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ETHICS ADVISORY OPINION NO. 25-028-E

July 11, 2025

Question Presented: May a nonprofit organization which employs a city council member contract with the city council?

Brief Answer: No. A nonprofit organization receiving public funds is a “business,” and a business in which a city official has a “material financial interest” cannot serve as a contractor to the city, pursuant to Section 25-4-105(3)(a), 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 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.

(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.

(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.

(4) Notwithstanding the provisions of subsection (3) of this section, a public servant or his relative:

(d) May be a contractor, subcontractor or vendor with any authority of the governmental entity of which he is a member, officer, employee or agent or have a material financial interest in a business which is a contractor, subcontractor or vendor with any authority of the governmental entity of which he is a member, officer, employee or agent: (i) where such goods or services involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws; or (ii) where the contractual relationship involves the further research, development, testing, promotion or merchandising of an intellectual property created by the public servant.

II. FACTS

Facts provided by the requestor are set forth below, with identifying information redacted, and are considered a part of this opinion.

Our Office, as attorneys for [the City], and for and on behalf of the City, hereby requests that the Mississippi Ethics Commission consider the following facts and provide an opinion as to what impact, if any, the employment or association of a new City Council Member with a non-profit entity (that is "in the running" to be awarded certain contracts or agreements related to the distribution of federal funding received by the City from the US Department of Housing and Urban Development (hereinafter, "HUD")) may have on the City's ability to enter into the aforementioned contracts or agreements. If the Commission determines that entry into the contracts or agreements can be accomplished, the City further requests an opinion from the Commission as to the appropriate path forward to allow reimbursements to be made to the said non-profit, to the extent that the same is possible. A corollary to this is whether the Commission's opinion is dependent on the (1) type of relationship between the non-profit entity and the new City Council Member (e.g., employer-employee, independent contractor, etc.); or (2) type of funding source or method of payment associated with compensation of the new Council Member associated with his/her provision of services to the non-profit entity.

FACTS (for purposes of this opinion request):

- [The City] is presently soliciting non-profit entities to administer certain housing related programs (rental assistance, housing rehabilitation assistance, etc.) which are designed to funnel federal (HUD) dollars through the City to the non-profit and ultimately to citizens of [the City] or to others on behalf of citizens of [the City].
- According to Federal guidelines, the programs all follow a similar financial path. The selected non-profits are required to follow Federal guidelines in determining direct awards to citizens. (payment of rent, payment of utility deposits, payment of home rehab expenses, etc.) The selected non-profits are to make payments to or on behalf of the citizens of [the City] from the funds of the non-profit and then submit fully documented reimbursement requests to [the City]. Assuming the documentation is verified, the City would then issue a reimbursement to the non-profit for the amount that the non-profit expended.
- In addition to the foregoing, the programs allow the non-profit to draw down an "administrative" fee designed to cover certain overhead costs of the non-profit associated with the administration of the program. The "administrative" fee can cover office expenses, salaries and other expenses usually associated with overhead.
- Each contract or agreement entered into by the City with a selected non-profit will contain a maximum amount that the selected non-profit may expend for reimbursement (i.e., a not to exceed amount).
- One of the non-profit entities "in the running" to administer the programs noted above (and similar programs) for [the City] ("Non-Profit A") has as one of its employees a newly elected (assumed office on July 1) Member of the [...] City Council.
- We are advised by "Non-Profit A" that the new City Council Member is paid "strictly and 100%" by a separate HUD grant that is granted to "Non-Profit A" by another non-profit entity. But a side question, as noted above, is whether the method or manner of payment of compensation by the non-profit to the new Council Member matters in any of these questions or the type of relationship between the non-profit entity and the new City Council Member (e.g., employer-employee, contractor, etc.).

Taking the foregoing facts into account, we ask the following specific questions:

- The City requests an opinion as to whether a violation of Miss. Code Ann. § 25-4-105(1), Miss. Code Ann. § 25-4-105(2) or Section 109 of the Mississippi Constitution or any other ethics laws would arise if the [...] City Council were to approve a contract/agreement with "Non-Profit A" to administer the federal funding available to the City from HUD. If a violation is created, we, further, seek guidance

as to those circumstances under which we can avoid or eliminate those violations, if any. We assume, as to this question, that the newly elected City Council Member would need to fully and completely recuse him/herself from consideration of the contract/agreement by the City.

- If the Commission opines that the City may approve and enter into a contract/agreement with "Non-Profit A" to administer the federal funding available to the City from HUD, please advise whether the City Council as a whole OR the City Council with the new Council Member recusing his/herself from the matter may vote to approve citizen related expense reimbursements to "Non-Profit A" (i.e., OT "administrative" reimbursements) without creating a violation of any applicable ethics laws.
- If the Commission opines that the City may approve and enter into a contract/agreement with "Non-Profit A" to administer the federal funding available to the City from HUD, may the newly elected City Council Member perform ANY work in connection with the said contract/agreement? If so, please advise whether the City Council as a whole OR the City Council with the new Council Member recusing him/herself from the matter may vote to approve "administrative" expense reimbursements to "Non-Profit A" without creating a violation of any applicable ethics laws if monies sought to be reimbursed were not paid to the new Council Member?
- Would any of the Commission's opinions to these questions change if the relationship between the non-profit entity ("non-Profit A") and the new City Council Member were anything other than employer-employee (e.g., independent contractor) and/or if the method or manner of payment of compensation by "Non-Profit A" to the new Council Member was different than that outlined above (e.g., the new Council Member was paid directly by HUD for the new Council Member's services provided to "Non-Profit A," etc.).

If you require any further information before the Commission can render an opinion, please advise.

III. ANALYSIS

A nonprofit organization receiving public funds is a "business," as defined in Section 25-4-103(c), Miss. Code of 1972. As a full-time employee of the nonprofit, the new council member is presumably receiving more than \$5,000.00 per year in income from the nonprofit and, therefore, has a "material financial interest" in the nonprofit. See definition in Section 25-4-103(k). Becoming an independent contractor to the nonprofit rather than an employee would not change this analysis, as the statutory definition sets an annual income threshold, irrespective of the public servant's role. Pursuant to Section 25-4-105(3)(a), the nonprofit which employs the new council member cannot be a contractor, subcontractor or vendor to the city, unless one of the limited exceptions contained in Section 25-4-105(4) applies. The Mississippi Supreme Court has defined a contractor under this statute as "one who contracts to perform a service for another." Moore, ex rel. City of Aberdeen v. Byars, 757 So.2d 243, 248 (¶ 15) (Miss. 2000).

The only exception which could apply under these circumstances is found in Section 25-4-105(4)(d). That provision would allow the nonprofit to be a contractor to the city only if the “services involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws.” Id. The facts above indicate there are other entities under consideration for the proposed contract. Based on those facts, it appears the exception cannot be applied, and the council is prohibited from entering the proposed contract with the council member’s employer, pursuant to Section 25-4-105(3)(a). Other provisions of law, such as Section 109, Miss. Const. of 1890, and its statutory parallel, Section 25-4-105(2), Miss. Code of 1972, also apply here, but an analysis of those provisions is rendered moot by the conclusions above.

MISSISSIPPI ETHICS COMMISSION

BY: _____

Tom Hood, Executive Director and
Chief Counsel