004, ch. 537, § 1; reenacted without change, Laws, 2005, ch. 395, § 1; reenacted and amended, Laws, 2007, ch. 603, § 1; reenacted without change, Laws, 2008, ch. 323, § 1; Laws, 2010, ch. 490, § 1; reenacted without change, Laws, 2012, ch. 317, § 1; Laws, 2014, ch. 457, § 59; reenacted without change, Laws, 2016, ch. 408, § 1, eff from and after July 1, 2016; reenacted without change, Laws 2020, ch. 456, § 1, eff from and after July 1, 2020; reenacted and amended, Laws, 2020, ch. 485, § 1, eff from and after July 1, 2020; Laws, 2023, ch. 491, § 1, eff from and after July 1, 2023; reenacted without change, Laws, 2024, ch. 458, § 1, eff from and after July 1, 2024.

## Annotations

## Notes

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### Joint Legislative Committee Note —

Section 1 of ch. 426, Laws of 2002, eff from and after July 1, 2002 (approved March 20, 2002), amended this section. Section 4 of ch. 624, Laws of 2002, effective from and after July 1, 2002

(approved April 25, 2002), also amended this section. As set out above, this section reflects the language of Section 4 of ch. 624, Laws of 2002, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 1 of Chapter 456, Laws of 2020, effective from and after July 1, 2020 (approved July 8, 2020, at 8:02 am), reenacted this section without change. Section 1 of Chapter 485, Laws of 2020, effective from and after July 1, 2020 (approved July 8, 2020, at 6:35 pm), reenacted and amended this section. As set out above, this section reflects the language of Section 1 of Chapter 485, Laws of 2020, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective date and the approval date of the amendments are the same, the amendment with the latest approval time supersedes all other amendments to the same section approved on an earlier date and time.

#### **Editor's Notes —**

For the repeal date of this section, see § 47-5-911.

Laws of 2004, ch. 537, § 8 provides:

“SECTION 8. The Performance Evaluation and Expenditure Review Committee shall conduct a study to determine the actual per day cost of housing state inmates in county jails. The PEER Committee shall complete such determination and shall report with the Governor, Lieutenant Governor, Speaker of the House and Chairmen of the Senate and House Corrections Committees no later than December 1, 2004.”

This section was brought forward without change by Laws of 2024, ch. 458, § 1. Since the language of the section as it appears in the main volume is unaffected by the reenactment of the section, it is not reprinted in this supplement.

#### **Amendment Notes —**

The first 2002 amendment (ch. 426) reenacted the section without change.

The second 2002 amendment (ch. 624) rewrote the last sentence in (2); and rewrote (3).

The 2003 amendment reenacted the section without change.

The 2004 amendment reenacted and amended the section by, in (3), rewriting the second sentence and adding the fourth sentence.

The 2005 amendment reenacted the section without change.

The 2007 amendment, which reenacted and amended the section, in (3), added (b) and (c), redesignated the former first paragraph as present (a), and deleted the former last sentence of

(a), which read: “The Department of Corrections shall not pay a county for offenders housed in county jails pending a probation or parole revocation hearing.”

The 2008 amendment reenacted the section without change.

The 2010 amendment, in (3)(a), rewrote the second sentence, which formerly read: “The department shall pay the cost for medical attention for prisoners at an amount no greater than the reimbursement rate based on the Mississippi Medicaid reimbursement rate,” and added the third and fourth sentences.

The 2012 amendment was reenacted without change.

The 2014 amendment, in (3)(b), deleted “out of any available funds,” following “the department shall pay”; and in (4), added “of this section” to the end.

The 2016 amendment reenacted the section without change.

The first 2020 amendment (ch. 456) reenacted the section without change.

The second 2020 amendment (ch. 485) reenacted and amended the section by adding (1)(b).

The 2023 amendment in (1)(b) inserted “or the county of request of a sheriff or board of supervisors outside the county of conviction”; in (2) substituted “Twenty-five Dollars (\$25.00)” for “Twenty Dollars (\$20.00)” and inserted “except as authorized in Section 47-5-909(2)”; in (3)(a) substituted “Twenty-five Dollars (\$25.00)” for “Twenty Dollars (\$20.00)” and inserted “except as authorized in Section 47-5-909(2)” and “or five (5) days after the sentencing order is sent, in writing, by such county to the department, whichever is earlier”.

The 2024 amendment reenacted the section without change.

### **Cross References —**

Department of Corrections may create a postconviction DNA database see [§ 47-5-183](#).

### **Opinion Notes**

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#### **OPINIONS OF THE ATTORNEY GENERAL**

Certification as to whether there is space available within a Department of Corrections facility should be in writing on individual basis. Lucas, Oct. 12, 1992, A.G. Op. #92-0734.

If prisoner is sentenced by circuit judge to department of corrections and committed to county jail, then sheriff can not simply refuse to take prisoner because of overcrowding. Barrett, Jan. 12, 1994, A.G. Op. #93-0832.

The Mississippi Department of Corrections is under no obligation to pay counties for the costs associated with the care of inmates participating in a joint state/county work program under [Section 47-5-401\(1\)](#). Epps, Feb. 28, 2003, A.G. Op. #03-0764.

Miss. Code Ann. § 47-5-901

The state's responsibility for housing costs of prisoners commences the day the Department of Corrections receives a certified copy of the sentencing order regardless of when MDOC finishes the paperwork to induct an inmate into the system. Robinson, Mar. 4, 2005, A.G. Op. 04-0626.

Mississippi Code 1972 Annotated  
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End of Document



1991 Miss. AG LEXIS 946

Office of the Attorney General of the State of Mississippi

**MS Attorney General Opinions**

**Reporter**

1991 Miss. AG LEXIS 946 \*

December 6, 1991

**Core Terms**

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city, municipal, county jail, pre-trial, detainee, repeal, cost, jail, meal

**Request By:** [\*1] Mr. George P. Cossar, Jr.

City Attorney

Charleston, Mississippi

**Opinion By:** MIKE MOORE, ATTORNEY GENERAL

By: Alice D. Wise, Special Assistant Attorney General

**Opinion**

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Attorney General Mike Moore has received your letter of October 23, 1991, and has referred it to me to answer. Your letter states:

The City of Charleston does not own a jail and, by agreement, utilizes the jail owned by Tallahatchie. This letter is written to request your opinion as to whether state law authorizes the payment of fees to the county for housing of municipal prisoners. If state law does authorize such a payment, how much can the city pay?

The city houses two types of prisoners in the Tallahatchie County Jail: (1) those convicted of a crime and serving sentence; and (2) pre-trial detainees who have not posted bail and are awaiting trial. Under Miss. Code Ann. § 21-23-7, it appears that the municipal judge may impose a \$ 10.00 per day jail fee on the prisoner upon conviction as part of court costs. This statute does not indicate whether the city must actually house the prisoner or whether the city must pay the county if it houses the prisoner. The statute furthermore does not address what fees the city must pay for [\*2] pre-trial detainees.

Under Miss. Code Ann. § 19-25-73, effective July 1, 1991, the city appears to be authorized to pay the county the same amount that the Department of Corrections should pay under Miss. Code Ann. § 47-5-112. Miss. Code Ann. § 47-5-112 allows for the payment of the actual cost of food not to exceed \$ 10.00 per day. Miss. Code Ann. § 47-5-112, however, stands repealed as

of July 1, 1991. Is Miss. Code Ann. § 47-5-112 still good law despite its repeal insofar as the city's authority to pay for the cost of meals?

If the city does not have the authority to make payments to the county, how far does this authority extend? In other words, if the pre-trial detainee is only housed for a few hours and does not receive a meal, does the city have the authority to make any payments to the county? Is the city authorized to make payments if the Sheriff does not keep a meal log as outlined in Miss. Code Ann. § 19-25-74?

Section 19-25-73(3) provides authority for counties to charge cities for housing, feeding and caring for municipal prisoners, stating:

In the event that prisoners are housed in the county jail by any political subdivision of the state, the county may charge [\*3] the political subdivision for housing, feeding and otherwise caring for such prisoners an amount not to exceed the payments provided under Section 47-5-112, Mississippi Code of 1972, for the keeping in the county jail of persons committed, sentenced or otherwise placed under the custody of the Department of Corrections.

Section 47-1-39 grants specific authority for cities and counties to contract for use of the county jail by the city, stating:

The governing authorities of municipalities shall have the power to construct and maintain a municipal prison, and to regulate the keeping of the same and the prisoners therein, and to contract with the board of supervisors, which is empowered in the premises, for the use of the county jail by the municipality; and to provide for the working of the streets by municipal prisoners, and to contract with the county for such work by county prisoners or the working of county roads by municipal prisoners, or for working same on the county farms. Municipal prisoners shall be worked on county roads or county farms only in the county in which the municipality is situated. Males and females shall be confined in separate cells or compartments.

As [\*4] you note, § 47-5-112 was repealed as of July 1, 1991. Repeal of § 47-5-112 takes the cap off the amount which cities may reimburse counties for feeding, housing and caring for municipal prisoners. Since § 21-17-5(2)(g) prohibits donations, the amount that a city reimburses a county for expenses incurred on behalf of municipal prisoners must be reasonable.

ATTACHMENT

October 23, 1991

Mr. Mike Moore  
Attorney General  
P O Box 220  
Jackson, MS 39205-0200

IN RE: Payment of Fees to County for Municipal Prisoners

1991 Miss. AG LEXIS 946, \*4

The City of Charleston does not own a jail and, by agreement, utilizes the jail owned by Tallahatchie County. This letter is written to request your opinion as to whether state law authorizes the payment of fees to the county for housing of municipal prisoners. If state law does authorize such a payment, how much can the city pay?

The city houses two types of prisoners in the Tallahatchie County Jail: (1) those convicted of a crime and serving sentence; and (2) pre-trial detainees who have not posted bail and are awaiting trial. Under Miss. Code Ann. § 21-23-7, it appears that the municipal judge may impose a \$ 10.00 per day jail fee on the prisoner upon conviction [\*5] as part of court costs. This statute does not indicate whether the city must actually house the prisoner or whether the city must pay the county if it houses the prisoner. The statute furthermore does not address what fees the city must pay for pre-trial detainees.

Under Miss. Code Ann. § 19-25-73, effective July 1, 1991, the city appears to be authorized to pay the county the same amount that the Department of Corrections should pay under Miss. Code Ann. § 47-5-112. Miss. Code Ann. § 47-5-112 allows for the payment of the actual cost of food not to exceed \$ 10.00 per day. Miss. Code Ann. § 47-5-112, however, stands repealed as of July 1, 1991. Is Miss. Code Ann. § 47-5-112 still good law despite its repeal insofar as the city's authority to pay for the cost of meals?

If the city does not have the authority to make payments to the county, how far does this authority extend? In other words, if the pre-trial detainee is only housed for a few hours and does not receive a meal, does the city have the authority to make any payments to the county? Is the city authorized to make payments if the Sheriff does not keep a meal log as outlined in Miss. Code Ann. § 19-25-74?

Your prompt [\*6] attention to this matter would be greatly appreciated.

George P. Cossar, Jr., City Attorney

**Load Date:** 2014-07-12

MS Attorney General Opinions

1995 Miss. AG LEXIS 119

Office of the Attorney General of the State of Mississippi

**MS Attorney General Opinions**

**Reporter**

1995 Miss. AG LEXIS 119 \*

**Opinion No. 94-0791**

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March 8, 1995

**Core Terms**

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county jail, feed, board of supervisors, municipal, department of corrections, sentence, city, per day, cost, jail, custody, section, food, dollar, offender, inmate, classify, month, log, contractor, confine, political subdivision, committed person, actual cost, meal, food allowance, general fund, expenditure, reimburse, prison

**Syllabus**

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[\*1]

Re: County charging cities to house prisoners

**Request By:** George Cossar, Jr., Esq.

Cossar & Cossar

17 North Market Street

P.O. Box 50

Charleston, Mississippi 38921

**Opinion By:** MIKE MOORE, ATTORNEY GENERAL

By: Alice Wise, Special Assistant Attorney General

**Opinion**

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Attorney General Mike Moore has received your letter on behalf of the City of Charleston and has asked me to respond. Your letter states:

On December 6, 1991, you sent me an opinion stating that the City of Charleston is authorized to pay Tallahatchie County for housing prisoners.

The recent special session allowed counties to charge the Department of Corrections the sum of \$ 20.00 per day.

Does this mean that the County can now charge cities the sum of \$ 20.00 per day?

Also, can the sheriff alone make the decision as to the cost which the city must pay or must this be done by the Board of Supervisors?

Miss. Code Ann. section 47-5-901 as amended by the 1994 special session states in relevant part:

(1) Any person committed, sentenced or otherwise placed under the custody of the Department of Corrections, on order of the sentencing court and subject to the other conditions of this subsection, may serve [\*2] all or part of his sentence in the county jail of the county wherein such person was convicted if the Commissioner of Corrections determines that physical space is not available for confinement of such person in the state correctional institutions. Such determination shall be promptly made by the Department of Corrections upon receipt of notice of the conviction of such person. The commissioner shall certify in writing that space is not available to the sheriff or other officer having custody of the person. Any person serving his sentence in a county jail shall be classified in accordance with Section 47-5-905.

(2) If state prisoners are housed in county jails due to a lack of capacity at state correctional institutions, the Department of Corrections shall determine the cost for food and medical attention for such prisoners. The cost of feeding and housing offenders confined in such county jail shall be based on actual costs or contract price per prisoner not to exceed Twenty Dollars (\$ 20.00) per day per offender.

This statute limits the amount that the Department of Corrections can pay a county for housing prisoners to \$ 20.00 per day per prisoner and does not limit the amount [\*3] that a city can pay a county for housing prisoners. See also Miss. Code Ann. section 47-1-43 (sets limit on amount counties may pay cities for housing county prisoners) .

Pursuant to Miss. Code Ann. section 19-25-73 (Supp. 1994) a board of supervisors may negotiate a contract with a city to house city prisoners in the county jail. The city may negotiate with the county to house, feed and care for city prisoners for a reasonable fee, and there is no statutory limit on that amount. As we stated in our opinion to you of December 6, 1991 (attached), section 21-17-5(2)(g) prohibits donations and the amount that a city reimburses a county for expenses incurred on behalf of municipal prisoners must be reasonable.

December 6, 1991

Mr. George P. Cossar, Jr.

City Attorney

Charleston, Mississippi

Attorney General Mike Moore has received your letter of October 23, 1991, and has referred it to me to answer. Your letter states:

The City of Charleston does not own a jail and, by agreement, utilizes the jail owned by Tallahatchie. This letter is written to request your opinion as to whether state law [\*4] authorizes the payment of fees to the county for housing of municipal prisoners. If state law does authorize such a payment, how much can the city pay?

The city houses two types of prisoners in the Tallahatchie County Jail: (1) those convicted of a crime and serving sentence; and (2) pre-trial detainees who have not posted bail and are awaiting trial. Under Miss. Code Ann. § 21-23-7, it appears that the municipal judge may impose a \$ 10.00 per day jail fee on the prisoner upon conviction as part of court costs. This statute does not indicate whether the city must actually house the prisoner or whether the city must pay the county if it houses the prisoner. The statute furthermore does not address what fees the city must pay for pre-trial detainees.

Under Miss. Code Ann. § 19-25-73, effective July 1, 1991, the city appears to be authorized to pay the county the same amount that the Department of Corrections should pay under Miss. Code Ann. § 47-5-112. Miss. Code Ann. § 47-5-112 allows for the payment of the actual cost [\*5] of food not to exceed \$ 10.00 per day. Miss. Code Ann. § 47-5-112, however, stands repealed as of July 1, 1991. Is Miss. Code Ann. § 47-5-112 still good law despite its repeal insofar as the city's authority to pay for the cost of meals?

If the city does not have the authority to make payments to the county, how far does this authority extend? In other words, if the pre-trial detainee is only housed for a few hours and does not receive a meal, does the city have the authority to make any payments to the county? Is the city authorized to make payments if the Sheriff does not keep a meal log as outlined in Miss. Code Ann. § 19-25-74?

Section 19-25-73(3) provides authority for counties to charge cities for housing, feeding and caring for municipal prisoners, stating:

In the event that prisoners are housed in the county jail by any political subdivision of the state, the county may charge the political subdivision for housing, feeding and otherwise caring for such prisoners an amount not to exceed the payments provided under Section 47-5-112, Mississippi Code of 1972. [\*6] for the keeping in the county jail of persons committed, sentenced or otherwise placed under the custody of the Department of Corrections.

Section 47-1-39 grants specific authority for cities and counties to contract for use of the county jail by the city, stating:

The governing authorities of municipalities shall have the power to construct and maintain a municipal prison, and to regulate the keeping of the same and the prisoners therein, and to contract with the board of supervisors, which is empowered in the premises, for the use of the county jail by the municipality; and to provide for the working of the streets by municipal prisoners, and to contract with the county for such work by county prisoners or the working of county roads by municipal prisoners, or for working same on the county farms. Municipal prisoners shall be worked on county roads or county farms only in the county in which the

municipality is situated. Males and females shall be confined in separate cells or compartments.

As you note, § 47-5-112 was repealed as of July 1, 1991. Repeal of § 47-5-112 takes the cap off the amount which cities may reimburse counties for feeding, housing and caring for municipal [\*7] prisoners. Since § 21-17-5(2)(g) prohibits donations, the amount that a city reimburses a county for expenses incurred on behalf of municipal prisoners must be reasonable.

MIKE MOORE, ATTORNEY GENERAL

By: Alice D. Wise, Special Assistant Attorney General

§ 19-25-73. Feeding of prisoners; alternative methods of funding.

(1) In respect to the feeding of prisoners by the sheriff's office, the board of supervisors is authorized to choose one (1) of the following methods:

(a) It shall only contract with a local caterer or restaurant owner to bring in food for the prisoners, and the contract shall be awarded after taking bids as provided by law for other county contracts.

(b) The sheriff shall purchase, in the name of the county, all necessary food and related supplies to be used for feeding prisoners only in the county jail. All purchases of such food and supplies shall be invoiced to the county and placed on the claims docket of the board of supervisors for disposition in the same manner as all other claims against the county. All wages and other compensation for services rendered to the sheriff in connection with the feeding of prisoners shall be submitted to and approved [\*8] by the board of supervisors as other wages or compensation paid to employees of the sheriff. The total expenditure for such purpose under this method shall not exceed an amount equal to Six Dollars (\$ 6.00) per day per prisoner, except as provided in subsection (3) of this section. All payments and reimbursements from any source for the keeping of prisoners shall be received and paid into the general fund of the county.

(c) The board of supervisors may negotiate a contract with the board of trustees of the local public community hospital to bring in food for the prisoners.

(2) The board of supervisors may authorize the sheriff to maintain a bank account entitled "jail food allowance account" into which shall be deposited all receipts for feeding and keeping prisoners in the county jail, including payments from the board of supervisors at the rate of Six Dollars (\$ 6.00) per prisoner per day and all such receipts from municipalities, the United States and any other jurisdictions required to pay the cost of feeding or keeping prisoners contained in the jail. He shall maintain a receipts journal and a disbursements journal, in a form to be prescribed by the State Department of Audit, [\*9] which will provide the information necessary to determine the actual cost of feeding the prisoners, which shall not exceed Six Dollars (\$ 6.00) per prisoner per day, except as provided in subsection (3) of this section. All costs and expenses for such feeding shall be paid from the jail food allowance account and supported by properly itemized invoices. Any funds accumulating in the jail food allowance

account in excess of the monthly average expenditures, plus ten percent (10%) for contingencies, shall be paid into the county general fund at least once each calendar quarter.

(3) In the event that prisoners are housed in the county jail by any political subdivision of the state, the county may charge the political subdivision for housing, feeding and otherwise caring for such prisoners an amount not to exceed the payments provided under Section 47-5-112, Mississippi Code of 1972, for the keeping in the county jail of persons committed, sentenced or otherwise placed under the custody of the Department of Corrections. Nothing in this section shall be construed to affect payments by the Department of Corrections set by Section 47-5-112, Mississippi Code of 1972. [\*10] for the keeping in the county jail of persons committed, sentenced or otherwise placed under the custody of the Department of Corrections.

SOURCES: Codes, 1942, § 4259.5; Laws, 1972, ch. 463, § 1; 1976, ch. 457, § 1; 1979, ch. 481; 1982, ch. 337; 1991, ch. 460, § 1, eff from and after July 1, 1991.

Cross references --

Restrictions on governmental purchases of foreign beef, see §§ 31-7-61 to 31-7-65. Expenses of housing in county jails prisoners under custody of department of corrections, see

§ 47-5-112.

§ 19-25-74. Feeding of prisoners -- log of meals served.

In any event, regardless of which method in respect to the feeding of prisoners is selected by the board of supervisors, the sheriff shall maintain a log, showing the name of each prisoner, the date and time of incarceration and release, to be posted daily, which shall record the number of meals served to prisoners at each mealtime, and the hours of the day served, and shall make affidavit as to the correctness thereof and file the same monthly with the board of supervisors. Such log shall remain on file with the board of supervisors as other records of said board and shall be made available to the state department [\*11] of audit upon request. No claims for the cost or expenses of feeding prisoners shall be approved by the board of supervisors for any month unless and until such log for that month is filed.

SOURCES: Laws, 1976, ch. 457, § 2, eff from and after October 1, 1976.

§ 47-1-43. Keeping of county offenders in municipal jails pending trial.

The board of supervisors of any county and the governing authorities of any municipality located within such county are hereby authorized to enter into agreements providing for the keeping of persons arrested for offenses committed within the county in which such municipality is located in the jail facilities of such municipality pending trial of such person. Such agreements may provide for the payment to the municipality by the board of supervisors from any available funds of the county of a sum not to exceed five dollars (\$ 5.00) for each day or part thereof during which an offender may be confined in the jail of the municipality.

SOURCES: Codes, 1942, § 3374-135.5; Laws, 1968, ch. 288, § 1, eff from and after passage (approved March 27, 1968).



## Cross references --

Residency of prisoner as affected by incarceration in facility of Department [\*12] of Corrections, see § 47-1-63.

§ 47-1-45. Board of supervisors may agree with municipalities of the county on terms of working municipal convicts.

The board of supervisors of each county is authorized to make contract with any village or small town within the county to work its convicts on the county farm. But in agreeing to take and work such convicts the board of supervisors shall not agree to pay more per day for the labor of any municipal convict than in its judgment the labor of such convict is worth to the county, in order that in the working of such municipal convicts the county shall not do so at a loss to the county.

SOURCES: Codes, 1880, § 3185; 1892, § 813; 1906, § 869; Hemingway's 1917, § 4029; 1930, § 4070; 1942, § 7911; Laws, 1918, ch. 154.

## Research and Practice References --

*60 Am Jur 2d, Penal and Correctional Institutions § 170.*

72 CJS, Prisons and Rights of Prisoners §§ 20, 22, 25, 26, 28, 29, 31, 35, 41, 42, 45-49, 63, 99, 105.

§ 47-1-47. Credit allowed for labor of convicts; treatment.

Every county or municipal convict shall be comfortably clothed at the expense of the county or municipality, [\*13] but all clothing furnished shall remain the property of the county or municipality, and shall be thoroughly fumigated and disinfected before being allotted to a convict after having been used by another, and every convict shall be sufficiently fed, to maintain his body and induce his good health, with substantial and suitable food to be furnished and prepared and paid for by the county or municipality. And every convict for each day's work he is required to do shall receive credit on his fine and costs assessed against him of ten dollars (\$ 10.00) per day, until such fine and costs are fully paid. And in case the convict is serving a sentence of imprisonment, each day that he works in serving such sentence shall entitle him credit for equal time on his sentence of imprisonment, but in no instance shall a convict receive credit on the fine and costs and on the time sentenced to imprisonment for the same work. No convict shall be allowed to labor more than eight (8) hours per day, but shall be required, when able, to perform eight (8) hours labor each day.

SOURCES: Codes, 1892, § 786; 1906, § 845; Hemingway's 1917, § 4020; 1930, § 4065; 1942, § 7906; Laws, 1908, ch. 109; 1954, [\*14] ch. 243; 1979, ch. 501, § 2, eff from and after passage (approved April 18, 1979).

## Cross references --

Removal of prisoners in case of infectious disease, see §§ 47-3-7, 47-3-9.

Enforcement of sentence, see § 47-1-1.

Medical aid for prisoners, see § 47-1-57.

Clothing for persons working on state highway projects, see § 65-1-8.

SECTION 12. -- [Classified as § 47-5-1221] A plan shall be developed and certified by the commissioner which demonstrates the method by which the state would resume control of the prison upon contract termination. Such plan shall be submitted for review and comment to law enforcement agencies, the district attorney and circuit judges in the county in which the prison is located.

SECTION 13. -- [Classified as § 47-5-1223] (1) The Commissioner of the Department of Corrections shall designate an existing employee of the Department of Corrections as a contract compliance officer within the department which shall monitor any contracts between the state and private entities for the operation and management of correctional facilities, and shall assure contractor compliance with its performance work statement and assure the provision of prisoner care requirements. [\*15]

(2) The contract compliance officer shall be responsible for monitoring all aspects of each privatized correctional facility. The officer shall be provided an on-site work area, shall be on-site on a daily basis, and shall have access to all areas of the facilities and to offenders and staff at all times. The private contractor or contractors shall provide any and all data, reports and other materials that the contract compliance officer determines are necessary to carry out monitoring responsibilities under this section.

(3) The contract compliance officer shall report at least annually, or as requested, to the Governor, the Senate Committee on Corrections, the House Penitentiary Committee and the Joint Legislative Committee on Performance Evaluation and Expenditure Review on the performance of the private contractor or contractors.

SECTION 14. -- [Classified as § 47-5-1225] No contract for private correctional facilities or services shall authorize, allow, or imply a delegation of the authority or responsibility of the state to a prison contractor to:

- (a) Classify inmates or place inmates in less restrictive custody or more restrictive custody;
- (b) Transfer an inmate, although [\*16] the contractor may recommend in writing that the department transfer a particular inmate;
- (c) Grant, deny, or revoke sentence credits;
- (d) Recommend that the parole board either deny or grant parole, although the contractor may submit written reports that have been prepared in the ordinary course of business;
- (e) Develop and implement procedures for calculating sentence credits or inmate release and parole eligibility dates;
- (f) Require an inmate to work, except on department-approved projects; approve the type of work that inmates may perform; or award or withhold wages or sentence credits based on the manner in which individual inmates perform such work; or

(g) Determine inmate eligibility for furlough and work release.

SECTION 15. -- [Classified as § 47-5-1227] (1) No public official or an employee of a state agency who has duties or responsibilities related to the contracting, constructing, leasing, acquiring or operating a private correctional facility may become an employee, consultant or contract vendor to a private entity providing such facility or services to the state within one (1) year after the termination of his service or employment.

(2) Any person violating [\*17] this section shall be guilty of a misdemeanor and punished by a fine of not less than Five Hundred Dollars (\$ 500.00) but not more than One Thousand Dollars (\$ 1,000.00)

SECTION 16. Section 47-5-901, Mississippi Code of 1972, is amended as follows:

47-5-901. (1) Any person committed, sentenced or otherwise placed under the custody of the Department of Corrections, on order of the sentencing court and subject to the other conditions of this subsection, may serve all or any part of his sentence in the county jail of the county wherein such person was convicted if the Commissioner of Corrections determines that physical space is not available for confinement of such person in the state correctional institutions. Such determination shall be promptly made by the Department of Corrections upon receipt of notice of the conviction of such person. The commissioner shall certify in writing that space is not available to the sheriff or other officer having custody of the person. Any person serving his sentence in a county jail shall be classified in accordance with Section 47-5-905.

(2) If state prisoners are housed in county jails due to a [\*18] lack of capacity at state correctional institutions, the Department of Corrections shall determine the cost for food and medical attention for such prisoners. The cost of feeding and housing offenders confined in such county jails shall be based on actual costs or contract price per prisoner not to exceed Twenty Dollars (\$ 20.00) per day per offender.

(3) Upon vouchers submitted by the board of supervisors of any county housing persons due to lack of space at state institutions, the Department of Corrections shall pay to such county, out of any available funds, the actual cost of food, or contract price per prisoner, not to exceed Twenty Dollars (\$ 20.00) per day per offender as determined under subsection (2) of this section for each day an offender is so confined beginning the fifth day following the date the offender is committed and taken into custody by the sheriff and will terminate on the date on which the offender is released or otherwise removed from the custody of the county jail, and shall pay the actual cost for medical attention for prisoners unless the Commissioner of Corrections shall find that the costs of any medical services rendered are unreasonable. Such payment [\*19] shall be placed in the county general fund and shall be expended only for food and medical attention for such persons.

(4) A person, on order of the sentencing court, may serve not more than twenty-four (24) months of his sentence in a county jail if the person is classified in accordance with Section 47-5-905 and the county jail is an approved county jail for housing state inmates under federal court order. The sheriff of the county shall have the right to petition the Commissioner of Corrections to remove the inmate from the county jail. The county shall be reimbursed in accordance with subsection (2).

(5) The Attorney General of the State of Mississippi shall defend the employees of the Department of Corrections and officials and employees of political subdivisions against any action brought by any person who was committed to a county jail under the provisions of this section.

(6) This section does not create in the Department of Corrections, or its employees or agents, any new liability, express or implied, nor shall it create in the Department of Corrections any administrative authority or responsibility for the construction, funding, administration or operation of county [\*20] or other local jails or other places of confinement which are not staffed and operated on a full-time basis by the Department of Corrections. The correctional system under the jurisdiction of the Department of Corrections shall include only those facilities fully staffed by the Department of Corrections and operated by it on a full-time basis.

SECTION 17. -- [Classified as § 47-5-1229] There is hereby created a special fund to be designated as the "Correctional Facilities Emergency Construction Fund." Any monies as may be appropriated by the Legislature shall be deposited into the fund. The expenditure of monies out of the fund shall be under the direction of the State Prison Emergency Construction and Management Board as spread on its minutes and such funds shall be paid by the State Treasurer upon warrants issued by the Executive Director of the Department of Finance and Administration.

SECTION 18. Section 25-9-107, Mississippi Code of 1972. is amended as follows:

25-9-107. The following terms, when used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(a) "Board" [\*21] shall mean the State Personnel Board created under the provisions of this chapter.

(b) "State service" shall mean all employees of state departments, agencies and institutions as defined herein, except those officers and employees excluded by this chapter.

§ 19-25-73. Feeding of prisoners; alternative methods of funding.

(1) In respect to the feeding of prisoners by the sheriff's office, the board of supervisors is authorized to choose one (1) of the following methods:

(a) It shall only contract with a local caterer or restaurant owner to bring in food for the prisoners, and the contract shall be awarded after taking bids as provided by law for other county contracts.

(b) The sheriff shall purchase, in the name of the county, all necessary food and related supplies to be used for feeding prisoners only in the county jail. All purchases of such food and supplies shall be invoiced to the county and placed on the claims docket of the board of supervisors for disposition in the same manner as all other claims against the county. All wages and other compensation for services rendered to the sheriff in connection with the feeding of prisoners shall be submitted to and approved [\*22] by the board of supervisors as other wages or compensation paid to employees of the sheriff. The total expenditure for such purpose under this method shall not exceed an amount equal to Six Dollars (\$ 6.00) per day per

prisoner, except as provided in subsection (3) of this section. All payments and reimbursements from any source for the keeping of prisoners shall be received and paid into the general fund of the county.

(c) The board of supervisors may negotiate a contract with the board of trustees of the local public community hospital to bring in food for the prisoners.

(2) The board of supervisors may authorize the sheriff to maintain a bank account entitled "jail food allowance account" into which shall be deposited all receipts for feeding and keeping prisoners in the county jail, including payments from the board of supervisors at the rate of Six Dollars (\$ 6.00) per prisoner per day and all such receipts from municipalities, the United States and any other jurisdictions required to pay the cost of feeding or keeping prisoners contained in the jail. He shall maintain a receipts journal and a disbursements journal, in a form to be prescribed by the State Department of Audit, [\*23] which will provide the information necessary to determine the actual cost of feeding the prisoners, which shall not exceed Six Dollars (\$ 6.00) per prisoner per day, except as provided in subsection (3) of this section. All costs and expenses for such feeding shall be paid from the jail food allowance account and supported by properly itemized invoices. Any funds accumulating in the jail food allowance account in excess of the monthly average expenditures, plus ten percent (10%) for contingencies, shall be paid into the county general fund at least once each calendar quarter.

(3) In the event that prisoners are housed in the county jail by any political subdivision of the state, the county may charge the political subdivision for housing, feeding and otherwise caring for such prisoners an amount not to exceed the payments provided under Section 47-5-112, Mississippi Code of 1972. for the keeping in the county jail of persons committed, sentenced or otherwise placed under the custody of the Department of Corrections. Nothing in this section shall be construed to affect payments by the Department of Corrections set by Section 47-5-112, Mississippi Code of 1972. [\*24] for the keeping in the county jail of persons committed, sentenced or otherwise placed under the custody of the Department of Corrections.

SOURCES: Codes, 1942, § 4259.5; Laws, 1972, ch. 463, § 1; 1976, ch. 457, § 1; 1979, ch. 481; 1982, ch. 337; 1991, ch. 460, § 1, eff from and after July 1, 1991.

Cross references --

Restrictions on governmental purchases of foreign beef, see §§ 31-7-61 to 31-7-65.

Expenses of housing in county jails prisoners under custody of department of corrections, see § 47-5-112.

§ 19-25-74. Feeding of prisoners -- log of meals served.

In any event, regardless of which method in respect to the feeding of prisoners is selected by the board of supervisors, the sheriff shall maintain a log, showing the name of each prisoner, the date and time of incarceration and release, to be posted daily, which shall record the number of meals served to prisoners at each mealtime, and the hours of the day served, and shall make affidavit as to the correctness thereof and file the same monthly with the board of

supervisors. Such log shall remain on file with the board of supervisors as other records of said board and shall be made available to the state department [\*25] of audit upon request. No claims for the cost or expenses of feeding prisoners shall be approved by the board of supervisors for any month unless and until such log for that month is filed.

SOURCES: Laws, 1976, ch. 457, § 2, eff from and after October 1, 1976.

§ 19-25-75. Additional guards for jail.

#### JUDICIAL DECISIONS

Without existence of special relationship between sheriff and victim of homicide by jail escapees or sheriff and victim's survivors, survivors have no cause of action against sheriff because sheriff's duty is general public duty. Robinson v Estate of Williams (1989, SD Miss) 721 F Supp 806.

**Load Date:** 2014-07-12

MS Attorney General Opinions

## 2024 MISS. AG LEXIS 26

Office of the Attorney General of the State of Mississippi

### **MS Attorney General Opinions**

#### **Reporter**

2024 MISS. AG LEXIS 26 \*

### **Opinion No. 2024-00030**

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April 4, 2024

### **Core Terms**

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municipal, county jail, preliminary hearing, opine, board of supervisors, statutory authority, county grand jury, grand jury, officially, negotiate, prison

### **Syllabus**

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[\*1] Housing Municipal Prisoners in the County Jail

#### **Request By:** The Honorable Steve Rushing

Sheriff, Lincoln County

215 Justice Street

Brookhaven, Mississippi 39601

### **Question**

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The Office of the Attorney General has received your request for an official opinion.

#### **Questions Presented**

1. Is there statutory authority or case law stating that a city prisoner becomes a county prisoner when bound over to the county grand jury at a preliminary hearing?

2. Does [Mississippi Code Annotated Section 47-1-39](#) authorize a county to include in the contract that a city inmate will not become a county prisoner until said prisoner is indicted by the grand jury?

**Opinion By:** LYNN FITCH, ATTORNEY GENERAL; Abigail C. Overby, Special Assistant Attorney General

### **Opinion**

**Brief Response**

1. We are not aware of any statutory authority or case law stating that a city prisoner becomes a county prisoner upon being bound over to the county grand jury at a preliminary hearing.
2. If a county and municipality choose to contract with one another for the holding of municipal prisoners in the county jail pursuant to Section 47-1-39, said contract should include the terms negotiated between the parties in accordance with the law. We are unable to officially opine as to the terms or interpretation of a contract.

**Applicable Law and Discussion**

While we are not aware of any statutory [\*2] authority or case law stating that a city prisoner becomes a county prisoner upon being bound over to the grand jury at a preliminary hearing, Section 47-1-39 provides two options for housing municipal prisoners. That section states: "The governing authorities of municipalities shall have the power to construct and maintain a municipal prison, and to regulate the keeping of the same and the prisoners therein, and to contract with the board of supervisors, which is empowered in the premises, for the use of the county jail by the municipality." *Id.*; see [Gage v. State, 68 So. 2d 417, 418 \(1953\)](#) (providing that a municipal defendant may be confined in the county jail if the city has contracted with the board of supervisors to use the county jail in lieu of constructing and maintaining their own); MS AG Op., *Rasco* at \*1 (Sept. 5, 2008) (opining that the city may contract with the county for the holding of municipal prisoners or construct its own prison).

In response to your second question, Section 47-1-39 only authorizes a contract for the housing of municipal prisoners. It does not speak to the terms of said contract. Should the county and municipality choose to contract for the holding of municipal prisoners in the county jail, the two should negotiate terms of the agreement in accordance with the law. We are unable to officially opine as to the terms or interpretation of [\*3] a contract. See MS AG Op., *Hensarling* at \* 3 (Sept. 3, 2021) (stating that we cannot offer guidance on specific language of local agreements).

To the extent that any prior opinions conflict, they are modified prospectively to conform herewith.

If this office may be of any further assistance to you, please do not hesitate to contact us.

**Load Date:** 2024-06-12

MS Attorney General Opinions