

MISSISSIPPI MUNICIPAL ATTORNEYS ASSOCIATION
2025 WINTER CLE SEMINAR

Attorney General Opinions Update
(for June 1, 2024 – December 31, 2024)

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I. PREFACE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**II. VARIOUS ATTORNEY GENERAL OPINIONS ISSUED FROM
JUNE 1, 2024, THROUGH DECEMBER 31, 2024**

1.	<p><u>Stuart II – AG Opinion issued on June 24, 2024 (OP-2024-00046)</u> A municipality has the authority to settle valid claims pursuant to Miss. Code Ann. § 25-1-47 if the municipality determines that it is legally obligated for the claim and the claim is not exempt from liability. Whether a claim for “mistakenly paid” fines can be settled pursuant to § 25-1-47 is a factual determination to be made by a city’s governing authority.</p>
2.	<p><u>Bruni — AG Opinion issued on June 24, 2024 (OP-2024-00062)</u> A municipality may not name a third party as an additional insured on its liability insurance policy since the same would essentially amount to an agreement to indemnify, which governmental entities may not do.</p>
3.	<p><u>Lampton - AG Opinion issued on June 27, 2024 (OP-2024-00052)</u> Unless an extension has been granted by the Fire Personnel Minimum Standards and Certification Board, a fire fighter who has been employed as a full-time fire fighter by any local government fire fighting unit for a period exceeding one (1) year, or for a cumulative time exceeding 2,800 compensated hours <u>may not</u> be rehired or continue to be employed “unless that person is certified as completing the mandatory training requirements” set out in § 45-11-203(2). <u>Miss. Code Ann.</u> § 45-11-203(1). Being terminated and rehired does not restart the time limitation for required certification.</p>
4.	<p><u>Turnage — AG Opinion issued on July 30, 2024 (OP-2024-00109)</u> Assuming a city’s special charter is silent on the question, a county resident’s continued and uninterrupted period of residency in an area that is annexed by a city should be considered residency within the city for the purposes of determining whether the requirements in <u>Miss. Code Ann.</u> § 23-15-300(1) have been met. If a city’s ward lines change prior to the election, an individual whose residency is continuous and uninterrupted may apply his or her previous period of residency in his or her former district to the period he or she has resided in the newly created district to satisfy the residency requirements in § 23-15-300(1). NOTE: The AG’s Office will not interpret or issue an official opinion regarding a municipality’s special charter.</p>
5.	<p><u>Caves – AG Opinion issued on July 30, 2024 (OP-2024-00161)</u> A school district is not required to create a record that does not currently exist in response to a public records request.</p>
6.	<p><u>Compton – AG Opinion issued on July 31, 2024 (OP-2024-00088)</u> If a school district finds, consistent with the facts and spread upon the minutes, that an employee was underpaid due to an administrative error, the employee may be paid the difference between the salary she was paid and the salary the district finds that she is owed.</p>

7.	<p><u>Hubbard - AG Opinion issued on July 31, 2024 (OP-2024-00117)</u> The governing authorities of a municipality may make the decision to purchase playground equipment for a park on city property pursuant to <u>Miss. Code Ann. § 21-17-5(1)</u>. However, a city may not provide funding to a private citizen to purchase playground equipment for a park on city property.</p>
8.	<p><u>Slover – AG Opinion issued on July 31, 2024 (OP-2024-00110)</u> So long as a proposed ordinance is not otherwise contradictory to state law, a county board of supervisors may enact an ordinance that would require landowners to include additional filing information, such as a property indexing number (PIN), on deeds filed with the chancery clerk as part of the requisite indexing instructions.</p>
9.	<p><u>Watson – AG Opinion issued on August 15, 2024 (OP-2024-00108)</u> Section 249A of the Mississippi Constitution of 1890 is expressly limited to voting “in person at the polls or in person in the office of the circuit clerk,” and thus, it does not prohibit a legislative or constitutional expansion of voter identification requirements for <u>mail-in absentee voters</u>. The voter identification requirements of <u>Miss. Code Ann. § 23-15-563</u> apply only to in-person voting: “[e]ach person who appears to vote in person at a polling place or the registrar’s office shall be required to identify himself or herself to a poll manager or the registrar by presenting current and valid photo identification before such person shall be allowed to vote.”</p>
10.	<p><u>White – AG Opinion issued on August 15, 2024 (OP-2024-00053)</u> A sheriff may set bail for persons arrested for misdemeanors when bond has not been fixed and approved by a judicial officer and set the amount of bond for felony offenses under emergency circumstances as set forth in <u>Miss. Code Ann. § 19-25-67</u>. Pursuant to § 99-5-9, it is left to the committing court (and not to a sheriff) whether to allow or disallow cash bail bonds from defendants.</p>
11.	<p><u>Gates — AG Opinion issued on August 23, 2024 (OP-2024-00105)</u> If the governing authorities of a municipality determine that an elected official’s requested access to records is reasonable and required for the elected official to perform his or her official duties, then the elected official does not have to pay for copies of such records.</p>
12.	<p><u>Dumas — AG Opinion issued on August 30, 2024 (OP-2024-00104)</u> Section 17-25-25 of the Mississippi Code sets forth the ways in which a municipality may dispose of personal property that is no longer being used for a public purpose. Section 17-25-25 does not limit who may purchase the personal property. If a city makes a factual determination that the governing authority is no longer using a police vehicle, it may sell the vehicle to a county constable, fire chief, or any other individual or entity so long as it complies with that Section.</p>

13.	<p><u>Prudie — AG Opinion issued on August 30, 2024 (OP-2024-00161)</u></p> <p>A city is not explicitly prohibited by Mississippi law from initiating and utilizing an automatic license plate reader-based motor vehicle insurance enforcement program. However, certain factual and legal determinations must be considered in regard to the proposed program, including, but not limited to, the proposed uses of the Motor Vehicle Insurance Verification System.</p>
14.	<p><u>Featherstone — AG Opinion issued on September 17, 2024 (OP-2024-00131)</u></p> <p>If a duly re-elected member of a city’s board of aldermen has not been sworn in for each new term but was initially sworn in under a previous administration, then at a minimum, the subject aldermen would be considered a” de facto officer,” and a de facto officer’s official acts are valid and binding.</p>
15.	<p><u>Hicks — AG Opinion issued on September 17, 2024 (OP-2024-00113)</u></p> <p>Upon making the appropriate factual determinations, a city has the power under <u>Miss. Code Ann. § 21-19-13(2)</u> to repair a drainage ditch on private property to prevent erosion. A city also has the authority to pay necessary expenses in providing labor, materials, and supplies for those repairs made pursuant to § 21-19- 13(2).</p>
16.	<p><u>Webb — AG Opinion issued on September 18, 2024 (OP-2024-00084)</u></p> <p>Pursuant to <u>Miss. Code Ann. § 19-7-3(1)</u>, any real estate belonging to a county that has ceased to be used for county purposes may be sold, conveyed, or leased by the county once the requisite findings in § 19-7-3(4) have been made and the processes and procedures in § 19-7-3 have been followed. However, a county may not accept “just any bid” when selling such property. The county may reject all bids, accept the highest and best bid, or hold an auction among those who submitted bids with the starting bid being the highest bid received in response to the advertisement. If the county chooses to hold an auction, no bidder in the auction shall be shown any preference pursuant to § 19-7-3(2)(a). In the disposition of the property, the county may consider past consideration only in conjunction with future consideration. Ultimately, what is sufficient as “good and valuable consideration” is within the discretion of the board of supervisors. Pursuant to its general contracting authority in § 19-3-41, a county could enter into an agreement with an entity for the operation and management of a public park. In addition, a county may authorize an entity to retain profits from the sale of concessions and/or rentals in order to defray the entity’s expenses. The AG also noted here that any contract that extends beyond the term of a governing board without express statutory authority is voidable at the discretion of its successors.</p>
17.	<p><u>Gipson — AG Opinion issued on October 3, 2024 (OP-2024-)</u></p> <p>AG Opinions are not issued to advise one public official or agency about another public official’s or agency’s duties and responsibilities. Here, the State Commissioner for the Department of Agriculture and Commerce asked if a county economic development authority could donate land to the State. The AG only issued an opinion as to the authority of the Department to receive a donation of property.</p>

18.	<p><u>Seymour — AG Opinion issued on October 3, 2024 (OP-2024-)</u></p> <p>The AG was asked to speak on a recent amendment to Miss. Code Ann. § 23-15-563 regarding acceptable forms of identification that an elector may present at polls in order to vote. While generally photo identification must be current and valid in order for a qualified elector to be allowed to vote at a polling place or the registrar’s office, § 23-15-563(2) sets forth several exceptions to this general rule and these only require identification to be valid but not current. As an example, a valid but not current Mississippi driver’s license is an acceptable form of photo identification pursuant to Miss. Code Ann. § 23-15-563(2)(a). Notably, in Mississippi, to cast a vote that can be legally counted, an individual must be a qualified elector and, therefore, must be a resident of Mississippi and a citizen of the United States. An affidavit ballot that is cast by virtue of an acceptable form of photo identification may not be counted if later it is determined that such person was not a qualified elector of Mississippi.</p>
19.	<p><u>Hopkins — AG Opinion issued on October 21, 2024 (OP-2024-)</u></p> <p>Pursuant to <u>Miss. Code Ann. § 41-55-3</u>, et seq., counties (and cities) are empowered to contract with other “political subdivisions” for, among other things, the provision of ambulance services. Also, there are new statutory requirements that can apply to contractual agreements associated with an exclusive provider of ambulance services in a municipality.</p>
20.	<p><u>Bullard — AG Opinion issued on November 1, 2024 (OP-2024-)</u></p> <p>A municipality may contribute funds towards the cost of work conducted on rivers and streams located outside the boundaries of the city so long as the city finds such payment of monies will promote the health, comfort, and convenience of the inhabitants of such municipality in accordance with <u>Miss. Code Ann. § 21-19-13</u></p>
21.	<p><u>Spruill — AG Opinion issued on November 8, 2024 (OP-2024-)</u></p> <p>The 2% statutory franchise fee in <u>Miss. Code Ann. § 77-3-17</u> (that public utility companies that hold a certificate of public convenience and necessity are required to pay to a municipality) does not apply to “broadband services” provided by electric cooperatives or their broadband affiliates. In support of its opinion, the AG says that “broadband services” are expressly excluded from the definition of “public utility” in Mississippi statutory law (see <u>Miss. Code Ann. § 77-3-3(d)(iii)</u>). “Thus, while much of what an electric cooperative provides to its customers are public utilities, any broadband services provided by an electric cooperative are not considered public utilities.” And there is no “statutorily mandated fee for an electric cooperative or its broadband affiliates to provide broadband services on the cooperative’s electric delivery system under the Mississippi Broadband Enabling Act.”</p>

22.	<p><u>DuBose — AG Opinion issued on November 8, 2024 (OP-2024-)</u> A public right-of-way is “[t]he right of passage held by the public in general to travel on roads, freeways, and other thoroughfares.” (Quoting BLACK’S LAW DICTIONARY, 12th ed. (2024)). A property owner cannot permanently obstruct a public right-of-way, and what action a city can take to remedy the obstruction is within the discretion of the municipality’s governing authorities.</p>
23.	<p><u>Bruni — AG Opinion issued on November 19, 2024 (OP-2024-)</u> Settlement monies, once accepted by a governmental entity, become public funds and can then only be expended in accordance with state law, even if otherwise permitted by court order. So, even if a court order would permit a city’s use of such settlement proceeds in a fashion that the same would amount to an unlawful donation not specifically authorized by state law, compliance with the same would not be legally permitted.</p>
24.	<p><u>Roberson — AG Opinion issued on November 22, 2024 (OP-2024-)</u> Money (cash) found by a municipal law enforcement agency and which is not part of a criminal investigation or procedure and which agency has been unable to locate its owner, could be deemed by the municipality’s governing authority to be “abandoned property” (with the appropriate factual determination) and the proper procedure for handling disposition of the same would be that set forth in <u>Miss. Code Ann.</u> § 21-39-21. Since “money....cannot be sold,” it could be “directly deposited – without an actual sale – into the <i>municipality’s</i> general fund as set forth in Section 21-39-21.” (Emphasis in original).</p>
25.	<p><u>Johnson — AG Opinion issued on November 25, 2024 (OP-2024-)</u> The AG has opined that a third-party vendor can, for a profit (through charges to their client (not the government entity but an outside party)), facilitate, oversee, and manage law enforcement officers’ off-duty security performed pursuant to <u>Miss. Code Ann.</u> § 17-25-11, so long as the requirements set forth in § 17-25-11 are met (including, the factual determination that “the official uniform, weapon and vehicle in the discharge of the officer’s private security endeavor promotes the public interest,” which must be made “on an employee-by-employee basis and not be general order.”).</p>
26.	<p><u>Watkins - AG Opinion issued on December 2, 2024 (OP-2024-)</u> “Under the appropriate factual finding by a municipality that the funds will be used in accordance with [<u>Miss. Code Ann.</u>] Section 17-3-1, this advertising statute allows the municipality to provide money to a chamber of commerce.” However, “whether it is legal for the City to pay the chamber of commerce annual municipal membership assessment fees in this particular instances requires a factual determination by the City and is outside the scope of an official opinion.”</p>

27.	<p><u>McKenzie – AG Opinion issued on December 2, 2024 (OP-2024-)</u></p> <p>A utility debt may not be adjusted or forgiven when a customer has received the benefits of the utility service, regardless of a municipality’s error in billing. (Citing MS AG Op. to Frieson (Sept. 7, 2018) (citing MS AG Op. to Williams (Sept. 12, 2008)). On this basis, the AG opined that even if the City of McComb discovered “water billing errors and faulty water meters” that resulted in “many underbilled utility accounts,” the City could not “forgive” the underbilled account amounts and must collect these amounts.</p>
28.	<p><u>Flaggs – AG Opinion issued on December 30, 2024 (OP-2024-)</u></p> <p>A city may adopt an ordinance that exempts its residents from a percentage of the fees or charges for waste disposal services. However, such a city must comply with <u>Miss. Code Ann.</u> § 21-19-1, § 21-19-2, and § 19-5-109, which specify the monies that can be used for waste disposal services. In 2016, § 19-5-109 was amended to <i>remove general funds as a source of funds for this purpose</i>. Therefore, a city may not use general fund monies to cover these costs.</p>