



*Lynn Fitch*  
ATTORNEY GENERAL

# **AGO LEGISLATIVE AND OFFICIAL OPINIONS UPDATE**

**Mississippi Association of Supervisors  
January 25, 2023**

**Whitney Lipscomb, Deputy Attorney General  
Misty Monroe, Assistant Attorney General, Opinions & Policy Division**



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





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# The Opinions and Policy Division

The Division's duties include:

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



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OPINIONS

June 26, 2020

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

Re: Refund of "Initialization Fee"

Dear Mr. Pope:

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

#### Question Presented

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

#### Background Facts

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

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

#### Brief Response

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



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## **2023 Legislative Session**

- 2023 AGO Legislative Agenda
- Statutory Advisor, Mississippi Code Annotated Section 7-5-25



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# Official Opinions

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



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# Official Opinions

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

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



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# Official Opinions

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

- Opinion Process
- Opinion request form
  - Please note within the request any need for emergency consideration, including a date by which you need the opinion, or any other relevant dates
- Recently issued opinions (since January 1, 2020)
- Quarterly summaries of recently issued opinions
  - Sign up to receive summaries
- Opinion search database

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

The screenshot shows the 'Opinions and Policy' page of the Attorney General's website. The page has a dark header with the Attorney General's logo and name, and navigation icons for Home, About, Media, and Divisions. The main content area is titled 'OPINIONS AND POLICY' and includes a sub-section for 'Opinions'. The text explains that the Attorney General issues official opinions pursuant to Section 7-5-25, Miss. Code Ann. and provides links for the official opinion process, the request form, and recently published opinions. It also mentions that the Attorney General's Office publishes opinion outlines and provides links for the outlines covering January 1, 2020 through June 30, 2020, July 1, 2020 through December 31, 2020, and January 1, 2021 through March 31, 2021. A footer section offers to receive opinion outlines by email.



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## MS AG Op., *Holleman* (February 24, 2022)

The general notice requirements of the Open Meetings Act, Section 25-41-13, are in addition to the notice requirements for meetings of county boards of supervisors in Section 19-3-17 for recessed meetings and Section 19-3-19 for adjourned meetings.



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## MS AG Op., *Whitehead* (August 2, 2022)

Whether an entity is eligible for the manufacturing exemption under Sections 27-31-101 *et seq.* and the free port warehouse exemption under Sections 27-31-51 *et seq.* is a question of fact for the governing authorities of Tishomingo County. If an entity is eligible, the governing authorities of Tishomingo County have the discretionary authority to grant both exemptions.



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## MS AG Op., *Bailey* (August 22, 2022)

Pursuant to Mississippi Code Annotated Section 19-7-33 (county parking regulations), the Humphreys County Board of Supervisors has the authority to regulate parking on the premises around the courthouse.



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## MS AG Op., *Reynolds* (August 22, 2022)

While the Tallahatchie County Board of Supervisors may require a permit and security for damage to highways under its jurisdiction caused by excessive size or weight of a vehicle or load, such regulations must be applied uniformly to all vehicles exceeding the established size and weight limits.



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## MS AG Op., *Baker* (September 6, 2022)

If the Panola County Board of Supervisors determines that due to an administrative error it erroneously granted an employee sick leave pay that the employee had not earned, the County may allow the employee to repay the County using donated sick leave in accordance with a lawful policy enacted prior to the employee's catastrophic illness or injury. This would not be a retroactive salary increase nor extra compensation; thus, it would not be prohibited by Sections 96 (constitutional prohibition against extra compensation) or 66 (constitutional prohibition against donation or gratuity) of the Mississippi Constitution.



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## MS AG Op., *Holcomb* (September 7, 2022)

Sections 66 and 96 of the Mississippi Constitution prohibit the Issaquena County Board of Supervisors from granting additional compensation for services already rendered and included in a previously agreed upon contract.

However, we have stated in another opinion that if a county wants to implement incentive pay, it must be “(1) contracted for between the parties or with the employee prior to the date when services are to be performed; (2) determined in accordance with objective standards of measurement; and (3) earned by personal services performed by the employees.” MS AG Op., *Chiles* at \*1 (Nov. 10, 2020).



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## MS AG Op., *Barry* (September 21, 2022)

The Kemper County Board of Supervisors cannot require all county employees to accept payroll payments via direct deposit.



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## MS AG Op., *Hammack* (November 28, 2022)

So long as the amount of the raises is within the tax assessor/collector's approved budget for the current fiscal year, it is the tax assessor/collector who determines the effective date of prospective raises for employees of his or her office.



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## MS AG Op., *Davis* (October 11, 2022)

A constable is only entitled to receive the statutory fee when he serves as bailiff when court is in session.

We recently opined that a constable that serves as bailiff shall be paid for each day or part thereof for civil court and for criminal court. Thus, a constable that serves as bailiff shall receive a fee between \$55.00 and \$100.00 for attending each day or portion of a day for civil court and shall also receive a separate fee between \$55.00 and \$100.00 for attending each day or portion of a day for criminal court on the same day. MS AG Op., *White* (Jan. 24, 2023).



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## MS AG Op., *Mord* (December 5, 2022)

If the Walthall County Board of Supervisors determines based on the facts of its situation that the conditions of Section 19-7-3(3) (requiring a board of supervisors to make certain affirmative findings in order to dispose of particular pieces of real property) have been met, then the Board has the authority to sell the property in question to a small, privately-owned grocery store chain.

A county may sell surplus property consistent with Section 19-7-9(3) for good and valuable consideration, and what suffices as good and valuable consideration is within the Board's discretion.



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## MS AG Op., *Mord* (December 5, 2022) cont.

The Board may not donate real property to an economic development district because doing so would violate the Constitutional prohibition against donations as well as Section 19-3-40, which prohibits a board of supervisors from granting a donation.



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*Lynn Fitch*

ATTORNEY GENERAL

## ATTORNEY GENERAL'S OPINIONS UPDATE

**WHITNEY LIPSCOMB**

**Deputy Attorney General**

**601-359-3817**

**[whitney.lipscomb@ago.ms.gov](mailto:whitney.lipscomb@ago.ms.gov)**

**Misty Monroe**

**Assistant Attorney General**

**Director, Opinions and Policy Division**

**601-359-3693**

**[misty.monroe@ago.ms.gov](mailto:misty.monroe@ago.ms.gov)**