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ETHICS ADVISORY OPINION NO. 23-023-E

January 12, 2024

Question Presented: May a former county supervisor work for a business if a related company contracts with the board of supervisors in the future?

Brief Answer: Pursuant to Section 109, Miss. Const. of 1890, and Section 25-4-105(2), Miss. Code of 1972, a former county supervisor is prohibited from having an interest in a contract authorized by the board within one year of leaving office. However, if the former supervisor is employed by a separate company and receives no compensation or benefits, directly or indirectly, from the contracting company, then he will have no prohibited interest in the contract, and no violation will occur. Additionally, no violation of Section 25-4-105(3)(e) will result as long as the former supervisor does not work on any matters involving his 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 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.

(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.

(m) “Person” means any individual, firm, business, corporation, association, partnership, union or other legal entity, and where appropriate a governmental entity.

(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.

(3) No public servant shall:

(e) Perform any service for any compensation for any person or business after termination of his office or employment in relation to any case, decision, proceeding or application with respect to which he was directly concerned or in which he personally participated during the period of his service or employment.

II. FACTS

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

This firm serves as the Board Attorneys for the [...] County Board of Supervisors. One of our supervisors, [...], is considering employment with a local engineering firm that performed and continues to perform work for [the county]. [The supervisor] did not run for reelection and [his/her] term ends on January 1, 2024. The engineering firm serves as county engineer for [the county] and one of its principals is the State Aid Engineer for [the county].

[The supervisor's] proposed employment will be full-time, and [...] annual salary will exceed \$5,000. [He/She] will be an employee but will have no ownership interest in the firm. [His/Her] work will consist of business development primarily with governmental entities, but during the first year will not involve [the county] or its Board of Supervisors in any way. After the first year of employment, [his/her] work will not include any service, work or duties related to any project, contract, case, decision, proceeding or application with respect to which [he/she] was directly concerned, or in which [he/she] personally participated during [his/her] period of service as a [...] County supervisor. The engineering firm has already created a separate account to hold funds received from [the county]. [The supervisor's] salary

and benefits will be paid solely with funds from other accounts. In other words, no funds derived from [the county] will be used to pay [his/her] salary and benefits.

[The supervisor], the Board and the engineering firm are cognizant of the prohibitions set forth in Article 4, § 109 of the Mississippi Constitution and in Miss. Code. Ann § 25-4-105 (including subsections (2) and (3)(e)), as well as the penalties set forth in § 25-4-109. [The supervisor] recognizes [he/she] will not be allowed to contact representatives of [the county] for one (1) year following the end of [his/her] term, and [he/she] will make no such contact.

Our question is, based upon the facts set forth above, may the supervisor work for the engineering firm immediately after [his/her] term ends?

III. ANALYSIS

Section 25-4-105(3)(e), Miss. Code of 1972, addresses successive governmental service and private sector employment. Section 25-4-105(3)(e) will not necessarily prohibit a former public servant from being employed by an entity which contracts with his or her former governmental entity. The law merely prohibits the former public servant from working for pay in the private sector on any *matter* in which he or she was directly or personally involved while working for the government.

Therefore, if the former public servant was *not* directly concerned with and did *not* personally participate in the matter in question, then the former public servant may legally accept payment from the private entity to work on that matter. Elec. Data Sys. Corp. v. Miss. Div. of Medicaid, 853 So.2d 1192, 1204, 1205 (¶¶ 35, 39) (Miss. 2003). If the former public servant *was* directly concerned with and *did* personally participate in the matter in question, then the private entity may still contract with the government, but the former public servant may not be paid in relation to that matter. Id.

Here, “any case, decision, proceeding or application” in which the firm was involved during the former supervisor’s term of office and which he voted on as a member of the board would fall within the proscription. It is likely the former supervisor cannot work for the firm on any engineering project, contract or other work which he voted on during his time on the board. As discussed below, Section 109 and Section 25-4-105(2) apply for one year after the supervisor leaves office, but Section 25-4-105(3)(e) contains no such time limitation. Any prohibition arising from Section 25-4-105(3)(e) will endure for the life of the matter in question, such as the duration of any engineering project, contract or other work which the former supervisor voted on. Therefore, the former supervisor is not simply prohibited from working for the firm on such matters for only one year but should avoid working on matters involving his county until all matters originating during his government service have concluded. This would be the safest course of action to ensure he does not violate Section 25-4-105(3)(e).

Section 109, Miss. Const. of 1890, and its statutory parallel, Section 25-4-105(2), Miss. Code of 1972, present a more difficult question. Those statutes prohibit a former county supervisor from having any direct or indirect interest in a contract with the county which was 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). In this context “authorized” means more than just the obvious act of approving a contract. It also means appropriating money. An appropriation of public money which ultimately funds a contract is an action which authorizes that contract. See Id., citing Cassibry v. State, 404 So. 2d 1360, 1366-67 (Miss. 1981).

All employees of a company are presumed to have an interest in that company’s income, so that segregating funds alone does not necessarily remove the employee’s interest. The former supervisor would be less likely to violate Section 109 and Section 25-4-105(2) if he were paid with segregated funds and employed by a separate company than the engineering firm contracting with his former board of supervisors. See Advisory Opinion No. 16-041-ER. Moreover, the former supervisor should not receive indirect compensation or benefits from the county engineering firm. Id. See also Advisory Opinion No. 08-124-E. Only under these circumstances can the outgoing supervisor work for the business and not violate Section 109 and Section 25-4-105(2).

MISSISSIPPI ETHICS COMMISSION

BY: _____

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