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### ETHICS ADVISORY OPINION NO. 23-013-E

July 7, 2023

**Question Presented:** May a business owned by the spouse of a county assistant purchasing clerk be a vendor to the county?

**Brief Answer:** When the income is paid to the spouse and the county assistant purchasing clerk exercises no control, direct or indirect, over the contract and when the county assistant purchasing clerk fully recuses herself from any matter that could result in a monetary benefit to the business, then no violation of Section 25-4-105(1) or (3)(a), Miss. Code of 1972, should occur if the spouse's business serves as a vendor to the county.

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.

(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.

(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.

(k) “Material financial interest” means a personal and pecuniary interest, direct or indirect, accruing to a public servant or spouse, either individually or in combination with each other. Notwithstanding the foregoing, the following shall not be deemed to be a material financial interest with respect to a business with which a public servant may be associated:

(i) Ownership of any interest of less than ten percent (10%) in a business where the aggregate annual net income to the public servant therefrom is less than One Thousand Dollars (\$1,000.00);

(ii) Ownership of any interest of less than two percent (2%) in a business where the aggregate annual net income to the public servant therefrom is less than Five Thousand Dollars (\$5,000.00);

(iii) The income as an employee of a relative if neither the public servant or relative is an officer, director or partner in the business and any ownership interest would not be deemed material pursuant to subparagraph (i) or (ii) herein; or

(iv) The income of the spouse of a public servant when such spouse is a contractor, subcontractor or vendor with the governmental entity that employs the public servant and the public servant exercises no control, direct or indirect, over the contract between the spouse and such governmental entity.

(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.

(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.

(3) No public servant shall:

(a) Be a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent, other than in his contract of employment, or have a material financial interest in any business which is a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent.

## 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 Assistant Purchasing Clerk of [a] County. My husband currently owns [a business] in [a nearby county]. He is looking to sell this location and purchase an existing business which is a current vendor for [the county where I am employed] and located in [a city within this county]. The business will be incorporated and he, solely, will own 100% of the stock. My name will be nowhere on anything to

do with the acquisition, nor will I be employed by the new business in any way. I have been employed by [the] county in my current position for 10 years this month. I am trying to look at my options for if and when he does purchase said business. Since I am only the assistant purchasing clerk and only exercise my assistant purchasing clerk duties in the absence of the Purchasing clerk, could I recuse myself from any dealings with business associated with the vendor once my husband acquires the stock, transfer to a different department in the county not dealing with any purchase related items, or recuse myself as a county employee all together. The only other option would be to not let the county do business with the vendor whom they already deal with on a regular basis. Some items are only available at this location in our area. With 10 years in I would really like to stay with the county to continue to build my retirement. I do love my job. Most of my job duties are dealing with collections, route maintenance, and billing for [the] County Solid waste.

### III. ANALYSIS

Section 25-4-105(3)(a), Miss. Code of 1972, prohibits all public servants of the county from having a “material financial interest” in a business which is a contractor, subcontractor or vendor to the county. The term “material financial interest” is defined very broadly as “a personal and pecuniary interest, direct or indirect, accruing to a public servant or spouse, either individually or in combination with each other.” Section 25-4-103(k).

However, the definition of “material financial interest” also contains several exclusions, including the “spousal exclusion” found in Section 25-4-103(k)(iv). This subsection provides that a financial interest which would otherwise be material is, in fact, not a material financial interest when based solely on the income of the public servant’s spouse, and the public servant exercises no control, direct or indirect, over the contract.

Additionally, Section 25-4-105(1) prohibits the assistant purchasing clerk (hereinafter, “the clerk”) from using her position with the county to obtain or attempt to obtain any pecuniary benefit for her spouse or the spouse’s business. See definitions of “relative” and “business with which [the clerk] is associated” in Sections 25-4-103(q) & (d). To assure compliance with Section 25-4-105(1) and (3)(a), the clerk must not have any role in selecting, recommending, approving, supervising or paying her spouse or the spouse’s business. The assistant purchasing clerk must completely recuse herself from all involvement with any bid, order, contract or payment between the county and her spouse’s business. Those functions should be performed by other county personnel, such as the purchasing clerk, when they involve the spouse’s business.

To properly recuse herself, the assistant purchasing clerk must completely avoid any actions related to awarding, paying or otherwise administering any transaction between her spouse’s business and the county. This restriction includes casual comments, as well as detailed discussions, made in person, by telephone or by any other means. If the clerk has no direct or indirect control over the contract, has no ownership in the spouse’s business and fully recuses as described above, then no violation of Section 25-4-105(1) or (3)(a) should occur if the clerk’s spouse’s business serves as a contractor, subcontractor or vendor to the county.

MISSISSIPPI ETHICS COMMISSION

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

Tom Hood, Executive Director and  
Chief Counsel