

## Official Attorney General Opinions

Supervisors as well as other public officials have the right to request an Official Opinion from the Attorney General's office regarding the legality of matters or action to be taken in the future. The primary purpose of obtaining an AG opinion is to protect the Supervisor or Board members from liability in the event they rely in good faith upon the opinion and a subsequent legal challenge is mounted with respect to action taken. The controlling statute is Miss. Code Ann. §7-5-25 (Supp. 1980), which provides a limited form of "good faith" immunity:

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 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. No opinion shall be given or considered if said opinion is given after suit is filed or prosecution begun.

Attorney General opinions are frequently cited and relied upon by the courts, along with legislative history, case law and unambiguous statutory language, in reaching conclusions of law on a variety of subjects ranging from tax exempt status of leasehold interests, *In Re Assessment of Ad Valorem Taxed on Leasehold Interest*, 854 So. 2d 1066, 1071 (Miss. 2003), to a county board of supervisor's discretionary authority to provide legal counsel to defend claims against county officers or employees, *Madison County v. Hopkins*, 857 So. 2d 43, 2003 Miss. LEXIS 299 (Miss. 2003), to questions of interpretation of statutes that no opinion of the Court has ever interpreted, *Straughter v. Collins*, 819 So. 2d 1244, 1250 (Miss. 2002).

The Mississippi Supreme Court has recognized that "although Attorney General opinions are not binding, they are certainly useful in providing guidance to this Court," *In Re Assessment of Ad Valorem Taxed on Leasehold Interest*, *supra* at 1071, and "they may certainly be considered by the Court." *Madison County v. Hopkins*, *supra* at \*20, citing *City of Durant v. Laws Construction Co.*, 721 So. 2d 598, 694 (Miss. 1998).

### Practical Limitations

There are four significant limitations on the usefulness of Official Attorney General Opinions and the propriety of requesting such opinions:

- (1) The Office of the Attorney General will not issue an official opinion after-the-fact.
- (2) Opinion requests which should properly be directed to the Mississippi Ethics Commission are generally beyond the purview of the Office of the Attorney General, who will usually invite the official making the inquiry to consult with the Mississippi Ethics Commission.

(3) Opinions rendered by the Attorney General are in response to specific facts and circumstances and may not be applicable in all cases.<sup>32</sup>

(4) Telephonic AG Opinions are not official opinions and cannot be relied upon for purposes of the limited immunity provided by §7-5-25.<sup>33</sup>

### **Written vs. Oral Opinions**

*State ex rel Summer, Attorney General v. Denton*, 382 So. 2d 461 (Miss. 1980), made it clear that §7-5-25 requires AG opinions to be in writing and the statute

makes no provision for an oral opinion of the Attorney General and parties may not rely on the good faith defense provided in the statute based on an oral opinion from the Attorney General.

It is also clear that official opinions from the office of the Attorney General, in order to be effective at all, must be in writing. As the Mississippi Supreme Court noted in *Meeks v. Tallahatchie County*, 513 So. 2d 563 (Miss. 1987):

Meeks argues that he was advised by someone in the office of the Attorney General that, so long as he resigned the office of Elections Commissioner and so long as he had not in fact acted as an Elections Commissioner with respect to the 1987 elections, he would be eligible to run. Suffice it to say that Meeks never produced any written opinion of the Attorney General to this effect. The Attorney General, according to our understanding, gives opinions only in writing. Miss. Code Ann. §7-5-25 (Supp. 1986). Even so, we would not be bound by any such opinion.

---

<sup>32</sup>See, e.g., *Bond v. Marion County Board of Supervisors*, 807 So. 2d 1208, 1215-16 (Miss. 2001) (“The request submitted to the Attorney General by the Board’s attorney specifically inquired whether, under § 19-5-99, the EDD had the authority to borrow money, and the Attorney General’s opinion limited itself to that inquiry. The opinion was requested on April 5, 1995, prior to the to passage of S.B. 3269 on April 6, 1995. The opinion, issued May 17, 1995, did not address S.B. 3269. In acting pursuant to S.B. 3269, the Board did not act contrary to the opinion of the Attorney General.”)

<sup>33</sup>See *Meeks v. Tallahatchie County*, *infra*.