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MISSISSIPPI ETHICS COMMISSION

CHRISTOPHER T. GRAHAM
Clinton

MAXWELL J. LUTER, Secretary
Tylertown

Post Office Box 22746
Jackson, Mississippi 39225-2746

Telephone: 601-359-1285

KRIS. K. DAVIS
Columbus

ERIN P. LANE
Ridgeland

www.ethics.ms.gov

ANDY TAGGART
Ocean Springs

TOM HOOD
Executive Director and Chief Counsel

ETHICS ADVISORY OPINION NO. 26-009-E

April 10, 2026

Question Presented: May a county employee be paid for work previously performed as a contractor to the county when the work was completed prior to his date of hire?

Brief Answer: Yes, but the county must determine that any contract payments made after the date of hire are only for work completed before the date of hire, in compliance with 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.

(6) Any contract made in violation of this section may be declared void by the governing body of the contracting or selling authority of the governmental subdivision or a court of competent jurisdiction and the contractor or subcontractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or the services furnished prior to the date of receiving notice that the contract has been voided.

II. FACTS

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

This request is submitted on behalf of [the] County pursuant to Mississippi Code § 25-4-17 and seeks an advisory opinion as to whether, under Mississippi Code § 25-4-105, the ... County Board of Supervisors may approve payment of invoices submitted by a contractor after he became an employee of the county, where the contracts were entered into prior to employment and the invoices may represent compensation for work performed or materials provided prior to the employment date.

[The] County entered into three contracts with the same individual prior to his employment with the county.

On June 1, 2020, the Board approved a contract for grounds maintenance at county facilities. The contract term was four years with automatic annual renewal. The scope of work included weekly grass cutting from March through September and related services. The contract provided for a fixed annual amount to be paid in twelve equal monthly installments. All payments were for labor.

On February 18, 2025, the Board approved a contract for flowerbed maintenance and landscaping. The contract does not specify a definite end date. Compensation consists of a fixed annual amount, payable in twelve equal monthly installments, which includes both labor and materials.

On April 7, 2025, the Board approved a contract for landscaping services at a county building, including planting and periodic maintenance. The contract does not contain a definite end date. Compensation includes both labor and materials.

Under each contract, payment is made only after the contractor submits an invoice, the work (and materials, if applicable) is verified by the appropriate county official, and the claim is approved by the Board. The former Buildings and Grounds Director approved the contractor's invoices until his departure at which time the county administrator began approving them.

The county hired the contractor as Building and Grounds Director effective November 17, 2025.

Prior to his employment, the contractor submitted an invoice dated November 6, 2025, which was approved on the November 17, 2025, claims docket.

On November 16, 2025, the county administratively paused the contracts pending guidance regarding compliance with the ethics laws.

After becoming a county employee, the individual submitted additional invoices dated November 26, December 7, and December 26, 2025. The individual represents that all work required under the contracts for the year has been completed and requests payment of the remaining contract amounts. The county has not yet verified the work associated with these invoices.

The county's questions are:

1. Whether the county may approve payment of invoices submitted after November 17, 2025, to the extent such invoices represent compensation for services performed or materials provided prior to that date.
2. Whether the county is prohibited from making any payments under the contracts after November 17, 2025, regardless of when the work was performed or materials were provided.
3. Whether the county may pay for materials only that were purchased and used prior to November 17, 2025, even if invoiced after that date.
4. Whether the contracts must be formally terminated by the Board in order to comply with Section 25-4-105, or whether the statute operates to prohibit further performance and payment as of the date of employment.

III. ANALYSIS

Pursuant to Section 25-4-105(3)(a), Miss. Code of 1972, a public servant of the county cannot be a contractor to the county. "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). Yet a former contractor who later becomes a public servant is not necessarily prohibited from

being paid later for contract work finished before he or she entered public service. See Advisory Opinion No. 25-006-E.

In this situation, the county can only pay for contract work completed before the contractor became a county employee on November 17, 2025. The three invoices submitted after the hire date bear date ranges which are not described but which indicate some of the work invoiced may have been performed after the hire date. Yet in an email provided by county officials, the former contractor asserts that all work invoiced was completed before his hire date of November 17, 2025. County officials will have to determine whether any work on the three invoices in question was performed after November 17, 2025, and the county must withhold payment for any work performed after that date. The supplemental information provided by the requestor indicates the county may have terminated the contract upon hiring the contractor as an employee. This should have been done by the board of supervisors in accordance with Section 25-4-105(6) above.

The county should also consult with the Technical Assistance Division in the Office of the State Auditor about the proper way to structure contracts for services to ensure no contractor is paid before the work is performed. In addition, the county may wish to seek tax advice to ensure no person is issued an IRS Form 1099 as a contractor while also receiving a Form W-2 as an employee.

MISSISSIPPI ETHICS COMMISSION

BY: _____

Tom Hood, Executive Director and
Chief Counsel