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ADVISORY OPINION NO. 07-123-E

December 7, 2007

Question Presented: May a former county administrator who worked on a renovation project while employed with the county accept employment with the company selected to perform work on that contract?

Brief Answer: Yes. Pursuant to Section 25-4-105(3)(e), Miss. Code of 1972, the former county administrator is strictly prohibited from working for the construction company on the renovation project or on any other project in which he or she participated as county administrator, but is not prohibited from working for the construction company on other projects.

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 protection 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 protection from liability 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:

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

(c) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, holding company, self-employed individual, joint stock

company, receivership, trust or other legal entity or undertaking organized for economic gain, a nonprofit corporation or other such entity, association or organization receiving public funds.

(e) "Compensation" means money or thing of value received, or to be received, from any person for services rendered.

(m) "Person" means any individual, firm, business, corporation, association, partnership, union or other legal entity, and where appropriate a governmental entity.

(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.

(3) No public servant shall:

(e) Perform any service for any compensation for any person or business after termination of his office or employment in relation to any case, decision, proceeding or application with respect to which he was directly concerned or in which he personally participated during the period of his service or employment.

II. FACTS

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

I am writing to inquire about any possible conflict of interest or future restrictions related to my recent acceptance of a new position.

I am currently employed as the County Administrator for the County since April 1, 2005. I was recently offered and accepted a position of Vice President and General Manager of a Construction Company in a City in Mississippi. My last day of work for the County is Friday, December 14, 2007 and my first day with the Construction Company is Monday, December 17, 2007.

The Construction Company competitively bid for and won the contract for the restoration of the County Courthouse. The work is scheduled to be completed in May 2008. In the construction contract I am named as the Owner's Representative, the Owner being the County Board of Supervisors.

Let me explain my role during the bid process. The architect for the project is an Architectural Company of another City. I worked with the Architectural Company, a subcommittee of the Board of Supervisors, several county employees, court officials, and some citizens on developing the general plans for the renovation and restoration project. Subsequent to the planning activity, the Architectural Company prepared all of the bid documents. The Architectural Company advertised for bids. The county Purchase Clerk/Chancery Clerk opened the bids. The Architectural Company tabulated the bids and made a recommendation to the Board of Supervisors to accept the bid from the Construction Company. The Architectural Company drafted the contract and presented it to the Board of Supervisors for approval and execution. At that point I was named the Owner's Representative.

Please advise as to the nature of any ethical and legal restrictions related to my employment with the Construction Company and its current and future contractual agreements with the County.

III. ANALYSIS

Section 25-4-105(3)(e), Miss. Code of 1972, quoted above, addresses successive government and private sector employment. Section 25-4-105(3)(e) will not necessarily prohibit a former public servant from being employed by a business which contracts with his or her former governmental entity. The law merely prohibits the former public servant from working in the private sector on any case, decision, proceeding or application in which he or she was directly or personally involved while working for the government.

Therefore, if the former public servant was *not* directly concerned with and did *not* personally participate in the matter in question, then the former public servant may legally work on that matter for the private entity. Elec. Data Sys. Corp. v. Miss. Div. of Medicaid, 853 So.2d 1192, 1204, 1205 (¶¶ 35, 39) (Miss. 2003). If the former public servant *was* directly concerned with and *did* personally participate in the matter in question, then the private entity may still contract with the government, but the former public servant may not participate or be paid in relation to that matter. Id.

The matter in question here is the contract for renovation and restoration between the construction company and the county. Through the county administrator's work in the bid process and as the owner's representative, the county administrator was directly and personally involved in the renovation and restoration project for the county. Therefore, the county administrator is strictly prohibited from working for the construction company on the renovation and restoration project or on any other project in which he or she participated as county administrator. This prohibition includes supervision of employees working on any project. However, the county administrator, upon termination of employment with the county, would not be

prohibited from working on projects for the construction company if the county administrator had no involvement in his or her official position in those projects. The county administrator is cautioned that whether a conflict exists in a particular case depends on the specific facts involved in that case.

MISSISSIPPI ETHICS COMMISSION

BY: _____
Tom Hood, Executive Director and
Chief Counsel