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### ETHICS ADVISORY OPINION NO. 26-005-E

March 6, 2026

**Question Presented:** May an individual be employed by a state agency while having a material financial interest in a business which is a contractor to the agency?

**Brief Answer:** No. A public servant may not have a material financial interest in a business which is a contractor to the governmental entity they serve, pursuant to Section 25-4-105(3)(a), Miss. Code of 1972, unless an exception applies, and none do under these facts.

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.

(a) "Authority" means any component unit of a governmental entity.

(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.

(j) “Intellectual property” means any formula, pattern, compilation, program, device, method, technique or process created primarily as a result of the research effort of an employee or employees of an institution of higher learning of the State of Mississippi.

(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.

(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:

(b) May be a contractor or vendor with any authority of the governmental entity other than the 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 or vendor with any authority of the governmental entity other than the authority of the governmental entity of which he is a member, officer, employee or agent where such contract is let to the lowest and best bidder after competitive bidding and three (3) or more legitimate bids are received or where the goods, services or property involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws.

(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 [state agency] respectfully requests an advisory opinion pursuant to Miss. Code Ann. § 25-4-17 regarding whether a proposed dual employment arrangement would violate the Mississippi Ethics in Government Law, specifically Miss. Code Ann. § 25-4-105.

### **I. Background**

[The state agency] is considering employing a licensed [professional] to serve as the ... Director for its ... Program. The ... program provides [certain services remotely and in person.] The position would be classified as a full-time ... Supervisor reporting to the [agency head]. The ... Director's responsibilities would include: [numerous professional oversight duties]; ensuring compliance with applicable federal and state regulatory requirements; and participating in data review and program improvement activities. (See Attachment A).

The [professional] under consideration currently serves as [the professional director of a for-profit corporation.] In [that] role, she assists in directing and coordinating [professional] management and quality improvement functions, participates in [professional] review activities, may review complex or controversial [matters], participates in credentialing committee proceedings in limited disciplinary reinstatement contexts, and occasionally participates in meetings with [a separate state agency] to address [technical] questions. (See Attachment B). She stated that her compensation is not tied to [any] performance measures.

### **II. Contractual/Financial Relationships and System Access:**

[The state agency] has an existing contractual relationship with [the corporation] as part of its [contractual responsibilities]. While this agreement has historically covered [only one general type of] services, [the corporation] remains [a certain type of contractor] operating under contract within [a large state government] program. Accordingly, [the corporation] has a contractual relationship with [the agency] involving state-administered ... services, under which [the corporation] would reimburse claims [made] under the ... program, and both [the corporation] and [the state agency] would simultaneously employ the [professional].

[The state agency] also maintains data use agreements with multiple third-party [entities], including [the corporation], under which protected ... information ... is exchanged only for [individuals] under that [entity]'s specific [scope], as [a separate state agency] does not permit [the state agency] to provide a consolidated list of all [individuals] to [this type of] organizations.

In addition to the above, the [program] Director would receive ... access [to private electronic records], allowing the ability to view, edit, and sign ... records for [program participants] statewide; [and access various other types of confidential records regarding individuals.]

Because the [program] Director would have broad system access to [private information] for [individuals served by the corporation and its competitors], monitoring and ensuring that such access is used solely for [the state agency] job duties can only be done retrospectively. Additionally, many third-party [entities] require [the program director to have access to private data] as part of routine ... processing. While the [professional] has indicated her willingness to recuse herself from any [corporation] review, appeal, or decision involving [the state agency program] (see Attachment C), if the [professional] were simultaneously involved in service delivery at [the state agency] and review processes at [the corporation], it may be difficult for [the state agency] to independently verify recusal, as [third-party] communications are transmitted via [systems the state agency cannot access].

### III. Identified Potential Conflict Areas:

[The state agency] has already identified the following potential areas of concern:

1. Whether the [professional]'s employment with [the corporation] constitutes a "material financial interest in a business" that contracts with her agency under Miss. Code Ann. § 25-4-105(3).
2. Whether simultaneous service in [one] role [at the state agency] and [an opposing] role [at the corporation] creates a prohibited conflict under § 25-4-105(1) or (3), given the ongoing financial relationship between [the state agency], [the state agency's program], and [the corporation].
3. Whether recusal from [duties at the corporation] involving [the state agency, its program and its other professional employees] would sufficiently mitigate any conflict under the law.

### IV. Conclusion

The ... program would bill [the separate state agency] for services provided to [individuals]. [The corporation] would [make payments] for covered services rendered to its members, including services potentially delivered under the ... program. The [professional] would also have access to confidential ... data across competing ... organizations.

Therefore, [the state agency] respectfully requests the Commission's guidance on whether the [professional]'s simultaneous employment as ... Director for [the state agency]'s ... program and [professional] Director for [the corporation], violates Miss. Code Ann. § 25-4-105, given [the corporation]'s contractual and reimbursement relationship with [the state agency]? If not per se prohibited, would formal recusal and institutional firewalls between the two roles be sufficient to

comply with the Ethics in Government Law, and are there any additional safeguards the Commission would require to permit such dual service? If hired by [the state agency], the [professional] has stated that she would drop down to part-time status at [the corporation].

[The state agency] seeks this advisory opinion prior to finalizing employment to ensure compliance with state ethics law and to protect both the agency and the [professional] from potential violations.

In response to questions from the commission's staff, the requestor provided the following additional information.

If employed at the corporation on a part-time basis, the professional would be paid more than \$5,000.00 per year by the corporation. The requestor reports that the corporation does provide services to the state agency under the contracts mentioned above and that there are several other reasonably available commercial sources for those services, with at least three such businesses currently contracting with the state for such services.

### III. ANALYSIS

In relation to this proposed dual employment, the requestor has identified numerous potential problems under multiple provisions of the Ethics in Government Law. The commission need not address all those issues here since one is dispositive.

Pursuant to Section 25-4-105(3)(a), Miss. Code of 1972, no employee or other public servant of the state may have a "material financial interest" in a "business" which is a contractor, subcontractor or vendor to state government. See also Section 25-4-103(h). Any public servant receiving aggregate annual net income of \$5,000.00 or more from a business definitely has a material financial interest in that business, as defined in Section 25-4-103(k)(ii). "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). Here the corporation is providing services to state government and is, therefore, a contractor to the state.

Exceptions to this restriction are codified in Section 25-4-105(4). One such exception found in Section 25-4-105(4)(b) can allow a business in which a state employee has a material financial interest to contract with a separate authority of state government, such as a separate state agency. See also Section 25-4-103(a). But here the contract is with the same state agency at which the individual is considering state employment.

Another exception found in Section 25-4-105(4)(d) would allow a state agency employee to have a material financial interest in a business which is a contractor to their agency only when the "services involved are reasonably available from two (2) or fewer commercial sources." Yet here there are several other businesses which can provide these services to the state agency and at least three which currently do just that.

Since no exception will apply, the corporation will be prohibited from continuing to serve as a contractor to the state agency if the agency hires the proposed professional employee while she continues to receive \$5,000.00 or more in annual income from the corporation. Consequently, the individual professional must choose between working for the state agency or working for the corporation but cannot work for both simultaneously under these circumstances.

MISSISSIPPI ETHICS COMMISSION

BY: \_\_\_\_\_

Tom Hood, Executive Director and  
Chief Counsel