



BEN H. STONE, Chairman
Gulfport

SEAN A. MILNER, Vice-Chairman
Clinton

STEPHEN W. BURROW, Secretary
Pascagoula

MAXWELL J. LUTER
Tylertown

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

ERIN P. LANE
Ridgeland

SAMUEL C. KELLY
Madison

CHRISTOPHER T. GRAHAM
Clinton

KRIS. K. DAVIS
Columbus

ETHICS ADVISORY OPINION NO. 25-007-E

April 4, 2025

Question Presented: May a business which employs a school board member serve as a contractor or subcontractor to that school district?

Brief Answer: No. A business which employs a school board member may not serve as a contractor or subcontractor to that school district, pursuant to Section 109, Miss. Const. of 1890, and Section 25-4-105(2) and (3)(a), Miss. Code of 1972. Additionally, while recusal can be effective in preventing other violations, recusal does not prevent or ameliorate violations of Section 109 or Section 25-4-105(2) or (3)(a), as these sections do not require any affirmative act by an individual member but merely action by the public body.

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.

(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.

(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.

(i) “Income” means money or thing of value received, or to be received, from any source derived, including but not limited to, any salary, wage, advance, payment, dividend, interest, rent, forgiveness of debt, fee, royalty, commission or any combination thereof.

(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.

(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:

(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.

Please accept this letter as the request of the School District (the "District") for an official Ethics Opinion concerning the questions posed herein, and on any related matters that your office deems pertinent. As a general matter, the District has a sitting school board member who is contemplating accepting an employment opportunity with a local construction company.

I. Applicable Law

According to Section 109 of the Mississippi Constitution of 1890:

....

Miss. Const. 1890. In addition, Miss. Code Ann. § 25-4-103 directs that:

....

Miss. Code Ann. § 25-4-103. Further, Miss. Code Ann. § 25-4-105 directs that:

....

Miss. Code Ann. 25-4-105 (emphasis added).

II. Background and Facts

The school district has a variety of construction projects that it plans to undertake in the next few years. One of the board members is contemplating accepting a position with a local construction company who could be a potential bidder on construction projects for the school district.

III. Requested Opinions

1. May a school district enter into a construction contract with a construction company for which a school board member is an employee if that school board member recuses themselves from the vote accepting the bid and entering into the contract with said construction company?
2. May a school district enter into a construction contract with a construction company who then subcontracts part of the construction project to the construction company for which a school board member is an employee?

On behalf of the District, we respectfully request your office to render the requested opinions. Thank you for your consideration of this request. Please call me if you need additional information.

III. ANALYSIS

Section 109, Miss. Const. of 1890, and its statutory parallel, Section 25-4-105(2), Miss. Code of 1972, both quoted above, prohibit a member of a public board from having any direct or indirect interest in a contract which is authorized by that board during his or her term of office or within one year thereafter. Frazier v. State, ex rel. Pittman, 504 So.2d 675, 693 (Miss. 1987). Typically, all employees of a business have an interest in all revenue received by the business and, therefore, have an interest in all contracts performed by the business. See Advisory Opinions No. 22-027-E, 20-039-E and 10-045-E. Only under unusual circumstances would an employee not have an interest in contracts performed by their employer. See Advisory Opinions No. 10-042-D and 18-060-E. Additionally, an employee of a subcontractor would have an interest in the prime contract. See Advisory Opinion No. 08-061-E.

Any contract which violates Section 109 or Section 25-4-105(2) is null and void, and the contractor has no right to payment. Towner v. Moore, ex rel. Quitman County School District, 604 So.2d 1093, 1096 (Miss. 1992), quoting Smith v. Dorsey, 530 So.2d 5, 9 (Miss. 1988). The contractor and the public official would be jointly and severally liable to repay all amounts received. Towner at 1100. Additionally, while recusal can be effective in preventing other violations, recusal does not prevent or ameliorate violations of Section 109 or Section 25-4-105(2), as these sections do not require any affirmative act by an individual member but merely action by the public body. Id.

In addition, a school board member is also prohibited from having a “material financial interest” in a business which is a contractor, subcontractor or vendor to the school district, as set forth in Section 25-4-105(3)(a). As a full-time employee, the board member would have a “material financial interest” in his or her employer, as defined in Section 25-4-103(k). “The term contractor is generally used in the strict sense of one who contracts to perform a service for another and not in the broad sense of one who is a party to a contract.” Moore, ex rel. City of Aberdeen v. Byars, 757 So.2d 243, 248 (¶ 15) (Miss. 2000). Likewise, a subcontractor provides a service to the governmental entity pursuant to a contract with a general contractor. Under Section 25-4-105(3)(a), the board member’s employer will be prohibited from serving as a contractor, subcontractor or vendor to the school district, and none of the exceptions codified in Section 25-4-105(4) are likely to apply under these circumstances. Moreover, those exceptions cannot apply to Section 109 or Section 25-4-105(2).

MISSISSIPPI ETHICS COMMISSION

BY: _____

Tom Hood, Executive Director and
Chief Counsel