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### ETHICS ADVISORY OPINION NO. 23-007-E

April 7, 2023

**Question Presented:** May a federal employee seek election to and serve in the Mississippi Legislature?

**Brief Answer:** Section 109, Miss. Const. of 1890, and Section 25-4-105(2), Miss. Code of 1972, do not prohibit a member of the Legislature from being employed by the federal government or paid with federal funds which have not been appropriated by the Legislature. However, the federal Hatch Act can prohibit a federal employee from being a candidate in a state partisan election.

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.

This letter is to request an opinion from your agency in regards to whether it's a conflict of interest for me if I won the Seat in the Mississippi State Senate and keeping my current position as Coordinator of Work Based Learning Community/Business Community Liaison at the [local] Job Corp Center ....

As you know, the center is federally funded and as far as I can determine, gets no funding from the State of Mississippi.

## 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 an interest in a contract 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). An appropriation or expenditure of public money which funds a contract is an action which authorizes that contract. Id., citing Cassibry v. State, 404 So.2d 1360, 1366-67 (Miss. 1981). Consequently, a member of the Legislature cannot be compensated with funds appropriated by the Legislature

Job Corp is a program of the U. S. Department of Labor, an entity of the federal government which is federally funded. See, for example, [H.R. 4502, 117<sup>th</sup> Congress](#). Presumably, an individual employed by Job Corp is paid with federal funds which have not passed through a state agency and have not been appropriated by the Mississippi Legislature. Under those circumstances, a member of the Mississippi Legislature is not prohibited by the Ethics in Government Law from being employed by Job Corp.

However, the Hatch Act, a federal law, prohibits certain individuals employed by the federal government or paid with federal funds from participating in partisan politics. The requestor should contact the Hatch Act Unit in the Office of Special Counsel, a federal agency located in Washington, DC, to determine whether he is permitted to be a candidate in a partisan state election.

MISSISSIPPI ETHICS COMMISSION

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

Tom Hood, Executive Director and  
Chief Counsel