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ETHICS ADVISORY OPINION NO. 25-004-E

April 4, 2025

Question Presented: May a state employee retire and later contract with the state agency to perform similar job functions?

Brief Answer: Yes. A former state employee may retire from state government and later contract with the same state agency, either in his individual capacity or through an LLC taxed as an S corporation which he wholly owns, to provide services similar to those he provided as an employee, and no violation of Section 25-4-105(3)(e), Miss. Code of 1972, will result.

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.

(e) “Compensation” means money or thing of value received, or to be received, from any person for services rendered.

(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.

(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.

I would like to request an opinion from the State Ethics Commission regarding if a former state employee forms a single member LLC which is classified as an S corporation (instead of a sole proprietorship), may[he/she] execute a contract with a state agency to provide similar services as those provided while an employee without violating State ethics regulations? This question seeks clarity related if the nature of the LLC has impact on what is permissible under current regulations and is related to the particulars of the work having already been described and opined on in Advisory Opinion 24-023-E.

III. ANALYSIS

As noted in [Advisory Opinion 24-023-E](#), previously issued to the same requestor, Section 25-4-105(3)(e), Miss. Code of 1972, addresses successive government and private sector employment. The law prohibits a former public servant from being compensated by a private business to work on the same matters in which he or she was directly or personally involved while working for the government. Section 25-4-105(3)(e) does not prohibit a former public servant from contracting with his or her former governmental employer to perform functions similar to those he or she previously performed as an employee. See Ethics Advisory Opinions No. 19-046-E, 17-043-E, 14-004-E and 09-049-E.

While the restriction may apply to a former public servant employed by a business, it does not necessarily restrict a former public servant from forming his or her own wholly-owned LLC to contract with his or her former governmental employer. See Ethics Advisory Opinions No. 19-046-E and 13-016-E. Therefore, no violation of Section 25-4-105(3)(e) should arise if the requestor resigns his employment with the state agency and later contracts with the agency, either in his individual capacity or through an LLC which he wholly owns, to provide similar services he provided as a state employee, as described above.

The basis for this finding is that there is no distinction between the individual former public servant and the wholly-owned LLC for purposes of Section 25-4-105(3)(e). Likewise, the tax status of the single-member LLC, such as being taxed as an S corporation, would not change the nature of the LLC. It would still be indistinguishable from the individual owner for Ethics Law purposes, and no violation would result.

MISSISSIPPI ETHICS COMMISSION

BY: _____

Tom Hood, Executive Director and
Chief Counsel