Mississippi College Law Review

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6-1-1979

Attorney General's Opinions

A. F. Summer

George M. Swindoll

ATTORNEY GENERAL'S OPINIONS

The Authority To Issue An Attorney General's Opinion

The Attorney General of Mississippi is empowered by the law of this state to issue written answers to questions posed by authorized persons. Section 7-5-25, Miss. Code Ann. (1972) sets forth a list of those authorized to request such opinions. In general, the list includes the governor, the legislature, the chancery and circuit court clerks, the secretary of state, the various state departments, state officers and commissioners operating under the laws of this state, the heads and trustees of state institutions, district attorneys, the various county and city officials and their attorneys.

The Attorney General's Opinions function as a protective measure, so that there can be no civil or criminal liability against any person or governmental entity who has properly requested the opinion, setting forth all governing facts on the basis of which the Attorney General's Office has prepared and delivered a legal opinion, and which the requesting party has followed in good faith. This general proposition holds true, unless a court of competent jurisdiction, after a full hearing, shall judicially declare that such opinion is manifestly wrong and without substantial support. No opinion shall be given or considered if said opinion is given after suit is filed or prosecution begun.

*Issuance Of An Attorney General's Opinion**

Attorneys in the Attorney General's Office are assigned to specific areas of law in which they specialize. After an opinion request is received by the Office of the Attorney General, it is assigned to the attorney whose area of law it might concern. He then researches the problem and prepares a draft of the opinion or answer. This draft is then submitted to the Opinion Committee which is composed of nine attorneys in the office, including the Attorney General. The Opinion Committee meets twice weekly, on Tuesday and Thursday. At the meeting of the Committee, the draft is discussed and reviewed. The Committee either suggests changes, requests more information, or approves the draft if it is agreed that the analysis of the law is correct.

Should changes be suggested or more information requested, the Committee sends the draft back to the attorney for revision. Upon correction or addition, the draft is returned to the Committee where it is again processed. If there are no further changes, additions, or corrections suggested, the draft will be given final approval and issued as an official Attorney General's Opinion.

*Prepared by Attorney General's Office

OPINION NO. SO 79-13

SUBJECT: WHETHER LIMITED WARRANTIES ON AUTOMOBILES MAY CONSTITUTE THE WRITING OF INSURANCE UNDER THE MISSISSIPPI CODE. A so-called limited warranty may meet all the requirements of a contract of insurance. This is especially so when the service is offered by a company which hopes to profit by the sale of the service. An automobile dealer, however, can offer an identical contract which will retain the character of a limited warranty. This is because the dealer's purpose is to enhance his competitive posture rather than increase his profit directly by the service.

DATE RENDERED: May 3, 1979

REQUESTED BY: Mr. George Dale

OPINION BY: A. F. Summer, Attorney General, by Robert E. Sanders, Special Assistant Attorney General

*Selected portion of Attorney General's Opinion is reprinted as follows:

Attorney General Summer has received your letter of request dated February 7, 1979, and has assigned it to me for research and reply. Your request reads as follows:

> Re: What constitutes the writing of Insurance as per Title 83, Chapter 5, Section 5, Mississippi Code of 1972, Annotated.
>
> This department respectfully requests an opinion concerning the interpretation of the above statute.
>
> The information we have would indicate that the proposed corporation would be operated in conjunction with a franchise new car automobile dealership. The dealer proposes to form a separate corporation with a brother-sister relationship to the existing dealership to issue the limited warranties it proposes to sale. The warranties would be offered on both new cars sold by the dealership and selected used cars that have been examined and are considered acceptable for the limited warranty.
>
> The warranties proposed would be limited warranties and would only cover mechanical malfunctions of the engine and drive line components and would exclude any damage caused by an accident. The proposed warranties would be offered for a specified period of time, probably not more than two years on new cars and not more than one year on selected and approved used cars, with an unlimited mileage allowance during the specified period. In addition this warranty will only be offered to the dealer's own customers and will not be offered through other dealers.

We are, therefore, requesting an opinion from your office on two questions that need to be answered:

(1) Is this vehicle service contract an insurance program and,

(2) If it is an insurance program can an automobile dealership offer its own customers the vehicle service contract without being licensed as an insurance company by the State of Mississippi?

. . . .

Your opinion request seeks to determine whether limited warranties sold by an entity other than the manufacturer or vendor of the product to which the limited warranty applies are insurance within Section 83-5-5, and the distinction, if any, between an entity and the vendor of the product for purposes of Section 83-5-3. Your questions appear to be ones of first impression in this state. A conflict of authority exists among states which have considered these questions in the past and as yet it appears that no majority rule has emerged.

An examination must first be made of the nature of a warranty. Black's Law Dictionary defines a personal property warranty as:

> A statement or representations made by the seller of goods, contemporaneously with and as a part of the contract of sale, though collateral to the express object of it, having reference to the character, quality, or title of the goods, by which he promises or undertakes that certain facts are or shall be as he then represents them. A promise or agreement by seller that article sold has certain qualities or that seller has good title thereto. A statement of fact representing the quality or character of goods sold, made by the seller to induce the sale, and relied on by the buyer.

The Uniform Commercial Code requires a sale for any of its warranty provisions to be effective. The hallmark of a warranty is the "promise of indemnity against defects in the article sold," C.J.S. Vol. 44 p. 473, but an essential prerequisite is that the one offering such a special indemnity be the manufacturer or seller of the product. C.J.S. Vol. 77 p. 1117 states "warranty is an incident to a contract of sale, and assumes or necessarily implies the existence thereof. A warranty is not an essential element of a sale, which can exist without it, but there can be no warranty without a sale." Anyone other than the manufacturer or seller offering such indemnity does not have standing to properly classify his offer as a warranty.

Mississippi has long recognized the requirement of a sale by the manufacturer before a warranty may exist. *Watts v. Adair*, 52 So. 2d 649 and *Stribling Brothers Machinery Co. v. Girod Co.*, 124 So. 2d 289. The Uniform Commerical Code has expanded the category of sales which enable a warranty to be recognized to sales by merchants regularly engaged in selling the product sold, but nothing in this

state's statute or common law negates the necessity of sale. A warranty is properly viewed as a service incident to the business of selling the product and the purpose of merely to enhance the competitive posture of the seller.

Insurance is defined in *Vance on Insurance*, Third Edition (1951) at page 2. Five elements which comprise a contract of insurance are set forth as:

> (a) The insured possesses an interest of some kind susceptible of pecuniary estimation, known as an insurable interest.
>
> (b) The insured is subject to a risk of loss through the destruction or impairment of that interest by the happening of designated peril.
>
> (c) The insurer assumes that risk of loss.
>
> (d) Such assumption is part of a general scheme to distribute natural losses among a large group of persons bearing somewhat similar risks.
>
> (e) As consideration for the insurer's promise, the insured makes a ratable contribution, called a premium, to a general insurance fund.
>
> A contract possessing only the three elements first named is a risk-shifting device but not a contract of insurance, which is a risk-distributing device; but, if it possesses the other two as well, it is a contract of insurance, whatever be its name or its form.

Clearly what has been labeled as a limited warranty in the opinion request meets all the requirements of a contract of insurance. This, coupled with the fact that the service is not offered by the manufacturer or seller but rather by a company which hopes to profit only by the sale of the service, leads to the conclusion that the service has been mislabeled. The contract in question is one of insurance. The fact that it covers only defects inherent in the article insured only limits the coverage of the insurance; it does not change the nature of the contract.

At the same time an automobile dealership can offer a true limited warranty which might be virtually identical to the contract of insurance offered by another. The distinction exists as the dealer has standing, as vendor, to offer a warranty and the overriding purpose is to enhance his competitive posture in the sale of a product rather than merely to enlarge the scope of his business or to increase his profit directly by this service. He could, of course, offer such a warranty only on cars he sells and not those of another dealer.

Sincerely,

A. F. SUMMER, ATTORNEY GENERAL

BY: Robt E. Sanders

Robert E. Sanders
Special Assistant Attorney General

RES: cv

OPINION NO. SO 79-14

SUBJECT: PERMISSIBLE ROAD BLOCKS AND CHECK POINTS UNDER DELAWARE V. PROUSE. Probable cause is required for police to detain a motorist to check his licence. A roadblock at which all passing motorists' driving licenses are checked is permissible.

DATE RENDERED: May 16, 1979

REQUESTED BY: Mayor Chastaine Flynt

OPINION BY: A. F. Summer, Attorney General, by Larry J. Stroud, Special Assistant Attorney General

*Full text of Attorney General's Opinion is reprinted as follows:

Attorney General A. F. Summer has received your opinion request of May 4, 1979 and has assigned it to me for reply. In your letter you state:

> It came to my attention from the news media that the United States Supreme Court recently held that it was unconstitutional to set up road blocks or check points for the purpose of checking drivers license to the general public without cause of any law violation.
>
> The police officers of the Town of Flowood have periodically in the past set up road blocks detaining people in their normal travel on the streets and highways of Flowood.
>
> Before issuing a directive to our police department under these conditions to cease and desist such practice I would appreciate your legal opinion as to the opinion of the U.S. Supreme Court before I issue such a directive.

The case you are referring to is *Delaware v. Prouse*, 47 L. W. 4323 (March 27, 1979). In this case the Supreme Court held that the police cannot arbitrarily pull over a motorist to check his license, in the absence of probable cause. However, the Court specifically stated it limited its opinion to an arbitrary spot check of a motorist, and went so far as to suggest that a roadblock where all passing motorists are checked as a possible method to be used to enforce traffic law and public safety.

In the light of the United States Supreme Court's opinion in *Delaware v. Prouse*, it is our opinion that a roadblock where all motorists' driving licenses are checked is permissible.

Trusting that the above will be of value to you, I am and remain

Sincerely yours,

A. F. SUMMER, ATTORNEY GENERAL

BY: Larry J. Stroud

Larry J. Stroud
Special Assistant Attorney General

LJS: cm

OPINION NO. SO 79-15

SUBJECT: RIGHT OF HUNTING CLUB LESSEE OF SIXTEENTH SECTION LAND TO PREVENT CROSSING BY NONMEMBER. A hunting club lessee may prevent the crossing of leased land by those wishing to fish in a stream running through the land. If the stream is a "public waterway," nonmembers may fish in the stream by gaining access by boat or wading.

DATE RENDERED: April 25, 1979

REQUESTED BY: Representative Robert Y. Wiseman

OPINION BY: A. F. Summer, Attorney General, by Mack Cameron, Special Assistant Attorney General

*Selected portion of Attorney General's Opinion is reprinted as follows:

Attorney General A. F. Summer has received your letter dated April 23, 1979 and has referred it to me for research and reply. Your letter stated:

> One of my people has been having some static from a hunting club because he was walking across their leased land getting to a fishing stream running through club leased property.
>
> Can they legally prevent him from going across club land and fishing in a stream running through club leased land?

Section 29-3-54, Mississippi Code of 1972, as amended, states:

> Any leaseholder of sixteenth section land or land granted in lieu thereof, shall be authorized to post such land against trespassers; provided that such posting shall not prohibit the inspection of said lands by individuals responsible for the management or supervision thereof acting in their official capacity. In the event hunting or fishing rights have been leased on lands classified as forest land, the holder of such rights and the state forestry commission shall be authorized to post such land against trespassers.

Thus, pursuant to the above cited section, lessee hunting club could prevent your constituent from going across the leased land and fishing in a stream running through the leased property. However, if the stream meets the criteria of a "public waterway" as defined in Section 51-1-4, Mississippi Code of 1972, then individuals would have the right to fish in the stream after gaining access from the stream itself by either a boat or by wading. . . .

Trusting the above will be of assistance to you, I am

Sincerely yours,

A. F. SUMMER, ATTORNEY GENERAL

BY: Mack Cameron

Mack Cameron
Special Assistant Attorney General

MC: db
Enclosure

OPINION NO. SO 79-16

SUBJECT: PROCEDURE REQUIRED FOR A CHANGE IN THE LOCATION OF A POLLING PLACE; THE RIGHT OF A MUNICIPALITY TO REQUIRE AN APPOINTED EMPLOYEE TO RESIDE WITHIN THE CORPORATE LIMITS. A change in the location of a polling place requires prior submission for federal approval. Approval may be sought by application to the Attorney General of the United States.

In the recent case of *Wright v. City of Jackson*, 506 F.2d 900 (5th Cir. 1975), the court held that a municipality could, as a matter of policy, require all municipal employees to reside within the corporate limits, so long as no federal restraints were violated.

DATE RENDERED: May 28, 1979

REQUESTED BY: Mrs. Dorothy N. Sheffield

OPINION BY: A. F. Summer, Attorney General, by S. E. Birdsong, Jr., Special Assistant Attorney General

*Full text of Attorney General's Opinion is reprinted as follows:

Attorney General A. F. Summer has received your letter and has assigned it to me for research and reply.

Your letter states:

I would like to receive an opinion on the following:

(1) The City Hall Annex has been used as a voting place for some years, but as of this year we no longer have the space required, and we advised the Board of Supervisors and the Circuit Clerk in March, 1979. Now the Board of Supervisors advised (5/18/79) that the time was not sufficient to change for August 7th election.

Was the time given sufficient enough?

(2) If you are an appointed employee of a municipality, are you required to live within the corporate limits of the City?

Thank you for your response.

A change in the location of polling places constitutes a change requiring prior submission for Federal approval under Section 5 of the Voting Rights Act of 1965. Perkins v. Matthews, 400 U.S. 379, 27 L. Ed. 2d 476, 915 S. Ct. 431 (1971). Such approval may be sought by application to the Attorney General of the United States. Under such circumstances, our office would not be able to state whether the time given is sufficient.

The City of Picayune has a mayor and four councilmen. We find no statutory requirement that an appointed city employee of such a municipality be required to live within the corporate limits of the municipality.

As to municipal employees under civil service, reference is made to House Bill No. 1007, Chapter No. 322, Laws of 1979, effective on March 1, 1979, which amended Section 21-31-15 of the Mississippi Code of 1972, Annotated, to read:

> . . . All applicants for a position of any kind under civil service must be a citizen of the United States and an elector of the county in which he resides and must meet only such bona fide occupational residency requirements as may be determined by the municipal board of civil service commissions or the governing authority of the municipality. . . .

In Hattiesburg Firefighters Local 184 et al. v. City of Hattiesburg, Miss., 263 So. 2d 767 (1972), the court considered a city ordinance requiring all members of the Fire Department and all other city employees under civil service to maintain their domicile and principal place of residence within the corporate limits during their employment, ruling that the ordinance was valid and not an improper classification as to firemen. On May 16, 1979, the Mississippi Supreme Court decided Brown v. City of Meridian, No. 51,162, wherein the Court cited Hattiesburg Firefighters as holding that a municipality may require its employees to reside within the corporate limits. Brown involved a municipal policeman covered by civil service who was dismissed because he maintained his residence

outside the corporate limits when a resolution of the City Council required all employees of the police and fire departments to maintain their residence within corporate limits. When the resolution was adopted, Meridian had a council-manager form of government.

In the recent case of *Wright v. City of Jackson*, 506 F. 2d 900 (1975), the United States Court of Appeals, Fifth Circuit, acted upon a suit brought as a class action by a group of nonresident firemen wherein they challenged the constitutionality of an ordinance requiring all city employees under civil service to maintain their residence within the City of Jackson. The Court held that the city could validly enact the policy of requiring residence within the city free of any federal restraint. When the ordinance was enacted, Jackson had a commission form of government.

Considering the foregoing, it is the opinion of this office that as a matter of policy, the government authorities of a Mississippi municipality may, in principle, enact an ordinance requiring all municipal employees to maintain their residence within the corporate limits.

With kind regards, I am

Very truly yours,

A. F. SUMMER, ATTORNEY GENERAL

BY: S. E. Birdsong, Jr.

S. E. Birdsong, Jr.
Special Assistant Attorney General

SEB, Jr/mg

OPINION NO. SO 79-17

SUBJECT: CAMPAIGN EXPENDITURES ARE REQUIRED TO BE REPORTED PRIOR TO ELECTION, AS WELL AS SIXTY DAYS AFTER THE ELECTION. Mississippi Code Annotated § 23-3-41(3) (1972) requires all reportable expenditures to be listed and filed within a four month period prior to the election. The only other report is not required until sixty days after the election.

DATE RENDERED: April 24, 1979

REQUESTED BY: Hon. Charles Pickering

OPINION BY: A. F. Summer, Attorney General, by Donald Clark, Jr., Special Assistant Attorney General

*Full text of Attorney General's Opinion is reprinted as follows:

I am in receipt of your letter of April 19, 1979, wherein you inquire as to whether expenditures are required to be reported at any time other than sixty (60) days after the date of the election at which the result as to the particular candidate is decided.

Upon receipt of your inquiry, I checked with other attorneys in this office and with the Office of the Secretary of State. It seems that there has been some degree of uncertainty over this issue of whether any other expenditure reports are required to be filed.

As cited in your letter of request, Section 23-3-41(3), Mississippi Code of 1972, Annotated, as amended, states, in part, as follows:

> Each candidate shall list in this first report all contributions and expenditures which are required to be reported by this chapter which are received or made for the purpose of the campaign at any time prior to the date of the report. The first report shall also list all personal property used by a candidate, including transportation vehicles and airplanes, after the date of the candidate's public announcement of his candidacy or the date of qualification by the candidate, whichever is earlier; provided, however, that the value of the use of such property equals or exceeds the amount required to be reported and is not owned by the candidate.

Based on the foregoing language, the office attorneys who prepared the "Guide to the 1978 Campaign Disclosure Act" concluded that Section 23-3-41(3), supra, required the listing of all reportable expenditures on the first report due to be filed within the four month period prior to the election. After this initial expenditure report, no further expenditure report is required until sixty (60) days after the election as which time the post-election report becomes due.

As stated in the preface to the "Guide to the 1978 Campaign Disclosure Act", the conclusions reached therein were not considered to be official opinions of the Attorney General. However, in light of the confusion concerning expenditure reports, this letter is intended to establish these conclusions as the official opinion of the Attorney General relative to expenditure reports.

In response to your telephone inquiry, this is to advise that where a reporting deadline falls on a weekend or holiday when official offices are closed, the required report shall be filed on the last day that said offices are open prior to the deadline.

With personal regards, I am

Very truly yours,

A. F. SUMMER, ATTORNEY GENERAL

BY 

Donald Clark, Jr.
Special Assistant Attorney General

DC, Jr:lm

OPINION NO. SO 79-18

SUBJECT: AUTHORITY OF THE STATE HIGHWAY COMMISSION TO INCREASE THE LOAD LIMIT OF TRUCKS ON AN EMERGENCY BASIS. The load limit on perishable farm products may be increased by the Motor Vehicle Comptroller. Upon application and a showing of good cause, the State Highway Commission may issue a special permit to allow weights in excess of the maximum. In an emergency situation the Governor could call a Special Session of the Legislature to consider the matter.

DATE RENDERED: June 18, 1979

REQUESTED BY: Hon. John R. Tabb

OPINION BY: A. F. Summer, Attorney General

*Full text of Attorney General's Opinion is reprinted as follows:

I am in receipt of your letter dated June 18, 1979 as follows:

> Section 65-1-45, Mississippi Code of 1972, Annotated, gives the State Highway Commission the authority to restrict or to reduce the allowable weight permitted on any State highway or bridge. Section 63-5-33, Mississippi Code of 1972, sets up the maximum weight allowable except by individual application under Section 63-5-51, Mississippi Code of 1972.
>
> Does the State Highway Commission have the authority to increase the load limit to 80,000 pounds on the Interstate System to both intrastate and interstate truckers on an emergency basis for a period of 30 days?

We understand that the Governor and Commissioner of Agriculture have requested that you increase load limits for Interstate and Intrastate truckers on an emergency basis.

As you are aware, the Legislature has, on numerous occasions, considered the question of increasing weight limits on the highways of the State of Mississippi and has consistently declined to do so, and that there is no authority to grant a blanket increase in weight limits without legislative authorization.

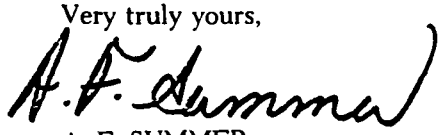
The Legislature has, by Section 27-19-83, Mississippi Code of 1972, authorized the Motor Vehicle Comptroller to issue permits to persons hauling perishable farm products, vegetables and fruits and dairy products to increase the load not to exceed two tons in excess of the amount allowed for that particular truck as provided by the tag purchased, as long as said products are produced in Mississippi, for a period not to exceed twenty days.

In addition, thereto, Section 63-5-51, Mississippi Code of 1972, authorizes the State Highway Commission, with respect to highways

under its jurisdiction, upon application in writing and for good cause shown, to issue a special permit for weights in excess of the maximum otherwise provided by statute, in conformance with and subject to the specific provisions of said section.

Should the Governor deem the situation such as to constitute economic or other emergency, he is, of course, authorized to call a Special Session of the Legislature to consider the matter.

Very truly yours,



A. F. SUMMER
ATTORNEY GENERAL

AFS:mfd

OPINION NO. SO 79-19

SUBJECT: AUTHORITY OF SUPERVISORS TO APPROPRIATE ADVERTISING MONIES TO AID CITIZENS AGAINST NUCLEAR TRASH. Mississippi Code Annotated § § 17-3-1, 3 (1972) grants proper authority to expend funds if the purpose is found to be in the "other interests . . ." of the county. Proper order should be entered upon the minutes to that effect.

DATE RENDERED: February 12, 1979

REQUESTED BY: Hon. Jeffrey Hollimon

OPINION BY: A. F. Summer, Attorney General, by John W. Weston, Special Assistant Attorney General

*Full text of Attorney General's Opinion is reprinted as follows:

Your letter request of February 7, 1979, addressed to Honorable A. F. Summer, Attorney General, has been received and assigned to this writer for research and reply. Your letter states:

> As Attorney for the Perry County Board of Supervisors, I have been directed to write your office for a written opinion.
>
> The salt dome formations in Perry County have recently been selected by the Federal Department of Energy as a possible site for a Nuclear Waste Repository. The Board of Supervisors have determined that such a repository would be highly undesirable for Perry County for a variety of reasons and that opposition to such would be in the best interest of the county and its citizens. In order to more formalize their opposition, the Board called a public meeting for the purpose of forming a citizen's organization. After forming the citizen's group, a central committee of fifteen members was selected to further organize and direct the activities of the group. For an organization name, the committee adopted Citizens Against Nuclear Trash (CANT).

CANT has now approached the Board of Supervisors, as well as all municipalities within the county, requesting an appropriation to help support the advertising campaign demonstrating the disapproval and opposition of Perry County citizens to the establishment of a Nuclear Waste Repository in the County. The Board of Supervisors feels that such an appropriation should be allowed under Sections 17-3-1 and 17-3-3, Mississippi Code of 1972, dealing with promotion of the moral, financial and other interest of the county. Would such an appropriation be legal if the Board affirmatively finds and adjudicates that such would promote and advance the moral, financial and other interests of Perry County and its citizens? If not, then would such an appropriation be legal under any other provision of law?

Another question concerning this same matter is that if such an appropriation would be illegal under all existing laws, could this authority be derived from a Local and Private Bill of the Mississippi Legislature, assuming they would pass such a measure?

Your referenced sections are as follows:

§ 17-3-1. Counties and municipalities may advertise resources.

The board of supervisors of any county in Mississippi, and the mayor and board of aldermen or board of commissioners of any municipality in the State of Mississippi, may in their discretion, set aside, appropriate and expend moneys, not to exceed one mill of their respective valuation and assessment for the purpose of advertising and bringing into favorable notice the opportunities, possibilities and resources of such municipality or county.

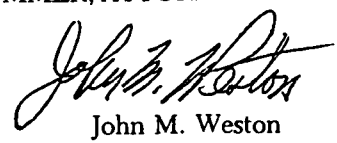
§ 17-3-3. Advertising, kind included.

Advertising pursuant to section 17-3-1 shall include newspaper and magazine advertising and literature, publicity, expositions, public entertainment or other form of advertising or publicity, which in the judgment of such board or boards will be helpful toward advancing the moral, financial and other interests of such municipality or county. (Emphasis supplied)

It is the opinion of this office that if the Board makes a finding of fact pursuant to said statutes that it is in the ". . . other interests . . . ." of the county and enters a proper order upon its minutes to that effect, funds may be expended for the purpose set forth in your inquiry.

Sincerely yours,

A. F. SUMMER, ATTORNEY GENERAL

BY: 

John M. Weston
Special Assistant Attorney General

JMW/ped

OPINION NO. SO 79-20

SUBJECT: AUTHORITY FOR A MUNICIPALITY TO REGULATE THE POLITICAL ACTIVITY OF EMPLOYEES. Inquiries concerning The Hatch Act should be addressed to the United States Civil Service Commission. The recent United States Supreme Court case of *Dougherty County v. White* is also relevant. Regulations may need to be submitted to the Office of the Attorney General of the United State for preclearance.

DATE RENDERED: March 26, 1979

REQUESTED BY: Mr. John W. Campbell

OPINION BY: A. F. Summer, Attorney General by S. E. Birdsong, Jr., Special Assistant Attorney General

*Full text of Attorney General's Opinion is reprinted as follows:

Attorney General A. F. Summer has received your letter and has assigned it to me for research and reply.

Your letter states:

> The City Board has directed that I request your opinion on a Section in our personnel policy. The Section applies to employee political activity as follows.
>
> SECTION XV: Employee Political Activity
>
> A. This policy is stated to preserve a workforce designed to achieve maximum public service and to maintain both the integrity of City employees and the respect of the public which they serve.
>
> B. Any political activity by employees of the City of West Point on City property and during City working hours is expressly prohibited.
>
> C. Any City employee who qualifies and runs for any Public Elected Office shall be required to take a leave of absence, without pay, thirty (30) days before the date of the election and such leave of absence shall run until the designated election date.
>
> D. Any City employee who is elected to a local, state, or federal office shall permanently resign his or her position with the City prior to taking office.
>
> The Board desires to know if this Section is in violation of the 1964 Voting Rights Act, the Hatch Act or any recent Supreme Court decisions.

Initially, we are obliged to say that that part of your inquiry relating to the Hatch Act is not susceptible to an opinion of this office since it would require an opinion concerning a Federal statute.

However, we can state that the Hatch Act (5 U.S.C. 1501-1508) is enforced by the United States Civil Service Commission and that the enclosed copy of Summary Statement Regarding Political Activity of State and Local Officers and Employees includes instruction on how to apply to the Commission for assistance in resolving any question as to whether the Act applies.

Attached for your information and reference is a copy of a letter of January 29, 1979, from this office to Honorable Stephen W. Rimmer of Jackson, which is relevant to your inquiry.

The attached copy cites and discusses the recent United States Supreme Court case of Dougherty Co., Georgia, Board of Education, et al v. John E. White, _____ U. S. _____. 58 L. Ed. 2d 269, 99 S. Ct. _____. The Dougherty County case treated the matter of a requirement that an employee of a county board of education was required to take a leave of absence without pay upon becoming a candidate for elective office. This requirement is similar to paragraph C. of Section XV of your personnel policy.

Dougherty County did not decide the substantial question of the constitutionality of the employee leave requirement in that case. It did decide that such a requirement imposed after the effective date of Section 5 of the Voting Rights Act of 1965 should be submitted for Federal approval before implementation.

We, therefore, are of the opinion that if the City of West Point, or its agencies, are to attempt enforcement of the requirement of paragraph C, supra, then the requirement should be submitted to the Office of the Attorney General of the United States for preclearance.

Noting the language in Dougherty County expressing the Court's concern for the possibility of discrimination resulting from constraints on employee political activity, it is recommended that you consider submitting the requirements of paragraphs B. and D. of Section XV of your personnel policy for preclearance.

We trust this will be of assistance to you.

With kind regards, I am

Very truly yours,

A. F. SUMMER, ATTORNEY GENERAL

BY: S. E. Birdsong

S. E. Birdsong, Jr.
Special Assistant Attorney General

SEB, Jr./mg
Enclosures

OPINION NO. SO 79-21

SUBJECT: AUTHORITY OF A MUNICIPALITY TO REDUCE AD VALOREM TAXES OF FLOOD VICTIMS. A municipality may reappraise and reduce the taxes on flood damaged property. However, there is no statutory authority for the arbitrary cancellation of an assessment for a chosen period of time. Further, no statutory authority exists to permit tax exemption in whole or part for such a selected period of time.

DATE RENDERED: July 9, 1979

REQUESTED BY: Hon. Alfred G. Nicols, Jr.

OPINION BY: A. F. Summer, Attorney General by S. E. Birdsong, Jr., Special Assistant Attorney General.

*Full text of Attorney General's Opinion is reprinted as follows:

Attorney General A. F. Summer has received your letter and has assigned it to me for research and reply.

Your letter states:

> I represent the City of Richland, Mississippi. As you are no doubt aware, approximately one-third of the residences in the City of Richland had some flood damage and inundation as a result of the recent Pearl River flooding.
>
> The Board of Aldermen of the City has considered various proposals as to how the City might assist these flood victims financially to recover from their losses.
>
> The Richland City Board has now asked me to write to your office for an advisory opinion as to whether the City Board could exempt from municipal taxation for this year, and maybe two years, property which had sustained flood damage in an amount of, hypothetically $1,000.00 or more, or some such figure as set by the Board.
>
> Mississippi Code of 1972, Section 21-33-43, provides that the city board may reduce or increase city ad valorem assessments for the same reason and in like manner as may be done by the county for county assessments. Mississippi Code of 1972, Section 27-35-143, provides that the county may "change or decrease an assessment" where the property "has depreciated in value on account of any such accident or occurrence as the foregoing" (i.e. flood).
>
> We are quite sure that these sections would allow the city to reappraise the property in accordance with the damage that has been done and to reduce the taxes according to a reappraisal. This would be expensive and cumbersome to the city; however, and the City Board prefers to simply cancel the assessment for a year or two or make the property exempt for a year or two on account of the flood damage and loss. The property owners would be required to file a petition and an

affidavit verifying their flood loss and damage in order to qualify for an exemption or cancellation of their ad valorem tax.

Can you see any interpretation of the subject statutes, or any other statutes applicable to the matter, which is contrary to the Board's desires, plans and wishes to cancel assessments for the relief of the City's flood victims in accordance with the plans hereinabove outlined?

We are obliged to say that although reassessment may be expensive and cumbersome to the city, we are of the opinion that the provisions of Sections 21-33-43 and 27-35-143 of the Mississippi Code of 1972, Annotated, do not authorize the simple cancellation of an assessment for a year or two or permit tax exemption in whole or in an arbitrary and uniform amount for a year or two on account of flood damage and loss. Further, we do not find any such statutory authority elsewhere.

We regret that we are unable to respond to you otherwise.

With kind regards, I am

Very truly yours,

A. F. SUMMER, ATTORNEY GENERAL

BY: S. E. Birdsong

S. E. Birdsong, Jr.
Special Assistant Attorney General

SEB,Jr./mg

OPINION NO. SO 79-22

SUBJECT: CERTAIN TANGIBLE PROPERTY IS NOT EXEMPT FROM AD VALOREM TAXES FOR SCHOOL DISTRICT PURPOSES. Tangible property includes both real and personal property. Tangible property used in the manufacturing operation or necessary to some manufacturers and other new enterprises may be exempt from ad valorem taxes.

DATE RENDERED: February 13, 1979

REQUESTED BY: Hon. Melvin Mitchell

OPINION BY: A. F. Summer, Attorney General, by S. E. Birdsong, Jr., Special Assistant Attorney General

*Full text of Attorney General's Opinion is reprinted as follows:

Attorney General A. F. Summer has received your letter and has assigned it to me for research and reply.

Your letter states:

> In the above section (Section 27-31-101, Mississippi Code of 1972) there appears the language . . . . Provided, however, said governing authority shall not exempt ad valorem taxes for school district purposes on tangible property . . . (Emphasis added). Since this language appears to be plainly prohibitive, it is of importance that the term "tangible property" be fully understood.
>
> As used in this statute, does "tangible property" include real estate, buildings, machinery, improvements, equipment, inventory, and raw materials? If it does not include all of the above, and any others which I have failed to list, which of the above and others not listed does the term include?

Section 27-31-101 of the Code cited in your letter provides in part:

> Enumeration of new enterprises which may be exempted.
>
> County boards of supervisors and municipal authorities are hereby authorized and empowered, in their discretion, to grant exemptions from ad valorem taxation, except state ad valorem taxation. Provided, however, said governing authorities shall not exempt ad valorem taxes for school district purposes on tangible property used in, or necessary to the operation of the manufacturers and other new enterprises hereinafter enumerated by classes, nor shall they exempt from ad volorem taxes the products thereof or automobiles and trucks belonging to the said manufacturers or other new enterprises operating on and over the highways of the State of Mississippi . . . .
>
> Any exemption from ad valorem taxes heretofore granted to existing enterprises shall continue in full force and effect but only as to tangible property heretofore included in the exemption but not as to tangible property that may be later added as an addition or improvements to the exempt tangible property.
>
> (Emphasis Supplied)

This section gives a list of enterprises which may be exempt and uses the terms "factories", "mills", "manufacturing plants" and "refineries". Except for a reference to pipeline facilities and terminals, grain elevators, plants and factories for recycling natural gas, and refineries for petroleum products, the section does not specify what particular pieces of property are included or excluded in the exemption. "Tangible property" is not defined in the section.

An elementary definition of the term "tangible property" is given in Black's Law Dictionary, Revised Fourth Edition, at Page 1627:

> TANGIBLE PROPERTY. That which may be felt or touched, and is

necessarily corporeal, although it may be either real or personal. H. D. & J. K. Crosswell, Inc., v. Jones, D.C.S.C., 52 F.2d 880, 883.

In Woolrich v. St. Catherine Gravel Co., 188 Miss. 417, 195 So. 307, 127 A. L. R. 1179 (1940), mention is made of the term but no definition is found in this case. Our research did not otherwise disclose a Mississippi case which treats or defines the term.

Adams County v. National Box Co., 125 Miss. 598, 88 So. 168 (1921), interpreted Chapter 100, Laws of 1916, Hemingway's Code, Sections 6878 and 6879, a predecessor statute to Section 27-31-101. When interpreting the law as to what is exempt, the Court said at Page 169:

> (1, 2) The exemption allowed goes only to the manufacturing plant, which includes those things necessary in and to its operation. The language of the act, "all permanent factories or plants of the kind hereinafter named. . .shall be exempt, from all state, county and levee taxation," means all of the real estate, buildings, machinery, improvements, and equipments forming a part of and belonging to the plant, or any other personal property forming a part of the plant, essential to, and necessarily used in, its operation. Exemption statutes are to be strictly construed against exemptions to persons or corporations for gain; and it seems clear to us the act here involved does not grant exemption to the box company on its raw materials and finished products, but goes only to the manufacturing plant and the things necessarily used in its operation. The personal property here assessed was no essential part of the plant, and is therefore subject to taxation.
>
> The steamboat used exclusively in transporting logs to the factory is not exempt from taxation because it is not a necessary part, or equipment, of the plant. It is not shown by the record that logs could not have been transported to the factory by other means, or that the plant could not have operated, without the use of the boat to transport the materials for manufacturing purposes. Those things or equipments of the plant which are exempt from taxation must be used directly in the manufacturing operations of the factory; otherwise they are not exempt. In this view it appears that the steamboat was not exempt as a necessary part of the factory . . . . (Emphasis Supplied)

By letter of October 25, 1977 from Honorable John M. Weston, Special Assistant Attorney General, to Mr. Jim Wetzel, Tax Assessor of Harrison County, this office expressed the opinion that, based upon an amendment to the law in 1922, raw materials and supplies used in plant operation are exempt from ad valorem assessment under Section 27-31-101 and related Code sections.

Meador v. Mac-Smith Garment Co., 188 Miss. 98, 191 So. 129 (1939), construed Section 19, Chapter 18 of the First Extraordinary Session of 1936, Section 3109, Code of 1930, a predecessor statute to Section 27-31-101, and concerned a claim of tax exemption said to be

granted by the county to a certain garment factory site, building, machinery, and equipment in Harrison County upon the basis that the industry constituted a new factory and new enterprise.

The issue of whether the industry was entitled to exemption was resolved in favor of the industry claiming tax exemption. We read this case to necessarily include the site, building, machinery and equipment used in the operation of the industry.

After considering the foregoing, we conclude that as to Section 27-31-101:

1. That "tangible property" includes both real and personal property; and,
2. That tangible property used in, or necessary to, the operation of the manufacturers and other new enterprises may be exempted except for ad valorem taxes for school district purposes; and,
3. That tangible property includes all of the real estate, buildings, machinery, improvements and equipments forming a part of and belonging to the plant, essential to, and necessarily used in, its operation; and,
4. That raw materials and supplies used in plant operation are tangible property that may be exempted except for ad valorem taxes for school district purposes; and,
5. That to be exempt tangible property must be used directly in the manufacturing operation.

It is suggested that as to items of property not specified, you may address further inquiries to us.

We trust this will be of assistance to you.

With kind regards, I am

Very truly yours,

A. F. SUMMER, ATTORNEY GENERAL

BY: S. E. Birdsong

S. E. Birdsong, Jr.
Special Assistant Attorney General

SEB, Jr/mg

OPINION NO. CR 79-02

SUBJECT: AUTHORITY OF SUPERVISORS TO ENACT AN ORDINANCE IMPOSING A PENALTY FOR TAMPERING WITH OR DAMAGING CABLE TELEVISION EQUIPMENT. There are no criminal statutes related to the proposed ordinance. Further, there exists no authority for the passage of such an ordinance. Therefore, authority must be granted by the Legislature, not a board of supervisors.

DATE RENDERED: March 6, 1979

REQUESTED BY: Hon. Boyce Holleman

OPINION BY: A. F. Summer, Attorney General, by John M. Weston, Special Assistant Attorney General

*Full text of Attorney General's Opinion is reprinted as follows:

Your letter request of February 27, 1979, addressed to Honorable A. F. Summer, Attorney General, has been received and assigned to this writer for research and reply. Your letter states:

> The Board of Superviors of Harrison County has been requested to enact an ordinance to impose a penalty for the unauthorized tampering with or damage to cable television equipment, a copy of which is enclosed herewith.
>
> We have been unable to locate any specific authority for the passage of this ordinance and respectfully request your opinion as to whether the Board may pass same, and if so, under what authority.

A TV station or community TV antenna service is not a public utility per § 77-3-3(3). We further examined the following statutes:

> § 97-7-31: Destroying injuring, etc. state of federally licensed communication systems.
>
> § 97-25-1: Electric power lines and facilities - tampering, injury or unauthorized use — . . . .
>
> § 97-25-3: Meters - tampering with electric, gas or water meters.

and

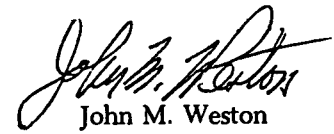
> § 97-25-53: Telegraphs and telephones - injuring or destroying lines — . . . .

It is the opinion of this office that none of the above criminal statutes are related to the proposed ordinance and, consequently, we are unable to locate any authority for the passage of same. Perforce, it would appear that such authority must necessarily come from an act of the Legislature.

With kindest personal regards, I am

Sincerely yours,

A. F. SUMMER, ATTORNEY GENERAL

BY: 

John M. Weston
Special Assistant Attorney General

JWM/ped

OPINION NO. CR 79-03

SUBJECT: INMATES CONFINED UNDER THE HABITUAL CRIMINAL ACT MAY NOT BE AWARDED EARNED TIME UNDER THE EARNED TIME CLASS SYSTEM. Habitual offenders are not entitled to parole. Therefore, they could never use earned time to reduce the term of their sentence. The legislature has purposefully differentiated between habitual offenders and the rest of the inmate population.

DATE RENDERED: March 15, 1979

REQUESTED BY: Mr. B. C. Ruth

OPINION BY: A. F. Summer, Attorney General, by Larry J. Stroud, Special Assistant Attorney General

*Full text of Attorney General's Opinion is reprinted as follows:

Attorney General A. F. Summer has received your opinion request of March 13, 1979, and has assigned it to me for reply.

In your letter you state:

> We have a number of inmates now confined serving sentences under Habitual Criminal Act 99-19-81 and 99-19-83. Both sections of the Code specify that "such sentences shall not be reduced or suspended nor shall such persons be eligible for Parole or Probation."
>
> Please advise if this forbids the awarding of earned time that might be accumulated under the Earned Time Class System.

In Sections 99-19-81 and 99-19-83 of the Mississippi Code 1972, as annotated and amended, there is found in reference to the sentences of habitual offenders the following language: "such sentence shall not be reduced or suspended nor shall such person be eligible for Parole or Probation." This language evinces the clear intent that a habitual offender serve his full sentence without any reduction of time or release on any program, excepting pardon by the governor.

In Section 47-5-139 of the Mississippi Code 1972, as annotated and amended, there is the following limitation on earned time:

> No inmate in any event shall have his sentence terminated by administrative earned time action until he is eligible for parole as provided in Title 47, Chapter 7, Mississippi Code of 1972.

Habitual offenders, under Section 47-7-3 of the Mississippi Code 1972, as annotated and amended, are not entitled to parole, and therefore could never use earned time to reduce the term of their sentence.

In Section 47-5-138 of the Mississippi Code 1972, as annotated and amended, which directs the promulgating of rules and regulations concerning earned time, there is found the following

language. "Such rules and regulations shall differentiate between habitual offenders for the purposes of awarding earned time." Here again the legislature has evidenced the intention that habitual offenders be treated differently concerning earned time than the rest of the inmate population. The statute does not state what the rules and regulations are to say, but from 99-19-81, 99-19-83, and 47-5-139, it is apparent that habitual offenders were not intended to be allowed any type or form of reduction of their sentence.

It is, therefore, our opinion that habitual offenders convicted under the provisions of 99-19-81 or 99-19-83 are not entitled to earned time.

Trusting that the above will be of value to you, I am and remain

Sincerely yours,

A. F. SUMMER, ATTORNEY GENERAL

BY: Larry J. Stroud

Larry J. Stroud
Special Assistant Attorney General

LJS:cm

OPINION NO. CV 79-03

SUBJECT: THE PURCHASE OF LIABILITY INSURANCE BY A MUNICIPALITY AND ITS EFFECT ON GOVERNMENTAL IMMUNITY. Miss. Code Ann. § 21-15-6 (1972), provides authority for a municipality to purchase general liability insurance coverage. Any recovery in an action against the municipality shall be limited to the proceeds of the liability insurance coverage. Likewise, any waiver of immunity as to any governmental function by municipality is limited only by the proceeds of such liability insurance coverage.

DATE REQUESTED: October 27, 1978

REQUESTED BY: Hon. Wiley J. Barbour

OPINION BY: A. F. Summer, Attorney General, by S. E. Birdsong, Jr., Special Assistant Attorney General

*Full text of Attorney General's Opinion is reprinted as follows:

Attorney General Summer has received your letter of October 10, 1978, and has assigned it to me for research and reply.

Your letter states:

> As attorney for the City of Yazoo City I have been requested by the Board of Mayor and Aldermen to inquire whether there would be any statutory prohibition against the City of Yazoo City as a municipal

corporation to purchase liability insuance coverage in blanket form on its police department and fire department emergency vehicles.

The City has liability coverage on its non-emergency vehicles with other departments, however, it appears that until recently there was no coverage available on emergency vehicles. However, a local insurance agent now assures the City that he could get a quotation if the City has the authority to purchase such liability insurance. . . .

Section 21-15-6 of the Mississippi Code of 1972, Annotated states:

> . . .*Purchase of general liability insurance coverage; effect on municipal liability.*
>
> Municipalities are hereby authorized, in the discretion of the governing authorities, to purchase general liability insurance coverage, including errors and omissions insurance for municipal officials and municipal employees.
>
> Nothing contained herein shall be considered as a waiver of immunity in whole or in part as to any governmental function attempted or undertaken by the municipality except that where the municipality has liability insurance coverage as to any action brought against it, then such action may be maintained against such municipality, but any recovery in such action shall be limited solely to the proceeds of any such liability insurance coverage and a judgment creditor shall have recourse only to the proceeds of such liability insurance coverage. Any judgment rendered in excess of the limits of such insurance shall, on motion of the court, be reduced as to the municipality to the amount of said liability insurance coverage but not as to any joint tort-feasor, if any. No attempt shall be made in the trial of any case to suggest the existence of any insurance which covers in whole or in part any judgment that may be rendered against any municipality.

It is the opinion of this office that Section 21-15-6, supra, provides authority for the City of Yazoo City to purchase general liability insurance coverage on its police and fire department emergency vehicles.

With kind regards, I am

Very truly yours,

A. F. SUMMER, ATTORNEY GENERAL

BY: S. E. Birdsong

S. E. Birdsong, Jr.
Special Assistant Attorney General

SEB,Jr./mg

OPINION NO. CR 79-04

SUBJECT: IS HOUSE BILL NO. 76 CONCERNING PAROLE LAWS VIOLATIVE OF THE *EX POST FACTO* CLAUSES OF THE FEDERAL AND STATE CONSTITUTIONS? Parole laws are a part of the "law annexed to the crime." For such legislation to be violative of the *ex post facto* clause it must be punitive. The intent of House bill No. 76 is not to punish probationers and parolees. Rather, its purpose is to administer a program of restitution and to facilitate the reintroduction of offenders into society.

DATE RENDERED: June 28, 1979

REQUESTED BY: Hon. David W. Hall

OPINION BY: A. F. Summer, Attorney General, by J. Stephen Wright, Special Assistant Attorney General

*Selected portion of Attorney General's Opinion is reprinted as follows:

Attorney General Summer has received your letter of request dated June 18, 1979, and has assigned it to me for research and reply.

You submit the following:

> It will be greatly appreciated if you would provide this office with an opinion advising as to whether or not the Act in question [H. B. No. 76, appearing at page 21 of Advance Sheet No. 8, Regular Session of 1979] can affect persons placed on probation or parole before the effective date of the Act, viz, July 1, 1979. There has been some confusion in this area as to whether or not the $10.00 can be collected from those who are presently on parole or probation . . . .

In personal consultation you further indicated that your request is directed solely to the question of whether H. B. 76 is violative of the *ex post facto* clauses of the federal and state constitutions. *United States Constitution*, Article 1, Section 10; *Mississippi Constitution*, Article 3, Section 16. This opinion is limited to the *ex post facto* issue.

To facilitate a logical progression, the relevant portions of H. B. No. 76, appearing at pages 21-23 of Advance Sheet No. 8, Regular Session of 1979, are set out below:

> Section 1. Any offender on probation or released from a facility of the Department of Corrections on parole, earned probation, work release or supervised earned release, who remains under the supervision of the Department of Corrections and after the effective date of this act, shall pay to the department the sum of Ten Dollars ($10.00) per month by certified check or money order.
>
> . . . .

[T]he foregoing statute applies on its face to probationers and parolees released before the effective date of the act but remaining under the supervision of the Department of Corrections after the effective date.

For purposes of the legislation in question the applicable definition of *ex post facto* laws is as follows: A law is *ex post facto* if it changes the punishment for a crime, thereby inflicting greater punishment than the law annexed to the crime when committed. *Calder v. Bull*, 3 U.S. (3 Ball.) 386, 1 L.Ed. 648 (1798).

In light of this definition, the obvious threshold question is whether parole laws are part of the "law annexed to the crime when committed." *Calder v. Bull, supra*. If not, then the instant legislation cannot be *ex post facto*.

Several courts, however, have held that parole laws, at least insofar as they deal with computing parole eligibility, are part of "the law annexed to the crime when committed" and cannot be applied *ex post facto*. *See Warden v. Marrero*, 417 U.S. 653, 94 S.Ct. 2532, 41 L.Ed.2d 283 (1974); *Lindsey v. Washington*, 301 U.S. 297, 57 S.Ct. 797, 81 L.Ed. 1182 (1937); *Shepard v. Taylor*, 556 F.2d 648 (2 Cir. 1977); *Love v. Fitzharris*, 460 F.2d 282 (9 Cir. 1972); *State v. Bullock*, 269 So.2d 824 (La. 1972). *See also Rodrigues v. U. S. Parole Comm'n and Metropolitan Center*, _____ F.2d _____ (7 Cir March 20, 1979), cited in *United States v. Addonizio*, _____ U.S. _____, 47 USLW 4628, 4629 n.9 (June 4, 1979). In addition, the Mississippi Supreme Court in *obiter dictum* has recently indicated that it would follow this line of cases if presented with an instance where parole-eligibility legislation were applied *ex post facto*. *Taylor v. Miss. State Probation and Parole Board*, 365 So. 2d 621, 622 (Miss. 1978). Parole laws, therefore, are not separate and distinct from the criminal laws, but are, at least in some respects, a part of the "law annexed to the crime."

Having answered the seminal question in the affirmative, we must turn to a second special consideration: For the instant legislation to be proscribed by the *ex post facto* clause it must be punitive. Retrospective application of laws which are neither punitive nor criminal is not forbidden, and whether legislation is punitive depends to a considerable degree upon the aim of the legislature in passing it. *Flemming v. Nestor*, 363 U.S. 603, 612-21, 80 S.Ct. 1367, 4 L.Ed.2d 1435, 1445-50 (1960).

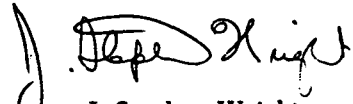
Furthermore, statutory enactments which impose some hardship because of past acts, but which are enacted to regulate some present situation, are not punitive, and, therefore not *ex post facto*, despite the imposition of hardship. *Flemming v. Nestor*, 363 U.S. 603, 80 S.Ct.

1367, 4 L.Ed.2d 1435 (1960); *DeVeau v. Braisted*, 363 U.S. 144, 80 S.Ct. 1146, 4 L.Ed.2d 1109 (1960).

These pronouncements, enunciated by the Supreme Court in *Flemming* and *DeVeau*, save the instant statute from a constitutional demise. It is the considered opinion of this office that the legislature, in passing the statute under consideration, had no intent or purpose to punish probationers and parolees. The true intent of the act is apparent on its face. Money collected between June 30, 1979, and July 1, 1980, is to be expended in the establishment of restitution centers for victims of crime. Money collected from and after July 1, 1980, is to be used to supplement payment by the State of Mississippi to prison inmates on discharge from the state's penal system. As was the case in *Flemming* and *DeVeau*, hardship is imposed upon probationers and parolees because of their prior misdeeds, but the purpose of the legislation is not to punish but rather to regulate and to administer first a program of restitution to victims and then a program to facilitate the reintroduction of offenders into society. Consequently, as applied to probationers and parolees who were released prior to July 1, 1979, but who remain under the supervision of the Department of Corrections thereafter, the instant legislation is not an illegal *ex post facto* law. In a word, the Department of Corrections, pursuant to the legislation in question, can collect $10.00 per month from all parolees and probationers under their supervision.

Sincerely,

A. F. SUMMER, ATTORNEY GENERAL

BY: 

J. Stephen Wright
Special Assistant Attorney General

JSW: bl

OPINION NO. CV 79-04

SUBJECT: AUTHORITY OF TRUSTEES TO PAY CLAIMS ARISING OUT OF THE NEGLIGENT OPERATION OF ANY SCHOOL VEHICLE. Trustees are authorized to pay claims only after a finding of negligence. Miss. Code Ann. § § 37-41-37, 41 (1972) limits the amount of compensation payable. Payments in excess of these amounts may be made only after suit is filed.

DATE RENDERED: February 5, 1979

REQUESTED BY: Hon. Jeremy J. Eskridge

OPINION BY: A. F. Summer, Attorney General, by George M. Swindoll, Assistant Attorney General

*Selected portion of Attorney General's Opinion is reprinted as follows:

Attorney General Summer has received your letter of request and has assigned it to me for research and reply.

. . . .

Under the provisions of Section 37-41-37, Mississippi Code of 1972, as amended, any person receiving inquiries or sustaining damages "(a) arising out of the negligent operation of any school bus or other vehicle owned by any county or any municipal separate school district or public junior college district or consolidated school district, or operated by such county or municipal separate school district or public junior college district by private contract, for the transportation of pupils to and from the public schools of such county, or municipal separate school district or junior college, or (b) caused by a bus while being operation in pursuance of any activity of any of such schools, or (c) arising by reason of negligence in the maintenance, upkeep, repair or mechanical failure of such vehicle, . . ." shall have a right of action against the . . . school district. (Emphasis Added)

It is the opinion of this office that, except in the event of a court order or judgment providing otherwise, the trustees of a school district may not lawfully authorize payment of a claim without first having found and determined that the accident arose due to the negligent operation of "by reason of negligence" in the maintenance, etc. of the vehicle. Additionally, the trustees may not pay in excess of One Thousand Dollars ($1,000.00) per claimant per accident for property damages or hospital, medical and doctor bills in an amount not to exceed $550.00 per person per accident unless claim is made for same by way of suit. "Settlements and compromises" as referred to in the second paragraph of said Section 37-41-37 are limited to these limitations, as more specifically stated in the last paragraph of Section 37-41-41. Any amount in excess of this can be lawfully paid only after suit is filed.

The school districts are protected by the doctrine of sovereign immunity from suits in excess of the amounts set by Section 37-41-41, supra.

In summary, the trustees are authorized to pay claims only if it is found and determined as a fact that negligence, either in the

operation or maintenance, repair, unkeep, or mechanical failure caused the damage or injury and only then for the amounts prescribed in the last paragraph of Section 37-41-41, supra. Payment for damages or personal injuries in excess of this amount may be made only after suit is filed.

Very truly yours,

A. F. SUMMER, ATTORNEY GENERAL

BY: George M. Swindoll

George M. Swindoll
Assistant Attorney General

GMS: cm

IN MEMORIAM

George M. Swindoll served the State of Mississippi in the Office of the Attorney General from July 1, 1971 until his death on June 22, 1979. His character was an inspiration; his dedication an example. The MISSISSIPPI COLLEGE LAW REVIEW expresses its deepest appreciation for his support and encouragement.