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### ETHICS ADVISORY OPINION NO. 22-033-E

January 6, 2023

**Question Presented:** May members of a convention and visitors bureau board also serve on the board of directors of a non-profit corporation which receives funding from the CVB board?

**Brief Answer:** No. The non-profit corporation is a “business with which [the CVB members are] associated,” and the funding will violate Section 25-4-105(1), Miss. Code of 1972.

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.

(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.

(d) “Business with which he is associated” means any business of which a public servant or his relative is an officer, director, owner, partner, employee or is a holder of more than ten percent (10%) of the fair market value or from which he or his relative derives more than Two Thousand Five Hundred Dollars (\$2,500.00) in annual income or over which such public servant or his relative exercises control.

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

(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.

(i) “Income” means money or thing of value received, or to be received, from any source derived, including but not limited to, any salary, wage, advance, payment, dividend, interest, rent, forgiveness of debt, fee, royalty, commission or any combination thereof.

(l) “Pecuniary benefit” means benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain.

Expenses associated with social occasions afforded public servants shall not be deemed a pecuniary benefit.

(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.

(q) “Relative” means:

(i) The spouse of the public servant;

(ii) The child of the public servant;

(iii) The parent of the public servant;

(iv) The sibling of the public servant; and

(v) The spouse of any of the relatives of the public servant specified in subparagraphs (ii) through (iv).

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

(1) No public servant shall use his official position to obtain, or attempt to obtain, pecuniary benefit for himself other than that compensation provided for by law, or to obtain, or attempt to obtain, pecuniary benefit for any relative or any business with which he is associated.

(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 the attorney for the [...] Convention and Visitors Bureau ("CVB"). I have been requested by the Board of Directors of the CVB to seek an advisory opinion from the Mississippi Ethics Commission on the following matter involving the CVB and the [City] Cultural Heritage Foundation ("CHF"):

May a board member of the CVB simultaneously serve as a board member of the [CHF], a non-profit 501(c)(3) historic foundation, that receives most of its funding from the CVB?

The [City] and the [County] Board of Supervisors created the CVB and [CHF], which operate consistent with their respective By-laws. The By-laws are attached hereto as Exhibits "A" and "B" respectively.

The CVB is funded primarily by the collection of a two percent tax "on the gross receipts of restaurants derived from retail sales of prepared food, beer and alcoholic beverages and on the gross proceeds of sales of other businesses derived from retail sales of beer and alcoholic beverages, excluding sales of alcoholic beverages upon premises covered by a package retailer's permit and sales of beer not for consumption on the premises." This funding is in place pursuant to a local and private law authorized by the Mississippi Legislature in House Bill 325 of the 2019 Session of the Mississippi Legislature. A copy of House Bill 325 is attached hereto as Exhibit "C."

Thereafter, on or about January 14, 2019, the [City], [County], and the CVB entered into an Interlocal Cooperation Agreement for the purpose of having all parties agree as to how certain special events and festivals in the City and the County are to be supported and funded. The Interlocal Cooperation Agreement and resolutions passed by the City and County are attached hereto as composite Exhibit "D."

Also, House Bill 325 states how the Board members of the CVB are to be chosen. Four members shall be appointed by the Mayor and City Council of the [City] and four members shall be appointed by the [County] Board of Supervisors. One member shall be appointed jointly by the Mayor of the [City] and the president of the [County] Board of Supervisors. The total number of Board members is nine.

The [CHF] was incorporated in 2007 as a Section 501(c)(3) non-profit corporate entity. See Articles of Incorporation of [City] Cultural Heritage Foundation, Exhibit "E."

The By-laws of the [CHF] state that its Board of Directors shall be no less than (1) one in number and no more than (9) nine. Further, to be qualified to serve on the

Board, the individual must then be serving as a director of the CVB. In practice, the members of the Board of Directors of the [CHF] are, and have been, the same board members of the CVB.

Regarding income or revenue for the [CHF], the large majority comes directly from the CVB. The board members of the CVB consider, discuss and vote on its annual budget and its monthly financials which includes substantial payments to the [CHF]. For fiscal year ending September 30, 2022, the total amount allocated from the CVB to the [CHF] was approximately \$295,000.00.

The board members of the [CHF] determine how its income, including the support from the CVB, will be spent.

As stated, all members of the CVB Board also serve as Board members of the [CHF] while the CVB is directly funding the [CHF]. The ethical propriety of the CVB Board members participating in the determination of how funds are to be provided to a non-profit organization on the Board of which those members also serve is obviously the central issue of this request. More specifically, are the Mississippi ethics laws violated when members of the CVB Board are simultaneously members of the [CHF], which receives publicly funded money from the CVB?

### III. ANALYSIS

As noted above, the Ethics Commission does not opine on past action, and this opinion should not be construed as reviewing or condoning any past actions. The commission is also opining only on the Ethics in Government Laws cited herein. The commission is not empowered to opine on Section 66 of the Miss. Const. of 1890, which restricts donations by the government, but the requestor is urged to seek advice from the Office of the Attorney General on that provision, particularly regarding the legality of payments from the CVB to the foundation, as described hereinabove.

Section 109, Miss. Const. of 1890, and its statutory parallel, Section 25-4-105(2), Miss. Code of 1972, prohibit a member of a public board from having any direct or indirect interest in a contract which is funded or otherwise authorized by that board during his or her term or for one year thereafter. Frazier v. State, ex rel. Pittman, 504 So.2d 675, 693 (Miss. 1987). For example, a member of a governmental board is generally prohibited from receiving income from a non-profit corporation if that non-profit corporation receives funding from the governmental board. Therefore, the CVB board members are prohibited by Section 109 and Section 25-4-105(2) from receiving any per diem, reimbursement or any payments of any kind or for any purpose, from the foundation.

Pursuant to Section 25-4-105(1), a public servant may not use his or her position to obtain or attempt to obtain any monetary benefit for a “business with which he [or she] is associated.” See Section 25-4-103(d). A non-profit corporation receiving public funds is a “business,” as defined in Section 25-4-103(c). The foundation herein is a “business,” under that definition. If “a

public servant or his [or her] relative is an officer, director, owner, partner, [or] employee” of the non-profit corporation, then the non-profit corporation is a business with which that public servant is associated, even where the public servant receives no income from the non-profit corporation.

Under those circumstances, the public servant is prohibited from using his or her position in government to benefit the non-profit corporation, even when the public servant receives no benefit. In such situations, the public servant would be required to fully recuse himself or herself from any governmental action benefitting the non-profit corporation. As long as members of the CVB board continue to serve on the board of directors of the foundation, the CVB board members are prohibited from participating in any CVB action which results in a monetary benefit to the foundation. The CVB board members are strictly prohibited from voting on any appropriations, contracts or other funding going to the foundation. Obviously, this restriction makes it impossible for the CVB and foundation to have the same board members.

In order to resolve this conflict, the organizations should change their bylaws so that CVB board members are not directors of the foundation. One solution would be to create a separate body within the foundation, the members of which would not be directors or officers of the non-profit corporation but would have an informal, advisory role. Other similar organizations have created a board of advisors, comprised of public servants like the CVB board members, who share information and advice with the non-profit but do not sit on its board of directors or serve as officers of the corporation. See [Ethics Advisory Opinion No. 12-012-E](#), for example. If all CVB members are removed as directors or officers of the foundation and are uncompensated by the foundation, then the CVB may make otherwise lawful payments to the foundation without violating Section 25-4-105.

MISSISSIPPI ETHICS COMMISSION

BY: \_\_\_\_\_

Tom Hood, Executive Director and  
Chief Counsel