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ETHICS ADVISORY OPINION NO. 25-010-E

May 2, 2025

Question Presented: May a county employee serve in the Legislature?

Brief Answer: Section 25-4-105(3)(a), Miss. Code of 1972, does not prohibit a legislator from being employed by a county. However, if elected, neither his employment with the county nor his consulting business can be compensated with funds appropriated by the Legislature, pursuant to Section 109, Miss. Const. of 1890, and Section 25-4-105(2), Miss. Code of 1972.

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.
- (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.
- (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.

I am writing to respectfully request an official opinion from the Mississippi Ethics Commission regarding potential conflicts of interest or statutory prohibitions associated with holding multiple positions.

Specifically, I seek guidance on whether I may lawfully serve in the Mississippi State Senate while also maintaining the following roles:

1. Jail Administrator for the [...] County Sheriff's Department – a full-time position in which I am responsible for the management and daily operations of the [...] County Jail.

2. Owner of [...] a private business that provides professional consulting and training services to county and regional jail facilities throughout the State of Mississippi.

At this time, I am seriously considering qualifying as a candidate in the upcoming special election for Mississippi State Senate [...]. As the qualification deadline for this election is May 31, 2025, I would be most grateful if the Commission could expedite its review and issue an opinion in advance of that date.

Please let me know if any additional information is needed to assist in this review. I appreciate your time and consideration of this matter and look forward to your guidance.

III. ANALYSIS

Section 25-4-105(3)(a), Miss. Code of 1972, prohibits a public servant from being employed by or otherwise being a contractor to the same “governmental entity” he or she serves, subject to some very limited statutory exceptions contained in Section 25-4-105(4). The county and the state are separate governmental entities, as that term is defined in Section 25-4-103(h). Thus, no violation of this subsection should arise from a county employee also serving in the Legislature. Likewise, Section 25-4-105(3)(a) prohibits a county employee from having a “material financial interest” in a business which is a contractor, subcontractor or vendor to that same county. See Section 25-4-103(k). However, a county employee's business is not necessarily prohibited from contracting with other counties.

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

term or for one year thereafter. Frazier v. State, ex rel. Pittman, 504 So.2d 675, 693 (Miss. 1987). One would not normally anticipate the Legislature taking any action which would fund a legislator's employment with a county, but it is possible that a county could pay a county employee using grant funds provided by a state agency which were appropriated by the Legislature. A violation could also occur if a county were to pay a legislator with funds received from the state under Sections 47-5-931 through 47-5-953 which govern the incarceration of state offenders in county facilities. It is possible that a regional correctional facility could use funds appropriated by the Legislature to compensate a consultant who is a legislator, which could also result in a violation.

If any such action did occur within the legislator's term of office or within one year after leaving the Legislature, then a violation of Section 109 and Section 25-4-105(2) would occur, and the contract would be rendered null and void, making the contractor or employee liable to repay all funds received. 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). These restrictions would, essentially, prohibit the consulting business from contracting with any governmental entity if the invoice will be paid with funds appropriated by the Legislature.

The Ethics Commission is not authorized to opine on questions outside the Ethics Law, such as Separation of Powers and dual compensation, which could arise from full-time employment with the county while serving in the Legislature. The requestor should consult with the Office of the Attorney General regarding any such issues. He should explicitly ask how a full-time county employee can retain that job while being absent for three or four months every year to attend sessions at the Capitol and whether serving in both capacities would violate the Separation of Powers clauses in the Mississippi Constitution.

MISSISSIPPI ETHICS COMMISSION

BY: _____
Tom Hood, Executive Director and
Chief Counsel