



BEN H. STONE, Chairman  
Gulfport

SEAN A. MILNER, Vice-Chairman  
Clinton

BOBBY WAITES  
Brandon

STEPHEN W. BURROW  
Pascagoula

## 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

MAXWELL J. LUTER  
Tylertown

ERIN P. LANE  
Ridgeland

SAMUEL C. KELLY  
Madison

NICK BAIN  
Corinth

### ETHICS ADVISORY OPINION NO. 24-002-E

February 9, 2024

**Question Presented:** May a former legislator, within one year of leaving office, work for a separate business which is owned by a law firm that contracts with state agencies if paid only with segregated funds which were not appropriated by the Legislature?

**Brief Answer:** Pursuant to Section 109, Miss. Const. of 1890, and Section 25-4-105(2), Miss. Code of 1972, a former legislator is prohibited from having an interest in a contract funded by the Legislature within one year of leaving office. However, if the former legislator is employed by a separate company and receives no compensation or benefits, directly or indirectly, from the law firm for one year, then the former legislator will have no prohibited interest in the contracts with state agencies, and no violation will occur.

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 request for an opinion of the Mississippi Ethics Commission is submitted by the undersigned, an attorney licensed and in good standing with the Mississippi Bar and a former member of the Mississippi Legislature, whose term expired [recently] (the "Former Member").

The Former Member is considering joining an affiliated, but separate and distinct, entity of the Jackson, Mississippi office of a large regional law firm with approximately 230 attorneys located across ten (10) offices in five (5) states and Washington D.C. (the "Law Firm"). The Mississippi offices of the Law Firm employ approximately 54 attorneys and an additional 70 support staff. As a result of the Law Firm's diverse set of attorneys and practice areas, certain members of the Law Firm may serve as counsel to various State of Mississippi (the "State") agencies and governmental entities, including serving various roles in the issuance of bonds by the State and State entities. Additionally, the firm has an active governmental relations practice across its footprint. The vast majority of the Law Firm's clients are not governmental, and the vast majority of the work performed by the Law Firm involves matters that do not derive from contracts with the State or from entities for which operating funds were appropriated by the Legislature. For the calendar year 2023 the total fees received by the Law Firm that were either a) appropriated by the Legislature or b) derived from an action or bill passed by the Legislature during the Former Member's term amounted to 1.3% of the total fees received.

The Law Firm currently has two existing separate and distinct, but affiliated entities and proposes to create a third separate and distinct entity to employ the Former Member (the "Separate Entity"). The Separate Entity would be wholly owned by the Law Firm. The Former Member's salary and benefits would come from the Separate Entity rather than the Law Firm. While the Former Member would retain some traditional law practice, it is anticipated that the majority of his efforts will be in the area of government affairs, including lobbying the State legislature, but not employed by the State Legislature or any chamber thereof.

The Separate Entity nor the Former Member will receive any funds from any client that pays the Law Firm with funds appropriated by the Legislature or as a result of a contract executed pursuant to legislation passed during the Former Member's term. The Former Member's salary and any bonus would not be determined by, nor related to services performed by other members of the Law Firm who provide legal services pursuant to a State contract or an engagement paid with public funds. The Former Member would not be eligible to be employed by or to own any equity interest in the Law Firm prior to January 1, 2025, at the earliest.

The Former Member and the Law Firm are aware of prior advisory opinions and court decisions dealing with legislator ethics issues, particularly issues involving Section 109 of the Mississippi Constitution and Section 25-4-105(2) of the Mississippi Code of 1972, as amended. This opinion request is made in order to delineate the Former Member's role as a governmental affairs attorney and the Law Firm's ability to continue to represent the State and State agencies during the year following the Former Member's retirement from the legislature.

The parties acknowledge both Constitutional Section 109 and Section 25-4-105(2) of the Mississippi Code of 1972 are clear that a member of the Legislature shall not 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 have been a member during his term or for one year after the expiration of such term. The Law Firm, the Separate Entity and the Former Member will ensure the Former Member does not work for any Law Firm client that operates pursuant to a contract executed or law passed during the Former Member's term. Further, the Commission has provided in the past that the Legislature is an authority separate from other component units of state government and a law firm that employs a legislator may continue to represent state agencies without violating 25-4-105(3) of the Mississippi Code. See Advisory Opinion No. 18-038-E. Finally, as described herein, the Former Member will be employed by the Separate Entity through December 31, 2024, at a minimum.

#### REQUEST FOR OPINION

The Former Member requests the opinion of the Commission as to whether under the facts and circumstances set out herein would the Former Member be in violation of any of the conflict of interest laws and statutes, particularly Section 109 of the Mississippi Constitution of 1890 and Section 25-4-105(2) and (3) of the Mississippi Code, if:

- (1) The Former Member is employed by the Separate Entity under the terms and conditions described;

- (2) The Former Member's salary and benefits are paid by the Separate Entity under the terms and conditions described;
- (3) The Former Member does not perform any work for or lobby on behalf of any State agencies or governmental entities represented by the Law Firm prior to January 1, 2025, although the Law Firm will continue to represent State agencies and governmental entities as described; and
- (4) The Former Member lobbies the Legislature on behalf of the Law Firm's other clients.

### III. ANALYSIS

Section 109, Miss. Const. of 1890, and its statutory parallel, Section 25-4-105(2), Miss. Code of 1972, prohibit a former legislator from having any direct or indirect interest in a contract with the state which was funded or otherwise authorized by the Legislature during his or her term of office 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).

Yet no violation of Section 109 or Section 25-4-105(2) will arise if the former legislator is paid with segregated funds which were not appropriated by the Legislature and is employed by a separate entity owned by the law firm, even if state agencies continue doing business with the law firm. See Advisory Opinion No. 23-022-E and 16-041-ER. Moreover, the former legislator should not receive indirect compensation or benefits from the law firm for one year if it continues to receive fees from state agencies or other public agencies during that time. Id. See also Advisory Opinion No. 08-124-E. Under these circumstances the former legislator can work for a separate entity which receives no funds appropriated by the Legislature for one year, and the law firm can continue to represent state agencies. These restrictions will expire when the former legislator has been out of office for one year. The Ethics in Government Law does not prohibit a former member of the Mississippi Legislature from being paid to lobby the Legislature immediately after leaving office. Advisory Opinion No. 10-080-E.

MISSISSIPPI ETHICS COMMISSION

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

Tom Hood, Executive Director and  
Chief Counsel