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ADVISORY OPINION NO. 17-072-E

October 13, 2017

Question Presented: May a legislator resign from the Legislature and, within one year, accept an employment position with a law firm which derives a very small percentage of income from representing state agencies when the former legislator's work will be completely unrelated to the state work?

Brief Answer: Yes. Under the specific facts of this opinion, the former legislator will have no prohibited interest in the limited representation of state agencies undertaken by the firm, and no violation of Section 109, Miss. Const. of 1890, or Section 25-4-105(2), Miss. Code of 1972, should arise if the former legislator becomes an employee of the firm.

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 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.

(o) "Public funds" means money belonging to the government.

(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.

I am a current member of the Mississippi Legislature as well as a licensed attorney in good standing with the Mississippi Bar. I am considering an offer from a regional law firm in Mississippi to join their products liability and drug and device litigation practice groups. The proposed employment does not include representation of any governmental entities; instead, I would represent private companies in civil lawsuits pending in various state and federal courts. Upon acceptance of this offer, I plan to resign from the Mississippi Legislature.

My understanding is that the law firm currently has at least two contracts with governmental entities that may be funded, in part, by the appropriation of public money by the Mississippi Legislature. In order to avoid any possible violations of Mississippi Constitution Section 109, Miss. Code Ann. § 25-4-101 or Miss. Code Ann. § 25-4-105, my proposed employment arrangement would be as an employee of the firm for the first year with consideration for partnership in the law firm following this one-year period.

I respectfully request an opinion of the Mississippi Ethics Commission as to what limitations, if any, would be placed on my employment arrangement with the law firm under Section 109 of the Mississippi Constitution and Article 3, Chapter 4, Title 25, Mississippi Code of 1972, as amended. I would also respectfully request that the Commission confirm that if there are limitations placed on my employment with the law firm such restrictions will in no way limit the law firm or any other member of the law firm from rendering legal services to state government entities, which are clients of the firm.

In response to a question from the commission's staff, the requestor also reported that the percentage of the law firm's revenue derived from fees received from the State of Mississippi in 2016 was 0.75% and in 2017 (year-to-date) is 0.94%.

III. ANALYSIS

Section 109, Miss. Const. of 1890, and its statutory parallel, Section 25-4-105(2), Miss. Code of 1972, 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). Consistent with Advisory Opinions No. 16-001-E, 12-026-E, 11-088-ER and 07-007-E, the commission finds the requestor will have no prohibited interest in the above described representation of state agencies performed by the firm if he is employed by the firm within one year of resigning from the Legislature.

However, this finding is based in large part on (1) the requestor being an employee of the firm and not a partner during the one year following resignation from the Legislature, (2) the requestor's litigation work at the law firm being completely unrelated to the firm's limited representation of the state and (3) the minimal percentage of fees derived from the state. Under these conditions, no violation will occur if the legislator resigns from office and accepts a position with the law firm. If any of these facts change substantially, the requestor should seek another advisory opinion from the commission.

MISSISSIPPI ETHICS COMMISSION

BY: _____
Tom Hood, Executive Director and
Chief Counsel