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TOM HOOD

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ETHICS ADVISORY OPINION NO. 26-002-E

March 6, 2026

Question Presented: 1. May a mayor receive payments from his former firm for work performed for and authorized by the city long before he took office?

2. May a mayor's former firm perform future services as a subcontractor to the city when the contract was authorized long before the mayor took office?

Brief Answer: 1. Yes. The contract was authorized long before the mayor took office, and no violation of Section 109, Miss. Const. of 1890, or Section 25-4-105(2), Miss. Code of 1972, will result. Because the work was performed before the mayor took office, the firm is not a contractor to the city, and no violation of Section 25-4-105(3)(a) will result.

2. If the mayor has a "material financial interest" in the firm, then the firm cannot serve as a subcontractor to the city, pursuant to Section 25-4-105(3)(a), unless an exception applies.

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.

(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.

(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.

[The City] hereby requests that the Mississippi Ethics Commission consider the following facts and provide an opinion as to the questions posed below. The facts center around an agreement signed by our Mayor on behalf of his then law firm and before he was elected and later sworn in as Mayor (but after he qualified to run for Mayor).

FACTS:

- In January 2025, [the current mayor] qualified to run for the office of Mayor of [the City].
- Thereafter, in March of 2025, on behalf of his then law firm, [...] (hereinafter, "law firm") [the mayor candidate] signed an agreement with the US Army Corps of Engineers (hereinafter, "Corps") pursuant to which the law firm is to perform certain property acquisitions in connection with a Corps project (hereinafter, "the project") located in [the City].
- [The City] and the Corps have been under contract or agreement with respect to the project for many years. Under the City's agreement with the Corps, the Corps is to undertake a project to construct a levy in [the City], which project will require acquisition of real property. The Corps contracted separately with the law firm for the said property acquisitions. The City is not a party to the agreement between the Corps and the law firm. However, the City will, ultimately, reimburse the Corps for a share (i.e., a percentage) of the expenses associated with the project, including, but not limited to, the expenses associated with property acquisition. That percentage was established in the

- agreement between the City and the Corps long before [the current mayor] entered the race for Mayor.
- On June 3, 2025, [the mayoral candidate] was elected Mayor of [the City].
 - Between the date of his election and the date he was sworn in, [the current mayor] fully divested himself of any and all interest, financial and otherwise, in the law firm EXCEPT the following:
 - The law firm retained the right to use [the mayor's] surname in the title of the firm; and
 - [The mayor] retained the right to his share of the portion (a percentage) of the funds to be recovered by the law firm (via City Council approved settlement) on behalf of its "opioid litigation" client, [the City], pursuant to a contingency fee arrangement between the law firm and the City that was entered into in 2018. Opioid settlement funds payable to [the mayor] are held in a "blind trust" that is controlled by a third party trustee.
 - [The mayoral candidate] was sworn in as [...] Mayor effective July 1, 2025.

Our office 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 NOW to approve any payments to the contractor on the project referenced above? We, further, seek guidance as to whether the Mayor's former law firm may continue to perform the noted property acquisitions pursuant to the law firm's written agreement with the US Army Corps of Engineers without creating any Ethics in Government violations for the Mayor?

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

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, including a mayor, from having any direct or indirect interest in a contract 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).

The mayor has fully divested himself of any and all interest in the law firm, except for a percentage of opioid settlement funds. The contract authorizing the retention of those contingency fees was approved by the city council in 2018, seven years before the mayor took office. Therefore, no violation will arise from the mayor receiving opioid settlement funds. Additionally, the work was performed before the mayor took office, and the firm is no longer providing those services to the city. Moreover, the law firm's continued use of the mayor's name has no bearing on the Ethics in Government Law.

Likewise, the U.S. Army Corps of Engineers contracted independently with the mayor's former law firm to perform property acquisition work on the above referenced levy project with the city. As noted by the requestor in the facts provided above, the city will reimburse the Corps

for a share of expenses, including property acquisition. “That percentage was established in the agreement between the City and the Corps long before [the current mayor] entered the race for Mayor.” Because that reimbursement agreement was authorized long before the mayor took office, no violation of Section 109 or Section 25-4-105(2) will result from reimbursement payments made by the city to the Corps under that agreement.

However, if the mayor receives aggregate annual net income of \$5,000.00 or more from the law firm from opioid settlement payments or any other reason, then he will have a “material financial interest” in the law firm, as defined in Section 25-4-103(k). In that event, the law firm will be precluded from serving as a contractor, subcontractor or vendor to the city, pursuant to Section 25-4-105(3)(a), even on matters in which the mayor has no prohibited interest under Section 109 and Section 25-4-105(2), unless an exception applies. Exceptions to Section 25-4-105(3) are codified in Section 25-4-105(4), and particularly in Section 25-4-105(4)(d).

“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. Here it appears the Corps of Engineers is a contractor to the city, and the law firm is a subcontractor. See Advisory Opinion No. 25-006-E. Consequently, it is unlikely the law firm can perform the proposed property acquisition work if the mayor is receiving \$5,000.00 or more in annual income from the law firm.

MISSISSIPPI ETHICS COMMISSION

BY: _____

Tom Hood, Executive Director and
Chief Counsel