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MISSISSIPPI ETHICS COMMISSION

Post Office Box 22746

Jackson, Mississippi 39225-2746

Telephone: 601-359-1285

www.ethics.ms.gov

TOM HOOD

Executive Director and Chief Counsel

ETHICS ADVISORY OPINION NO. 23-024-E

January 12, 2024

Question Presented: May a county purchase from a retail business which employs a former county supervisor who has been out of office for less than one year?

Brief Answer: No. Section 109, Miss. Const. of 1890, and its statutory parallel, Section 25-4-105(2), Miss. Code of 1972, make no distinction between a currently serving county supervisor and a former supervisor who has been out of office for less than one year. All employees of a company are presumed to have an interest in that company's income. Consequently, the county cannot make purchases from a retail business which employs a former county supervisor until the former supervisor has been out of office for one year.

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.

As Attorney for the ... County ... Board of Supervisors, I present to you the following scenario and question:

[The] County is a small county with a population of [less than 10,000] as estimated in 2021. As such there is only one retail store or vendor which sells parts, supplies and accessories necessary for the maintenance and upkeep of county vehicles. The [Parts] store which is located in [...], the county seat, which has a population of [less than 500] as estimated in 2021, is the only store or vendor in [the] County which sells such parts, supplies and accessories.

It is necessary for [the] County to purchase small parts and such supplies from the [Parts] store. Without the location and convenience of this store, it would be necessary for a county employee to travel [to other towns or cities] for such purchases, all of which cities are approximately 30 miles from [the county seat], resulting in what would be approximately a 60-mile round trip.

[A county supervisor] was defeated in [a recent election] on August 8, 2023 and as such, will not be returning in January 2024. It has come to my attention that this Supervisor has been recently employed by the [Parts] store as a counter sales clerk. It is important to note that he is and will be a regular employee, does not and will not make a commission from any sales, and has absolutely no ownership or any other interest in said business.

The question I present is given that this Supervisor, or soon to be former Supervisor, is a regular employee of the [Parts] store, a retail store, does not and will not make a commission from any sales, and has absolutely no ownership or any other interest in said business, and given the expense and inconvenience of a county employee traveling to and from [other towns or cities] for such purchases, may [the] County continue to purchase parts, supplies and accessories necessary for the maintenance and upkeep of county vehicles from this vendor in the next year without being in violation of Section 109, Miss. Const. of 1890 and Miss. Code Ann. Section 25-4-105 (1972 & Supp)?

III. ANALYSIS

Section 109, Miss. Const. of 1890, and its statutory parallel, Section 25-4-105(2), Miss. Code of 1972, 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). The Constitution makes no distinction between a currently serving county supervisor and a former supervisor who has been out of office for less than one year. 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 transaction. 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. Consequently, the county cannot make purchases from a retail business which employs a former county supervisor until the former supervisor has been out of office for one year. To make purchases from the business during calendar year 2024 would likely violate Section 109 and Section 25-4-105(2), making the transactions null and void. Towner v. Moore ex rel. Quitman County School Dist., 604 So.2d 1093, 1096 (Miss. 1992), quoting Smith v. Dorsey, 530 So.2d 5, 9 (Miss. 1988). This restriction will obviously create an inconvenience and burden on county government and will likely result in the unnecessary expenditure of additional county funds. Unfortunately, the Constitution makes no provision or exception for such circumstances, and the Ethics Commission has no authority to opine otherwise.

MISSISSIPPI ETHICS COMMISSION

BY: _____

Tom Hood, Executive Director and
Chief Counsel