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## MISSISSIPPI ETHICS COMMISSION

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### ETHICS ADVISORY OPINION NO. 22-014-E

July 8, 2022

**Question Presented:** May a mayor purchase real property which was previously sold by the city to a private individual?

**Brief Answer:** No. Section 25-4-105(3)(b), Miss. Code of 1972, prohibits any public servant of the city from purchasing anything from the city, directly or indirectly, except for public utilities and other similar items.

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.

(h) "Governmental entity" means the state, a county, a municipality or any other separate political subdivision authorized by law to exercise a part of the sovereign power of the state.

(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:

(b) Be a purchaser, direct or indirect, at any sale made by him in his official capacity or by the governmental entity of which he is an officer or employee, except in respect of the sale of goods or services when provided as public utilities or offered to the general public on a uniform price schedule.

## II. FACTS

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

This letter is written in my capacity as the City Attorney. This letter requests an advisory opinion from the Mississippi Ethics Commission as to whether the purchase of real property from a private commercial entity, by the Mayor, in his individual capacity, using personal private funds, would violate Miss. Code Ann. § 25-4-105, or any other ethics in government laws, when the subject property was previously sold as "surplus property" by the City to a private citizen.

This question involves the Mayor who was elected and began his first term in July 2017, and is currently serving a [...] term which ends July 2025. The application to declare the subject property "surplus" was submitted August 15, 2016 and the City Surplus Property Committee considered and determined it was "surplus" prior to the Mayor taking office. However, the governing authority determined the property was "surplus" and authorized its sell during the Mayor's first term.

The subject property was sold pursuant to the requirements listed in Miss. Code Ann. § 21-17-1. On January 31, 2017, the City Surplus Property Committee declared the subject property as "surplus property". On April 4, 2017, the City Surplus Property Committee, notified all City departments that the subject property was available and inquired as to whether any department had a municipal need for the property. After determining there was no municipal need for the property, the City obtained three (3) appraisals from professional property appraisers and determined the average fair market price was \$60,166.66. On August 1, 2017, the governing authority of the City declared the property surplus and authorized its

disposal to a private citizen. The City received payment in the amount of \$60,166.66 and the Mayor executed a Quitclaim deed conveying the property from the City to the citizen on September 27, 2017.

On May 24, 2021, the subject property was conveyed from the private citizen to a commercial entity. The Mayor had no direct or indirect pecuniary interest in the subject property at the time it was declared "surplus" or conveyed, however, out of an abundance of caution, I would request an ethics opinion considering the Mayor executed the Quitclaim deed in 2017. Would this purchase violate the ethics in government laws?

### III. ANALYSIS

Section 25-4-105(3)(b), Miss. Code of 1972, prohibits any public servant of the city from purchasing anything from the city, directly or indirectly, except for public utilities and other similar items. See Advisory Opinions No. 16-045-E, 14-043-E, 13-041-E, 13-034-E, and 11-052-E. The current property owner purchased the property from an individual who purchased it from the city as surplus property. If the mayor were to purchase the property from the current owner, the mayor would be purchasing the property indirectly from the city. Such an indirect purchase is prohibited under the plain language of the statute. Unfortunately, the statute provides no limitation to this prohibition and gives no indication whether it could end with some defined degree of remoteness or whether it continues in perpetuity. Consequently, the commission is compelled to find the mayor is prohibited from purchasing the property in question as long as he or she remains a public servant of the city.

MISSISSIPPI ETHICS COMMISSION

BY: \_\_\_\_\_  
Tom Hood, Executive Director and  
Chief Counsel