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TOM HOOD
Executive Director and Chief Counsel

ADVISORY OPINION NO. 06-076-E

October 6, 2006

Question Presented: May a legislator have an interest in a contract with a local school district which is funded by legislative appropriation?

Brief Answer: No. However, a contract with a school district in which a legislator has an interest will not violate Section 109, Miss. Const. of 1890, or Section 25-4-105(2), Miss. Code of 1972, if it is entirely funded with money which has not been appropriated by the Legislature.

The Mississippi Ethics Commission issued this opinion on the date shown above in accordance with Section 25-4-17(i), Mississippi Code of 1972, as reflected upon its minutes of even date. The Commission is empowered to interpret and opine only upon Article IV, Section 109, Mississippi Constitution of 1890, and Article 3, Chapter 4, Title 25, Mississippi Code of 1972. This opinion does not interpret or offer indemnity from liability for any other laws, rules or regulations. The Commission based this opinion solely on the facts and circumstances provided by the requestor as restated herein. The indemnity provided under Section 25-4-17(i) is limited to the individual who requested this opinion and to the accuracy and completeness of these facts.

I. LAW

The pertinent Ethics in Government Laws to be considered here are as follows, to wit:

Section 109, Miss. Const. of 1890.

No public officer or member of the legislature shall be interested, directly or indirectly, in any contract with the state, or any district, county, city, or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member, during the term for which he shall have been chosen, or within one year after the expiration of such term.

Section 25-4-103, Miss. Code of 1972.

(f) "Contract" means:

(i) Any agreement to which the government is a party; or

(ii) Any agreement on behalf of the government which involves the payment of public funds.

(g) "Government" means the state and all political entities thereof, both collectively and separately, including but not limited to:

(i) Counties;

(ii) Municipalities;

(iii) All school districts;

(iv) All courts; and

(v) Any department, agency, board, commission, institution, instrumentality, or legislative or administrative body of the state, counties or municipalities created by statute, ordinance or executive order including all units that expend public funds.

(p) "Public servant" means:

(i) Any elected or appointed official of the government;

(ii) Any officer, director, commissioner, supervisor, chief, head, agent or employee of the government or any agency thereof, or of any public entity created by or under the laws of the state of Mississippi or created by an agency or governmental entity thereof, any of which is funded by public funds or which expends, authorizes or recommends the use of public funds; or

(iii) Any individual who receives a salary, per diem or expenses paid in whole or in part out of funds authorized to be expended by the government.

Section 25-4-105, Miss. Code of 1972.

(2) No public servant shall be interested, directly or indirectly, during the term for which he shall have been chosen, or within one (1) year after the expiration of such term, in any contract with the state, or any district, county, city or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member.

II. FACTS

Facts provided by the requestor are set forth below, with identifying information redacted, and are considered a part of this opinion.

As a duly elected member of the Mississippi Legislature and pursuant to Mississippi Code Section 25-4-27, I am requesting an official Ethics Opinion on the following issues.

1. May a legislator or business in which a legislator has an ownership interest in enter into a contract with a municipal or county school district to provide training and consulting services to the school district?
2. May a legislator or business in which a legislator has an ownership interest in enter into a contract with a municipal or county school district to provide training and consulting services to the school district, when the funds used to compensate the legislator comes from federal (Title 1) funds?
3. May a legislator enter into a contract with a company to provide legal, counseling, consulting and training services, when said company has contracted with a municipal or county school district to provided consulting services?
4. May a legislator enter into contract with a company to provide legal, counseling, consulting and training services, when said company has contracted with a municipal or county school district to provided consulting services, when the funds used to compensate the said company comes from federal (Title 1) funds?

III. ANALYSIS

Section 109, Miss. Const. of 1890, and its statutory parallel, Section 25-4-105(2), Miss. Code of 1972, both quoted above, prohibit a member of the Legislature from having any direct or indirect interest in a contract with the government which is funded or otherwise authorized by the Legislature during his or her term or for one year thereafter. Frazier v. State, ex rel. Pittman, 504 So.2d 675, 693 (Miss. 1987). Municipal and county school districts receive both local funds and funds appropriated by the Legislature.

A legislator may not have any direct or indirect financial interest in any contract which is funded by legislative appropriation. However, a legislator is not necessarily prohibited from contracting or subcontracting with a school district per se if the contract is funded with money not appropriated by the Legislature. Federal funds which pass through the Mississippi Department of Education are customarily appropriated by the Legislature, although funds received by a local school district directly from the federal government may not be appropriated by the Legislature. See Op. Miss. Ethics Commn. No. 05-114-E. Likewise, funds received by a school district which are generated from local taxes are not appropriated by the Legislature.

Therefore, neither a legislator nor a business in which a legislator has an ownership interest may contract with a school district or another business which contracts with a school district if the contract is

funded, wholly or partially, by legislative appropriation. Yet a contract with a school district in which a legislator has an interest will not violate Section 109 or Section 25-4-105(2) if it is entirely funded with local, federal or other money which has not been appropriated by the Legislature. Questions regarding the segregation of funds within a school district or the efficacy of placing such limitations on the funding sources of school district contracts do not involve the Mississippi Ethics in Government Laws and should be directed to the school board attorney and/or the Office of the Attorney General.

MISSISSIPPI ETHICS COMMISSION

BY: _____
Tom Hood, Executive Director and
Chief Counsel