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ETHICS ADVISORY OPINION NO. 25-008-E

June 6, 2025

Question Presented: May a former state employee be compensated by a business to perform work related to matters in which he was not directly involved while serving as a state employee?

Brief Answer: Yes. Section 25-4-105(3)(e), Miss. Code of 1972, only prohibits a former public servant from working on the same matters in which he or she was directly or personally involved while working for the government.

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 am writing to request an opinion to be allowed to [work for a private business] on a [state agency] project that I was previously involved with in a different capacity.

I served as [a senior professional employee of a state agency] from June 1, 2021, to March 31, 2025. I retired from the Department, effective April 1, 2025. My primary responsibility as Division Director was the oversight of the preparation of ... contract proposals for bidding purposes on all [state agency] construction projects. I have also served on various selection committees for design-build projects (alternative delivery projects). When the Legislature passed new legislation to allow other forms of alternative delivery projects including Construction Manager/General Contractor (CMGC) and Progressive Design-Build (PDB), the project in question was selected as the first CMGC project for the Department to

undertake. On this project, I provided guidance to the Alternative Program Delivery Director on matters regarding what should be included in the construction contract. I also served on the selection committee that selected the Contractor for this project.

I am now employed at [a private company] as a Senior [professional] in the Field Services area of the company. My role primarily consists of project management related to ... materials sampling and testing My firm plans to propose their services in this regard on the project and desires to include me on the team that could be selected by [the state agency]. [The proposed work] is a requirement of any construction project, regardless of size, scope, owner, or contractor.

In summary, I do not feel my involvement in the project while employed at [the state agency] has any effect in regards to what my role would be here at [the private firm which now employs me]. I am requesting an opinion that would allow me to be involved in the aforementioned capacity for this project at my new employer.

In response to questions from the commission regarding the first request above, the requestor provided the following additional information.

[The state agency] plans to hire a consultant through a separate procurement process to oversee the construction and materials testing for this project. My firm has proposed to be a subconsultant to one of the consultants, if selected. We would answer directly to the consultant, and in turn, they would answer directly to [the state agency]. Our role would be materials sampling and testing (soil, asphalt, and/or concrete).

I hope that helps clarify the issue, and if you need more information, please let me know.

The requestor also submitted a second request as follows:

I served as [a senior professional employee of a state agency] from June 1, 2021, to March 31, 2025. I retired from the [agency], effective April 1, 2025. My primary responsibility as Division Director was the oversight of the preparation of construction contract proposals for bidding purposes on all [state agency] construction projects. The particular project in question is Bids were received for this project on November 23, 2021. [The state agency] also selected to hire a consultant to oversee construction and testing through a qualification-based selection process, composed of committee members from [the state agency]. I did not serve on this selection committee, nor was I involved in writing the Request for Proposals. As part of the submittal, the eventual selected consultant, ..., proposed [my current employer] as a subconsultant to oversee [a] portion of the project.

I am now employed at [a firm] as a Senior [professional] in the Field Services area of the company. My role primarily consists of project management related to ...

sampling and testing... Included in the scope of work for [the firm] on this project is a final ... report ..., which I have been tasked to help finish.

I am requesting an opinion as to whether my services (hours spent on the report I mentioned) can be billed by my company.

III. ANALYSIS

Section 25-4-105(3)(e), Miss. Code of 1972, addresses successive government 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 government employer. 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, there are two separate matters or projects to consider. In the first matter, the former state employee “served on the selection committee that selected the [c]ontractor for this project.” However, he now seeks to work for his employer as a subconsultant on a separate contract for testing. Because this separate contract will be procured after he retired, the former public servant was not involved in it and is not prohibited from working for his employer on that separate contract.

On the second project, the former state employee did not serve on the selection committee and was not involved in writing the request for proposals. The consultant chosen by the selection committee now seeks to engage the firm which employs the requestor to work on a portion of this project. Since the former state employee was not directly involved in the agency’s decision to select the consultant, he may be compensated by his employer to work on the referenced report as part of this project.

MISSISSIPPI ETHICS COMMISSION

BY: _____

Tom Hood, Executive Director and
Chief Counsel