

designation of a treasurer/disbursing officer for one of the local governmental units for the purposes of receiving, disbursing and accounting for the joint funds of the undertaking, and subject to the standards and procedures for the purchase, identification and disposal of personal property and disposition thereof complying with state purchasing laws and laws regarding the disposition of real and personal property and, finally, subject to the handling and disposition of seized and forfeited property being accomplished in accordance with the Uniform Controlled Substances Law.

- AG Op. No. 88-421 to Griffith, August 1, 1988, approved an Interlocal Cooperation Agreement between a County and school district for the joint maintenance of school property.

- AG Op. No. 88-46 to Butler, January 5, 1988, approved an Interlocal Cooperation Agreement between the Bureau of Narcotics, a city, County and sheriff.

- AG Op. No. 89-605 to Gant, August 11, 1989, approved an Interlocal Cooperation Agreement for establishment of the Northeast Narcotics Task Force, with statements of clarification.

- AG Op. No. 88-965 to Ellis, December 20, 1988, approved Interlocal Cooperation Agreements between a city and County relating to collection of taxes, fire protection and ambulance services.

- AG Op. No. 88-964 to Barry, December 20, 1988, approved an Interlocal Cooperation Agreement between a town and County regarding the collection of ad valorem taxes, subject to the requirement that all properties sold for taxes by the County for the city must be sold in accordance with the applicable statutes governing the sales of real and/or personal property for city taxes.

- AG Op. No. 89-564 to Thaxton, August 21, 1989, approved an Interlocal Cooperation Agreement between a County and town providing for joint efforts relating to solid waste collection disposal.

- AG Op. No. 88-931 to Haque, December 15, 1988, approved an Interlocal Cooperation Agreement between a city and County providing for a cooperative effort in the training and use of firearms by County law enforcement officers.

A copy of an Interlocal Cooperation Agreement made under this law is required to be filed with the State Department of Audit for audit purposes no later than sixty (60) days after it is in force. §17-13-11(4).<sup>103</sup>

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<sup>103</sup>A copy of a form of a blank Interlocal Cooperation Agreement containing the requisite provisions appears as Appendix C.

## **Road and Bridge Maintenance, Repair and Construction Work on Private Property; School Bus Turnarounds; Drainage; Abandonment; and Maintenance and Repair of Cemeteries**

The Board of Supervisors has authority to work, construct, reconstruct and maintain public roads and bridges and to raise funds for such work by ad valorem taxes, bond issues or both. Miss. Code Ann. §65-15-1 (Supp. 1989).

The principal statutes relating to public roads and streets are set forth in Miss. Code Ann. §§65-7-1, et seq. (1972). The statutory provisions pertaining to state aid roads in counties are set forth in Miss. Code Ann. §§65-9-1, et seq. (Supp. 1985), a detailed discussion of which is beyond the scope of this presentation.

### **Public Roads**

The following is a brief summary of Mississippi law on what constitutes a "public" road which may lawfully be repaired, constructed or maintained by a County, as opposed to a "private" road, with respect to which no County funds, labor or equipment may be *used* or expended.

The classic definition of a public road is set forth in the 1918 decision of the Mississippi Supreme Court in *Gulf and S.I.R. Co. v. Adkinson*, 117 Miss. 118, 77 So. 954, 955 (1918), cited in *Myers v. Blair*, 617 So. 2d 969 (Miss. 1992):

A highway is a road or way upon which all persons have the right to travel at pleasure. It is the right of all persons to travel upon a road, and not merely their traveling upon it, that makes it a public road or highway. This right may be acquired in various ways, one of which is by prescription; but in order for it to be so acquired, the road must be habitually used by the public in general for a period of ten years; and such user must be accompanied by evidence, other than mere travel thereon, of a claim by the public of the right so to do. The only evidence of such claim here is that the road was formerly worked by the public road hands of that vicinity, but when, for how long a period, and by what authority, does not appear, so that it is of no value. For aught that appears to the contrary, the travel over the road is by the sufferance or permission of the owners of the land over which it passes.

A public road may be created by prescription or by dedication, as well as by being laid out and established in accordance with statutory provisions, where the general public or several freeholders or householders of the County are interested in the road, and where the public interest or convenience requires a road to be established. A settlement or a neighborhood road may become a public road by prescription from user for the period required by law, generally the ten (10) year statute of limitations applicable to adverse possession.

A public road may be established by dedication by the landowner donating the right-of-way and where the public authorities accept the dedication by taking over and maintaining such a road at public expense, without having followed the statutory proceeding.

*George County By and Through Bd. of Sup'rs v. Davis*, 721 So. 2d 1101 (Miss. 1998) was an action between the George County Board of Supervisors and the State to determine whether certain secondary roads being maintained by the County were private or public. The action arose on the heels of a complaint to the Audit Department that the County supervisors were paving private driveways and roads. In response to the Audit Department's findings that a number of these roads were private, the Board members had taken Landowners' Affidavits, Prescriptive Road Affidavits, and photographs showing that these roads had been maintained by the County for a great number of years. The County also filed the instant civil action for declaratory and injunctive relief. The chancery court denied the County's motion for summary judgment and found that certain of the subject roads were private, and the Mississippi Supreme Court upheld this finding on appeal, holding that it is not enough for a Board of Supervisors to have maintained a road for over ten years and that a road could not be made a public road via the affidavit procedure used by George County, and that such affidavits "submitted in support of the Board's contention that the roads possessed the required claim of public use and necessity are not exclusive proof, but are only one factor to be taken into consideration by the chancellor in making his decision." *Id.* at 1107.

The County argued on appeal that the Mississippi Constitution, statutes and supporting case law afforded the Board of Supervisors broad authority and jurisdiction over its public, not private, roads, and that the Board had broad discretion when dealing with roads and when acting on petitions seeking a declaration that roads have become public. The Mississippi Supreme Court did not take issue with this position, noting that "[j]udicial review of the Board of Supervisor's decision concerning whether the public interest or convenience requires the establishment of a new road is limited to whether there was any reasonable basis for the Board's action," citing *Board of Supervisors Tishomingo County v. Blissitt*, 200 Miss. 645, 657, 27 So.2d 678, 680-81 (1946). The Court then noted that the chancellor's review of the Board's actions was limited to a determination of whether the Board had any reasonable basis for acting, and that the task before the Court in this appeal was to

determine whether the chancellor abused his discretion in determining the public or private status of the roads in question. "Absent an abuse of discretion, this Court will uphold the decision of the chancellor. This Court will not disturb the factual findings of the chancellor unless said factual findings are manifestly wrong or clearly erroneous."

Affirming the chancery court, the Mississippi Supreme Court set forth a detailed analysis of the caselaw, including an interesting commentary on former State Auditor Ray Mabus' 1983 memorandum to County Boards of supervisors on this subject:

This Court has stated that a public road may be created by prescription, dedication, or pursuant to statutory provisions. *Coleman v. Shipp*, 223 Miss. 516, 530, 78 So.2d 778, 784 (1955) (citing *Armstrong v. Itawamba County*, 195 Miss. 802, 16 So.2d 752, 757-58 (1944)); Miss.Code Ann. § 65-7-57 (1991). The chancellor's ruling separated the roads in question into two categories. The first

category included those roads that were determined to be public by virtue of the fact that they were petition roads and established as contemplated by § 65-7-57. The second category included those roads that were alleged to have been established by dedication or prescription. The final results of the chancellor's ruling and supplemental ruling have been previously stated in the Statement of Facts.

The Board maintains that in the late 1980's, the George County Board of Supervisors was advised by then State Auditor Ray Mabus, and then District Attorney Mike Moore that in those instances where a road had not been dedicated or petitioned, the County could gain the road by prescription or affidavit. Specifically, "[t]he County was told that after years of the County maintaining a road and there wasn't any record of it being dedicated or petitioned then the supervisor could gain the road by the affidavit procedure [whereby] the supervisors gets [sic] affidavits from the landowners and surrounding community citizens who have knowledge of the road and knows that the road has existed and that the County has maintained it for at least ten (10) years." Therefore, the Board alleges that "this resolution set a custom as to which counties declared roads public or private." Furthermore, the Board maintains that "[a]t times, this was the only criteria the supervisors used in their determination."

We reject the Board's argument concerning this "resolution." Even though this may have been the understanding of incoming supervisors, there is no proof in the record that the Board was actually advised of the affidavit procedure. In its Motion for New Trial, the Board relies upon an Attorney General's Opinion dated April 24, 1984. However, this Opinion is void of any guidance concerning the affidavit procedure. Conversely, the Opinion reiterates the established case law in Mississippi; in order for a road to become public by prescription the road must be habitually used by the public in general for a period of ten years, and such use must be accompanied by a claim by the public of the right so to do.

In order for the roads to be public by prescription, all the required elements must be present. This Court has previously identified the required elements.

The County claims the road public by prescription and, therefore, has the burden of proving, as does an individual claimant, that the use is:

- (1) open, notorious and visible;
- (2) hostile;
- (3) under claim of ownership;
- (4) exclusive;
- (5) peaceful; and
- (6) continuous and uninterrupted for ten years.

*Myers v. Blair*, 611 So.2d 969, 971 (Miss.1992) (citations omitted). Furthermore, this Court has consistently held that the Board of Supervisors can only act through its minutes. *Martin v. Newell*, 198 Miss. 809, 23 So.2d 796 (1945); *Noxubee County v. Long*, 141 Miss. 72, 82, 106 So. 83, 86 (1925); *Smith v. Board of Supervisors*, 124 Miss. 36, 86 So. 707 (1921).

[I]t is error for the Board to rely solely on the fact that it has maintained the roads for more than ten (10) years. If the roads do not have all the required elements of prescription and have not been properly acted upon by the Board of Supervisors, under established law in this state, they can only be considered private roads. The affidavits submitted in support of the Board's contention that the roads possessed the required claim of public use and necessity are not exclusive proof, but are only one factor to be taken into consideration by the chancellor in making his decision. In the case at bar, the chancellor's decision was based upon numerous factors such as the Board minutes, the State Auditor reports, testimony from Board members, the public and the State Auditors, as well as on-site inspection of each of the roads in question. Therefore, in accordance with this Court's limited standard of review in regards to the chancellor's decision and further recognizing the time and effort exhibited by the chancellor in this case, the Board must show that the chancellor manifestly erred in his decision. *Id.* at 1106-08.

Despite the Board's contention on appeal that the chancellor's decision was arbitrary and capricious in regard to certain roads he deemed as private but the Board had declared on its minutes to be public, the Mississippi Supreme Court concluded that "review of the record reveals that there was sufficient evidence for the chancellor's rulings and that his decisions were not manifestly in error." *Id.* at 1110.

### County Road Register

The *George County* case prompted a legislative response. Counties are now mandated to maintain a County Road Register, detailed requirements for which are set forth in Miss. Code Ann. Sections 65-7-4 et seq. (2000). The Board of supervisors is directed to prepare and adopt an official map and County road system register which designates and delineates all public roads on the County road system. The County road system register has three basis components as noted in Section 65-7-4(2):

- (a) The number and name of each public road on the County road system.
- (b) A general reference to the terminal points and course of each such road.
- (c) A memorandum of every proceeding in reference to each such road, with the date of such proceeding, and the page and volume of the minute book of the Board of supervisors where it is recorded.

Once the register is adopted, Section 65-7-4(4) directs the Board to record "all subsequent proceedings and changes to the County road system" in the register as soon as is reasonably possible. Section 65-7-4(6) further provides:

It is the intention of the Legislature that the initial official record of the County road system prepared and adopted in accordance with this section shall include all public roads that the Board of supervisors determines, consistent with fact, as of July 1, 2000, or such date the initial official record is adopted, are laid out and open according to law. From and after July 1, 2000, no road shall be added or deleted from the County road system or otherwise changed except by order or other appropriate action of the Board of supervisors and such action shall be recorded in the minutes of the Board. All additions, deletions or changes to the County road system shall be recorded in the official record of the County road system as provided for in this section.

As the Attorney General noted in AG Opinion #2003-0062 to Tom T. Ross, Jr. dated March 21, 2003, "the purpose of Section 65-7-4 is to establish a clear record, open to public inspection, of those roads which are County roads that may be worked by the County with public funds and those roads that may not. With this legislative intent in mind, it is the opinion of this office that any proceeding or change which materially affects the ability to identify, in whole or in part, a County road which may be worked with public funds should be recorded in the register. The addition or deletion of a road in its entirety or a segment thereof would constitute such a proceeding or change. A work order or project or state aid status which does not add or delete roads or segments of roads would not need to be included on the register."

The Court addressed the requirements for a County Road Register in *Hood v. Perry County*, 821 So. 2d 900 (Miss. App. 2002) involving a suit by landowners seeking a declaration that the County had abandoned a road, the C.B. Breland Road, which had been correctly identified on the official map adopted by the County Board of Supervisors as crossing the landowners' property, while the County Road System Register placed it in an adjacent range. The trial court dismissed the landowners' action but issued a temporary injunction preventing the County from acting against them until the error in the road register was corrected. The trial court specifically noted that the landowners' period of notice for the ten (10) day window of appeal would not begin to run until the Board corrected the error in the road register. The Board thereafter corrected the error, and the landowners failed to appeal to the circuit court, despite their right to the "single exclusive avenue" to appeal within ten days under §11-51-75. In affirming the dismissal of the landowners' action, the Court of Appeals found that the landowners did not elect the appropriate and exclusive remedy available to them, and their actions amounted to a failure to state a claim upon which relief could be granted, in light of the circuit court's exclusive jurisdiction over any appeal of the Board's actions. In upholding the exclusivity of the bill of exceptions procedure, the Court of Appeals reasoned:

Proceeding in opposition to a lawful decision of the Board outside of the exclusive remedies available constitutes a collateral attack that will not be maintained. *Id.* at 902.

### **Public Road Easement**

The owner of property may also grant to certain persons or to the public the easement of a highway over his land, which does not necessarily have to be technically by a deed, but may be done by "those acts which unequivocally manifest an intention that the community shall have and enjoy a highway on his private property. When the public accepts his offer there has been consummated that which is of equal import with a contract or grant, there has been accomplished what is expressed by the term "dedication." *Armstrong v.*

*Itawamba Co.*, 16 So. 2d 752, 757 (Miss. 1944).

### **Public Acceptance**

Public acceptance of a landowner's offer to grant a public easement of a highway over his land may be shown in two ways: first, by a formal act of the proper authority competent to speak and act for the public, or second, it may be implied from the circumstances, such as user, as the Court noted in *Armstrong v. Itawamba Co.*, *supra*, "continued user when taken in connection with the working of the road for nearly twenty years at public expense should be deemed to have been a sufficient acceptance."

It is also clear that a public road or highway "may be established by immemorial usage." *Armstrong v. Itawamba Co.*, *supra*.

In summary, a road or street may qualify as a public road, street or highway under any of these recognized definitions:

- by being used continuously and maintained by public authorities as a public way for a period of ten years or longer<sup>104</sup>
- by being formally dedicated as a public way by the owner by formal plat or map or otherwise
- by being created, established or laid out as a public road or highway according to statutory procedure by any public authority

*Southern Life & Health Ins. Co. v. Kemp*, 300 So. 2d 782, at 783-84 (Miss. 1974).

### **Private Roadway**

In *Saxon v. Harvey*, 190 So. 2d 901, 906 (Miss. 1966), the Mississippi Supreme Court held that a road was a private roadway and not a public road where it departed from the old public road some 200 to 300 yards and formed a driveway to an individual's home and a pond in his pasture. Cf. *House v. Honea*; *Lucas v. Williamson*.

### **Cul de Sac**

In *Quin v. Northside Baptist Church*, 105 So. 2d 151, 153 (Miss. 1958), the Mississippi Supreme Court held that a passageway which did not connect any roads or streets and was a cul de sac, was a private

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<sup>104</sup>AG Op. No. 91-0294 to Mullins, dated May 2, 1991, noted that creation of a public road by prescription is much like adverse possession. Citing *Gulf & S.I.R. Co. v. Atkinson*, 117 Miss. 118, 77 So. 954 (1918), and *Armstrong v. Itawamba County*, *supra*. This opinion stated that prescription "requires habitual use of the road by the public coupled with the County's exercise of jurisdiction over it as a public road via maintenance or other conduct to be seen by the landowner as a clear assertion that the road is public."

road and not a public road, where the County never spent a penny in the upkeep or maintenance of the passageway, such work as was done upon the road was done by those who resided along or near it, the passageway never appeared upon any map or plat or public record of the County, there had been no attempt by the landowner to dedicate a public highway, nor had there been any attempt by the County to accept or create one, and the County had not exercised any jurisdiction whatever over the passageway.

Many of the County-maintained roads in counties throughout the State of Mississippi are public roads which have been established by prescription or by continued user, rather than through the formal dedication process. In other words, many counties in our state have exercised jurisdiction over such roads, legally and properly, for so many years, including the working of the roads at public expense, so as to create the status of the public road. Even though these roads may not have been laid out and established in accordance with statutory provisions, they are nevertheless "public roads" created by prescription, dedication or continued user, despite the absence of a deed or conveyance from the landowner to the County. This applies equally to a settlement road, a neighborhood road, or a community road which the landowner has for years allowed the public to use generally and has allowed the County at public expense to maintain and work.

### **Private Roads**

On the other hand, if a road is one which forms a driveway to an individual's home or property, and departs from any recognized public roadway, and has never been kept up or maintained at public expense and could be closed entirely to public vehicular traffic if the landowner so chose, then it is a private road and cannot legally be maintained or graveled by the County at public expense. See generally *Coleman v. Shipp*, 78 So. 2d 778, 784 (Miss. 1955).

Finally, in *Myers v. Blair*, *supra*, the Mississippi Supreme Court, relying upon the fundamental principle that the minutes of the Board of Supervisors are the exclusive evidence of what the Board did, held that the lower court erred in ruling that a County had acquired a public road across private property by prescription, noting that there was no record in the case of any official action taken by the Board of Supervisors to make this particular road public. At trial, individual Supervisors, past and present, gave conflicting testimony as to whether the road was private or public, but no Board minutes were ever offered in evidence. Citing *Smith v. Board of Supervisors of Tallahatchie County*, 124 Miss. 36, 41, 86 So. 707 (1920), wherein the Mississippi Supreme Court ruled that there was no proof of any public use under a claim of right for the requisite ten year prescription period, and that the minutes of the Board of Supervisors must be evidence of their official acts, the Court concluded in *Myers*:

We also think it was error for the Court to permit individual members of the Board of Supervisors to testify what the Board did, and what the Board understood, and what the Board had authorized to be done in the premises. A Board of Supervisors can act only as a body, and its act must be evidenced by an entry on its minutes. The minutes of the Board of Supervisors are the sole and exclusive evidence of what the Board did. The individuals composing the Board cannot act for the County, nor officially in reference to the County's business, except as authorized by law....

### **School Bus Turnarounds**

Private roads and driveways may properly be used for school bus turnarounds, and public school grounds may properly be maintained at County expense, so long as the County Board of Supervisors follows the provisions of Miss. Code Ann. §19-3-42 (Supp. 1989):

- (1) The Board of Supervisors of any County is hereby authorized and empowered, in its discretion, to grade, gravel or shell, repair and/or maintain private gravel or shell roads or driveways to private residences if such roads or driveways are used for school bus turnarounds.
- (2) Prior to engaging in the work authorized in subsection (1) in this section, the Board of Supervisors shall spread upon the official minutes of the Board:
  - (a) the written request of the school Board for such work;
  - (b) the written approval of the Board of Supervisors for such work;
  - (c) the specific location of the road or driveway to be worked; and,
  - (d) the name of the owner of the road or driveway to be worked.
- (3) The written request of the school Board, as required in subsection 2(2)(a) above, shall contain a current list of all active school bus turnarounds presently in use by the school district or contemplated for use by the school district for the present school year. The approval by the Board of Supervisors shall be valid and effective for the period of time that a turnaround is anticipated for use, but in no event for a period greater than one year.
- (4) In addition to the authority granted in subsection (1) of this section, from and after October 1, 1989, the Board of Supervisors of any County is further authorized, in its discretion, to maintain public school grounds of the County and to grade, gravel, shell or overlay, and/or to maintain gravel, shell, asphalt or concrete roads, driveways or parking lots of public schools of the County if, before engaging in such work, the Board of Supervisors shall spread upon its official minutes the written request of the school Board for such work, the written approval of the Board of Supervisors for such work and the specific location of the school grounds or road, driveway or parking lot, to be worked.

In AG Op. No. 89-067 to Shaw, dated February 22, 1989, the Attorney General's office issued an opinion stating that §19-3-42 does not contemplate authority to lay out and construct a new private road or driveway to be used as a school bus turnaround.

### **County Work on Public School Grounds and Roads**

School officials often request help from a County Board of Supervisors to perform road work and other maintenance work on public school grounds in the County. Various statutory provisions and relevant AG Opinions have established guidelines for this work:

- I. General Prohibition Against Expenditures for Objects not Authorized by Law:

A County can only spend funds from within the County treasury on expenditures authorized by law. Miss. Code Ann. § 19-3-59 (2003). If any member of the County Board of Supervisors knowingly votes for an unauthorized expenditure, he is subject to being fined for up to twice the amount and to imprisonment for up to three months. Miss. Code Ann. § 19-13-35 (2003).

II. County Home Rule:

The County home rule statute, Miss. Code Ann. § 19-3-40(2) (2003) prohibits County donations. This prohibition prevents a County from providing funds or services to a public school district unless it has explicit statutory authority to do so.<sup>105</sup>

Pursuant to Miss. Code Ann. § 21-19-49 (4) (2003), a County can donate money to a school district for the purpose of erecting, purchasing, or otherwise acquiring a school building. Pursuant to Miss. Code Ann. § 37-13-21 (2003), a County through its health department can establish and provide for health education programs in its public schools.

III. Maintenance and Road work on School Property:

Pursuant to Miss. Code Ann. § 19-3-42 (4) (2003), a County may “maintain” the public school grounds, and may grade, gravel, shell, overlay or maintain roads, driveways and parking lots of its public schools, upon written request of the school Board for such work. In performing this work, a County can use County equipment and manpower, but it cannot purchase materials or equipment exclusively for use on school grounds.<sup>106</sup>

“Maintenance” includes performing road work on all school property,<sup>107</sup> furnishing dirt<sup>108</sup> to and/or preparing an athletic field,<sup>109</sup> performing road work on all school district property, and grading school grounds.<sup>110</sup> “Maintenance” does not include the erection of of basketball goals and playground equipment (even if such equipment is purchased by the school district),<sup>111</sup> the demolition of a building and hauling of its

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<sup>105</sup>Nunnelee, A.G.Op.# 98-0602 (1998)

<sup>106</sup>Barefield, A.G.Op.# 02-0481 (2002)

<sup>107</sup>Gex, A.G.Op.# 98-0797 (1999). The County Board of supervisors has the authority “to maintain public school grounds of the County and to grade, gravel, shell or overlay, and/or to maintain gravel, shell, asphalt, or concrete roads, driveways, or parking lots of public schools of the County.” Miss. Code Ann. § 19-3-42 (4) (2003)

<sup>108</sup>Gex, A.G.Op.# 96-0098 (1996).

<sup>109</sup>Dulaney, A.G.Op.# 02-0549 (2002).

<sup>110</sup>Landford, A.G.Op.# 97-0731 (1997)

<sup>111</sup>Bradley, A.G.Op.# 96-0739 (1996)

debris,<sup>112</sup> purchasing soil and seed,<sup>113</sup> installing an irrigation system,<sup>114</sup> contracting with a construction company to renovate lanes on a highschool track,<sup>115</sup> using County personnel and equipment to move a building from city property to school grounds,<sup>116</sup> contributing money or materials to the construction of a concession stand or press box at a public school ball field,<sup>117</sup> contributing cash directly to a public school district or a non-profit educational organization,<sup>118</sup> or paying for the services of the County Engineer for work to be performed on school grounds.<sup>119</sup>

To properly authorize County maintenance of school grounds, the County Board of supervisors must receive a written request of the school Board and spread such request upon its official minutes. The Board of supervisors must also spread upon its official minutes its written approval for such work and the specific location of the school grounds or road, driveway or parking lot to be worked. Miss. Code Ann. § 19-3-42 (4) (2003).

Pursuant to Miss. Code Ann. § 19-3-42 (1) (2003), a County may also maintain private gravel driveways that are used as school bus turnarounds. To properly authorize such maintenance, the Board of supervisors must first spread upon its official minutes a written request for the work, its written approval of the work, the specific location of the work, and name of the landowner. Miss. Code Ann. § 19-3-42 (2) (2003).

#### IV. Summary of Guidelines:

On public school property a County through its road department can only perform work which (1) involves existing County equipment and manpower (no purchasing of materials, equipment, or services), and (2) falls within the scope of the County's ordinary duties (road repair, grading, dirt hauling, mowing, ditch-clearing, etc). This is consistent with the most recent guidance from the Attorney General as set forth in AG Opinion to Barefield dated October 14, 2003, in which the Attorney General was asked whether a Board of supervisors may expend funds for materials (asphalt, dirt, gravel, etc.) necessary to construct, maintain and/or repair roads, driveways and parking areas into and on all property owned by public schools. That AG Opinion stated that a Board of supervisors in its discretion may haul and provide dirt and gravel for roads, driveways and parking areas owned by public schools. A Board of supervisors may also enter into an interlocal agreement with the

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<sup>112</sup>Lamar, A.G.Op.# 01-0130 (2001)

<sup>113</sup>Hollimon, A.G.Op.# 01-0312 (2001).

<sup>114</sup>*Id.*

<sup>115</sup>Bolton, A.G.Op.# 02-0071 (2002).

<sup>116</sup>Runnels, A.G.Op.# 02-0063 (2002)

<sup>117</sup>Pierce, A.G.Op.# 98-0071 (1998).

<sup>118</sup>Nunnelee, A.G.Op.# 98-0602 (1998).

<sup>119</sup>Barefield, A.G.Op.# 02-0481 (2002).

school district in which the costs of this service and the materials are reimbursed. County Boards of supervisors may provide materials to construct, maintain and repairs roads, driveways and parking areas into and on public school property pursuant to Section 65-7-74. Section 19-3-42, addressed in prior opinions, applies only to work on public school grounds other than roads, driveways and parking areas.

### **Drainage Work**

The jurisdiction of a Board of Supervisors over County roads includes the road right-of-way and under certain circumstances, acquisition of drainage easements and drainage of ditches as well as installation of culverts. The Board is required to properly maintain the road right-of-way up to but not beyond the private property line. If the Board finds that in order to properly drain or otherwise maintain the County road and road right-of-way, it is necessary to install culverts, it may install culverts in the right-of-way or perform other maintenance work thereon, so long as the installation of culverts is not for the exclusive use of abutting landowners.

In this regard, Miss. Code Ann. §65-7-1 (1972) authorizes and requires a County to keep ditches and borrow pits open in order to drain water from roadbeds, stating in part:

Ditches and borrow pits shall be kept open or connected so as to drain off the water from the roadbed, as far as practicable.

A further grant of authority is contained in Miss. Code Ann. §65-7-63 (1972), which provides:

The Board of Supervisors shall have power, whenever necessary, to drain water off the public roads through and over the adjacent lands, and damages may be allowed and paid to the owners of said adjacent lands in the same manner as is provided in regard to locating public roads.

Under Miss. Code Ann. §57-5-17 (1990), a County may develop ditches for drainage purposes when building industrial parks, provided such drainage is considered by the Board to be essential to the complete development of the industrial park.

According to the Attorney General's office, a County Board of Supervisors may engage in drainage work only on County-owned property or County-owned easements, and only for public purposes such as protection of County roads, buildings or other County-owned property. See AG Op. No. 92-0725 to Gamble, dated September 23, 1992.

If a Board finds that in order to properly drain a County road and road right-of-way, the construction of a certain ditch is necessary, it may lawfully acquire a drainage easement from the landowner and cut a ditch a reasonable distance across his land in order to provide sufficient drainage of the road and road right-of-way. Such ditch construction is authorized so long as its purpose is to drain the County roads and road right-of-way as authorized by §65-7-63, and so long as the ditch is not constructed on private property for the exclusive use and benefit of a landowner. Otherwise, any such construction or maintenance work, using public funds on

private roads for private benefit and not for a public purpose, would subject the Board of Supervisors to personal liability and substantial sanctions for expending public funds for an object not authorized by law.

The above drainage statutes were construed in light of County Home Rule in AG Op. No. 92-0351 to Teel, dated May 20, 1992, in which the Attorney General's office issued an opinion stating that the specific statutory provisions for local flood control and drainage set forth in Miss. Code Ann. §§51-21-1, et seq. deprived a County of authority to engage in a general program of flood control projects except as authorized in those statutes.

In AG Op. No. 91-0802 to Ready, dated November 18, 1991, the Attorney General's office issued an opinion stating that if a County believed that in order to preserve an industrial park's value to the community and to prevent flooding and erosion of the land within the industrial park, it was necessary for a ditch to be maintained by the County, it could acquire an easement on which the ditch is located by negotiating with the landowners to purchase their property, and if the negotiations with the landowners fail, the County could condemn the property by power of eminent domain in the name of the County, as a result of which the County could maintain or repair such ditch, concluding that "ditches may be dug anywhere within the industrial parks, so long as the ditches are deemed necessary by the County in order to drain water from the park."

County authority relative to drainage work has now been expanded considerably by Miss. Code Ann. §19-5-92.1 (2003). This statute confers authority upon counties to alter channels of streams and water courses; construct and repair bridges, clean and prevent erosion of drainage ditches, and acquire property and easements needed to do the work. Since it appears to have expanded County authority in this area far beyond existing legal limits, the statute is set forth in its entirety:

- (1) The Board of supervisors of any County, whenever the Board determines that the health, comfort and convenience of the inhabitants of the County will be promoted, may:
  - (a) Alter and change the channels of streams or other water courses;
  - (b) Construct, reconstruct and repair bridges over streams and water courses; and
  - (c) Incur costs and pay necessary expenses for:
    - (i) Providing labor, materials and supplies to clean or clear drainage ditches, creeks or channels and to prevent erosion of such ditches, creeks or channels;
    - (ii) Acquiring property and obtaining easements necessary to perform work under this section; and
    - (iii) Reimbursing landowners for damages and injury resulting from work performed by the County under this section.
- (2) The work performed and the expenses incurred under subsection (1) of this section may take place

on public or private property. However, if the work is to be performed or the expenses to be incurred will take place on private property, the Board of supervisors must:

- (a) Make a finding, as evidenced by entry upon its minutes, that such work and/or expenses are necessary in order to promote the public health, safety and welfare of the citizens of the County;
  - (b) Give notice, in writing, to all owners of property that will be affected by the work for such period of time as is reasonable to allow such owners to express any objections;
  - (c) Not receive written objection to the work by any owners of property that will be affected by the work within the period of time allowed to express objections; and
  - (d) Unless otherwise agreed, in writing, by the County and the landowner, construct or install a culvert or bridge, at the County's expense, at an appropriate location or locations to provide the landowner ingress and egress to all of the property to which the landowner had access immediately before performance of the work by the County.
- (3) The County shall reimburse landowners for all damages or injury resulting from work performed by the County under this section.
- (4) The provisions of this section do not impose any obligation or duty upon a County to perform any work or to incur any expenditures not otherwise required by law to be performed or incurred by a County, nor do the provisions of this section create any rights or benefits for the owner of any public or private property in addition to any rights or benefits as may be otherwise provided by law.
- (5) No additional taxes may be imposed for the work authorized under subsection (1) of this section until the Board of supervisors adopts a resolution declaring its intention to levy the taxes and establishing the amount of the tax levies and the date on which the taxes initially will be levied and collected. This date shall be the first day of the month, but not earlier than the first day of the second month, from the date of adoption of the resolution. Notice of the proposed tax levy must be published once each week for at least three (3) consecutive weeks in a newspaper having a general circulation in the County. The first publication of the notice shall be made not less than twenty-one (21) days before the date fixed in the resolution on which the Board of supervisors proposes to levy the taxes, and the last publication of the notice shall be made not more than seven (7) days before that date. If, within the time of giving notice, fifteen percent (15%) or two thousand five hundred (2,500), whichever is less, of the qualified electors of the County file a written petition against the levy of the taxes, then the taxes shall not be levied unless authorized by three-fifths ( 3/5) of the qualified electors of the County voting at an election to be called and held for that purpose.
- (6) This section shall stand repealed on July 1, 2004.

According to an AG opinion issued the year §19-5-92.1 went into effect, a County may repair a culvert on private property to prevent future erosion, but before undertaking the work, the Board of supervisors

must find, consistent with fact and spread upon the minutes, that the erosion at issue is caused by the County's placement of the culvert under a public road. *Chamberlin*, Nov. 8, 2002, A.G. Op. #02-0604.

### **Abandonment**

Up until 1986 there was no legislative guide establishing a formal procedure for abandoning County or other public roads. The exclusive statutory method for a Board of Supervisors to abandon any section of the County road system is set forth in Miss. Code Ann. §65-7-121 (Supp. 1986), which authorizes the Board under the following circumstances, either on its own motion or on petition of any interested County resident, to declare any section of the County road system abandoned:

- The section must not provide primary access to occupied property;
- Traffic on the section for the last ten years must have been intermittent and of such low volume that no substantial public purpose is being served by it; and,
- The Board has, for a period of at least the previous five years, not maintained the section as a part of the County road system.

### **Limited Immunity**

This statute provides for a public hearing to be held on the question of abandonment, following not less than two weeks publication of notice of the hearing. After abandonment, the Board is required to post clearly visible signs at any intersection of the abandoned roadway with the County road system indicating the abandoned section is no longer part of the County road system and is not maintained by the County. Miss. Code Ann. §65-7-121(3) further provides:

Once the required signs are posted, the County shall not be liable for the death of or injury to a vehicle, owner, operator or passenger, or for damage to a vehicle or its contents, resulting from a dangerous condition on the abandoned section.

Prior to the 1986 enactment of §65-7-121, it was sufficient for a Board of Supervisors to declare a road closed by making a factual determination of abandonment and placing that decision on its minutes. In AG Op. No. 94-0169 to Trapp, dated March 23, 1994, the Attorney General's office issued an opinion stating that if a Board of Supervisors determines that certain roads that may have previously been regularly maintained as County roads many years ago "were effectively abandoned before the enactment of §65-7-121 in 1986, it may enter an Order adjudicating those facts and the abandonment of the roads prior to the enactment of the statute. If there is any doubt of abandonment prior to 1986, then the procedure set forth in §65-7-121 must be utilized." In adjudicating such pre-1986 abandonment, the Board would be well-advised to make specific factual findings that there had been complete, continuous and protracted non-use of the subject road by the general public for a period in excess of ten years, during which time there had been an absence of control and regular maintenance by the County and, where applicable, the County acquiesced in the placement of physical obstructions or encroachments in or upon the road consistent with an intent by the County to abandon it. See

*R & S Development, Inc. v. Wilson*, 534 So. 2d 1008, 1010 (Miss. 1988), and *McNeely v. Jacks*, 526 So. 2d 541, 544 (Miss. 1988), both cited in AG Op. No. 94-0169.

In AG Op. No. 92-0347 to Holley, dated May 13, 1992, the Attorney General's office issued an opinion stating that when a County abandons an easement in a public road, the fee title remaining in the landowner is no longer burdened by the easement, citing *Miss. State Highway Commission v. McClure*, 536 So. 2d 895, 896 (Miss. 1988).

Abandonment of a road should be distinguished from mere discontinuance of segments of a public road rendered unnecessary by reason of alteration, improvement or straightening of the route. In an AG opinion issued one year after the adoption of the 1986 enactment of §65-7-121, the Attorney General's office construed the application of §65-7-121 by considering it in para materia with other statutes and constitutional provisions dealing with the same subject matter, including Section 170 of the Mississippi Constitution of 1890, and Miss. Code Ann. §§19-3-41, 65-7-5 and 65-7-57, concluding that "the discontinuance of segments of a public road made unnecessary as a consequence of alteration, improvement, or straightening of the route as authorized by constitutional and statutory provisions does not require adherence to §65-7-121." See AG Op. No. 87-602 to Griffith, dated December 7, 1987.

### **Establishment of Private Right of Way**

In *Hooks v. George County*, 1999 WL 718795 (Miss. 1999), the Court held that a County Board of supervisors acted in an arbitrary and capricious manner by granting a landowner's petition for a right-of-way across another landowner's property, in proceedings brought pursuant to Miss.Code Ann. § 65-7- 201 (1991). This statute provides as follows:

When any person shall desire to have a private road laid out through the land of another, when necessary for ingress and egress, he shall apply by petition, stating the facts and reasons, to the Board of supervisors of the County, which shall, the owner of the land being notified at least five days before, determine the reasonableness of the application. If the petition be granted, the same proceedings shall be had thereon as in the case of a public road; but the damages assessed shall be paid by the person applying for the private road, and he shall pay all the costs and expenses incurred in the proceedings.

According to the Court, the petitioners (Welfords) seeking the private right of way should have offered proof that they had first sought to purchase the right of way from the other landowners (Hooks), prior to filing their petition with the Board of Supervisors. Although the chancery court upheld the Board's action in granting the private right of way, the Mississippi Supreme Court reversed, holding that the Board failed to make a determination that the right of way was in fact "reasonably necessary" in light of the fact that the petitioning landowners already allegedly had two other alternative rights of way or easements of access to their land. Moreover, "the Board should not rule on the petition until the status of the easements is determined in chancery court, because the status of the easements will have a direct bearing on the reasonable necessity of a private way." *Id.* at \*7.

In reversing the chancery court which had upheld the County's action, the Court also noted that "[i]t seems from the record that the Board was acting in manner to determine at least in some part the outcome of the legal issues of the parties rather than simply determining whether a private way was in fact a reasonable necessity," and that "[a] finding of fact in this regard is mandatory when determining whether the Welfords met their burden of proof, especially where the Welfords did not provide any evidence to the Board that the right of way across Hooks's property is any more reasonable than the other two easements the Welfords already have." *Id.* at \*6.

In *Ganier v. Mansour*, 766 So.2d 3(Miss. App. 2000), the Mississippi Court of Appeals addressed the task of a Board of Supervisors when confronted with a petition to establish a private right of way under §65-7-201. The Board's task, according to the Court, was to review and decide whether the owner of a land-locked track of land, without a legally established means of ingress and egress, was entitled to an easement over neighboring land. "The Board had to accomplish this task while keeping in mind the competing interests of a family of farmers who own land surrounding the land-lot track. Our function as a reviewing Court is not to judge how to balance the competing rights; rather, our duty is to determine whether the Board's decision should stand under the prevailing standard of review. Under §65-7-201, the Court noted, the same proceedings." In this case, however, the final order of the Board of Supervisors awarded \$2000 per acre compensation to the landowner over whose property an easement was granted, subject to the easement, without assessing damages to the remainder or ordering the party to whom the easement was granted to pay the landowner the costs and expenses incurred in the proceedings. For that reason the Court of Appeals remanded the case to the Board of Supervisors to assess damages, costs and expenses in accordance with the statute. The Court reasoned that the Board of Supervisors chose a route which was less burdensome to the owner of the servient land, and found that the Board's decision, far from being arbitrary and capricious, showed a recognition and balancing of the interest of both the land lot owner and the owner of the servient land, by granting an easement which was less onerous to the servient land owner and which required no more burden to the land lot owner than that contemplated by the statute.

In *Lucas v. Williams*, 852So.2d 67(Miss. App. 2003), Williamson petitioned the County Board of Supervisors for a private right of way across land belonging to Lucas, after which the Board entered an order granting the request on December 17, 1998, with compensation and exact location of the right of way to be determined at a later date. 560.00 in damages were granted on March 23, 2000, and that amount was tendered to Lucas on March 29, 2000. Lucas then moved to set aside the Board's order, and on July 20, 2000 the Board entered its order denying the motion and affirming the 560.00 damage award. Lucas as the aggrieved party filed his notice of intent to appeal with the Circuit Court on February 16, 2001 and a Bill of Exceptions was accepted by the Board on February 20, 2001 with the filing in the Circuit clerk's office on February 27, 2001. Williamson moved in Circuit Court to dismiss the appeal on the grounds that it was not timely, and the Circuit Court agreed, dismissing the case with prejudice for failure to have jurisdiction on July 9, 2001. Affirming, the Mississippi Court of Appeals found that the Bill of Exceptions was not timely filed, noting that the latest time when the decision could have become final was, as the Circuit Court dictated in its order on August 7, 2000, at which time the minutes of the July meeting were signed by the President of the Board of Supervisors, pursuant to MS. Code. Ann. §19-3-27(Rev. 1995). "Since Lucas did not file his Bill of Exceptions until February 20, 2001, "well beyond the time frame dictated by statute, the filing was not timely and the Circuit Court correctly dismissed the appeal.

## Work On and Cleanup of Private Property

Use of County equipment and property and expenditure of County taxpayer funds for the benefit of a private landowner is generally illegal, except within very narrow and exceptional circumstances, such as those addressed in AG Op. No. 87-67 to Griffith, dated February 19, 1987, in which the Attorney General's office issued an opinion stating that it found no legal prohibition to a County Supervisor dumping dirt and debris onto the property of an adjacent property owner with that owner's permission, so long as that method of disposal was elected solely for the purpose of accomplishing an effective and efficient means of disposal and not merely for the benefit of the private landowner, and the dirt and debris in question did not reasonably constitute acceptable road building materials and possessed no intrinsic value to the County.<sup>120</sup> Under certain circumstances, the Board of Supervisors may lawfully go onto private property and clean it by cutting weeds, filling cisterns and removing rubbish, dilapidated fences, outside toilets, dilapidated buildings and other debris, and draining cesspools and standing water from it, so long as the following statutory requirements spelled out in Miss. Code Ann. §19-5-105 (Supp. 1983) are met:

1. The Board may act either on its own motion or on receipt of a petition requesting the Board to act signed by a majority of adult residents residing upon any street or alley within 750 feet of the precise location of the alleged menace.
2. The alleged menace must be situated on a parcel of land located in a populated area or in a housing subdivision and must be alleged to be in need of cleaning.
3. The Board must give notice to the property owned by United States certified mail, return receipt requested, receipted by addressee only, three weeks before the date of the hearing, or if the property owner is unknown or his address is unknown, then by three weeks notice in a newspaper having general circulation in the County, of a hearing to determine whether or not the parcel of land is in such a state of uncleanness as to be a menace to the public health and safety of the community.
4. If at this hearing the Board of Supervisors adjudicates in its resolution that the parcel of land in its then condition is a menace to the public health and safety of the community, "the Board of Supervisors may,

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<sup>120</sup>See, e.g., AG Op. No. 95-0199 to Shannon, dated June 22, 1995, finding no authority empowering a County Board of Supervisors to perform work or maintenance on a roadway located on private property on which the County Board of Education has an easement; AG Op. No. 93-0183 to Gamble, dated April 14, 1993, concluding that a County Board of Supervisors may not use any public funds, equipment, supplies or materials for any private purpose, nor may they grant any donation, and is thus without legal authority to conduct survey work, drafting work and engineering work in an area of the County that was wrongfully subdivided without having plats of the property approved as an official subdivision, where such work is sought for the purpose of establishing this property, which is now private property, as a subdivision; AG Op. No. 92-0407 to Smith, dated June 9, 1992, concluding that where a County has been granted an easement to use a private road as a detour, the County may maintain a private road and repair any damage caused by the public use; AG Op. to Welch, dated May 31, 1989, stating that a County could enter into an Interlocal Agreement with the Soil Conservation Service and could perform necessary work on private property to prevent erosion to County property.

if the owner not do so himself, proceed to have the land cleaned" as set forth above.

5. The Board of Supervisors may thereafter at its next regular meeting by resolution adjudicate the actual cost of cleaning of the said lot and the cost may become an assessment against the same.

6. Such action shall not be taken against any one parcel of land more than twice in any one calendar year, and the expense of cleaning shall not exceed One Thousand (\$1,000.00) Dollars in any one calendar year.

### **Maintenance and Repair of Cemeteries**

It is hard to believe that charges of illegal gravedigging and use of county equipment in cemeteries helped catapult a former state auditor into the Governor's mansion two decades ago. Since all things mortal must come to an end, it seems fitting to include a final segment in this book on the places there the graves get dug, public and private cemeteries.

Various statutes provide authority for a County Board of Supervisors to perform certain types of repair and maintenance work in relation to cemeteries.

Public cemeteries: Miss. Code Ann. §19-3-75(1988) provides:

The Board of Supervisors of any County is hereby authorized and empowered, in its discretion, to grade, gravel or shell and/or to repair and maintain roads or driveways to public cemeteries.

In A.G. Op. #95-0056 to Welch, February 23, 1995, the Attorney General opined that under §19-3-75, the Board of Supervisors has the discretionary authority "to grade, gravel or shell and /or to repair and maintain roads or driveways to public cemeteries." The term "public cemetery" according to A.G. Op. #02-0246 to Sanders, May 17, 2002, means a cemetery open to all people, although the determination of whether a particular cemetery is a "public cemetery" is a question of fact.

Cemeteries titled in name of county: Miss. Code Ann. § 19-7-39 (1975), provides in part that

The Board of Supervisors of any county is authorized to accept, in the name of the county, title by deed to any cemetery located within the county but located outside the corporate boundary of any municipality in the county which, due to age, abandonment of graves by private owners or for other good cause, is not being properly maintained or repaired and thereby have become detrimental to the public health and welfare..... No county funds or other public funds shall be expended by the board for the purposes of purchasing such cemetery. The board shall have the power to maintain, repair, enlarge, fence or otherwise improve any cemetery, title to which has been accepted by the board.

Confederate cemeteries: Miss Code Ann. § 19-5-93(A)(1972) authorizes the County Board of Supervisors, in its discretion, to donate money

for the location, marking, care and maintenance of the grave or graves and graveyard of Confederate soldiers or sailors who died in the Confederate service, and the purchase, if necessary, of the land on which any of the said graveyards may be situated, and the erection and maintenance of appropriate monuments and appropriate inscriptions thereon. In the exercise of this power the board is fully authorized to accept donations of land on which any of the said graveyards may be situated, and also money or funds to be used for any of the purposes of this section expressed.

Any Board of Supervisors may, in its discretion, contribute money to be used for the upkeep of graves of the Confederate dead in its county.

Private, non-profit cemeteries: Miss Code § 19-3-42(5)(1990) provides in part:

The Board of Supervisors of any County is hereby authorized, in its discretion, to repair and maintain driveways and parking lots of...(b) any private, non-profit cemeteries in the county.

According to A.G. Op #02-0354 to Barefield, July 19, 2002, a board of supervisors may repair and maintain driveways and parking lots on private and non-profit cemeteries upon satisfying the requirements of subsection (5). According to this same opinion, however, there is no authority for a board of supervisors to lay out, construct and/or pave new roads or driveways to public cemeteries.

Finally, (just in time for the June 2003 primary elections) the Attorney General's office provided clarification on the legal authority exercisable by counties with respect to the burial of paupers. In AG Op. No. 2003-0214 to Chamberlin, May 9, 2003, the Attorney General provided a detailed analysis of the statutes applicable to paupers burials, including Miss. Code Ann. §43-31-17 (1972)(disbursement of money for support of paupers requiring board order) ; §43-31-19 (eligibility requirements for paupers including bona fide residence for six months prior to application for support); §43-31-21 (board member's responsibility to ascertain pauper's right to support and to report facts to board for action); §43-31-25 (relatives' liability for expenses of county in providing for paupers); §43-31-29 (supervisors shall decently bury paupers and all strangers dying within county). Several reported decisions were also analyzed on the subject of pauper care and support, including *Tallahatchie County v. Harrison*, 23 So. 2d 291 (1898)(physician barred from recovering for caring for poor person, because that person had not been declared a pauper by the county, Court noting there was no evidence the person "was ever declared a pauper by the board of supervisors, nor was there any evidence that he desired to be so declared, and provided for by the county."); *Miller v. Tucker*, 105 So. 2d 774 (1925)(board could not donate funds to hospital since there were "no attempts by the board to find out that there persons at the hospital were in fact paupers, and there was no adjudication by the board of the status of the persons as paupers.") Based upon these authorities, the AG opined that the statutes pertaining to the burial of paupers are based on the identification of paupers and their support by the county prior to death. The opinion continued with the following observations from prior opinions on this subject:

1. The digging of a grave of a person who is not a pauper or stranger has been held to be an unauthorized expenditure of public funds.
2. The digging of a grave for a person who is not a pauper or stranger has been held to be an unauthorized expenditure of public funds. AG Op. to Johnson, April 24, 1998; AG Op. to Douglas,

March 11, 1988.

3. A city could not legally dig a grave unless the person was a pauper or stranger. AG Op. to Spicer, Oct. 20, 1988.

4. A board of supervisors has the authority to cremate the remains of a pauper or stranger, and provide a decent burial of the residue after the cremation. AG Op. to Meadors, Dec. 5, 1997.

The opinion articulated multiple opinions of the Attorney General based on the above statutes, providing a somewhat complex process securing the requisite legal authority for pauper burials at county expense:

(1) It is the opinion of the Attorney General that a board of supervisors may be able to establish the status of someone as a pauper, either before or after his death, based upon available records of current and recent public assistance and any other available evidence. However, the board of supervisors must review these and any other available documents. After this review, an adjudication of the person as a pauper by the board must take place and then be spread upon the minutes of the board. A signed pauper's oath, by itself, is not contemplated by the statutes as enough to establish the status of a pauper. An individual supervisor or employee of the board, e.g., the county administrator, may be allowed to make an initial determination of a person's right to burial as a pauper. However, that supervisor or employee would be liable for those costs if the full board later fails to find that the person buried was indeed a pauper.

(2) Additionally, it is the opinion of the Attorney General that any use of public equipment or public funds to bury a pauper or a stranger should not be a "funeral supplement"; that is, the public funds should not be added to the funds of a relative to enhance the funeral or burial of a person. If the burial is handled by a local funeral home, no additional monies should be accepted by the funeral home as compensation as such would show that the decedent had kin liable and able to pay for the expenses of the burial. If the burial is handled by the county itself, the county may bury the pauper or stranger in a public cemetery, "potter's field" or the county farm.

(3) The burial of unclaimed bodies by a board of supervisors is an entirely different matter. Section 41-39-5 of the Mississippi Code gives the board of supervisors the right and responsibility to bury unclaimed bodies held by any physician, hospital, funeral director, embalmer, coroner or other person that is not claimed for burial or cremation within forty-eight hours. The board must make reasonable efforts to notify the decedent's family or other known interested parties and then if the body is not claimed within five days of the notice, the board shall authorize and direct the burial or cremation of the dead body. These duties may be accomplished through a properly designated agent or employee of the board of supervisors, if a standing order which deals with this matter has been spread upon the official minutes. The reasonable expense of the burial or cremation is to be borne by the estate of the decedent or any person liable at law for the expenses of the decedent. The board of supervisors therefore should seek to recover the cost of the burial or cremation if an estate is opened or if a relative is located.

(4) It is the opinion of the Attorney General that a board of supervisors has the authority to bury unclaimed bodies, identified paupers, and unknown strangers after an order has been spread on their

official board minutes. However, these laws do not contemplate the county supplementing or reimbursing persons merely claiming to be or have been paupers solely to gain funeral assistance for the family.