



BEN H. STONE, Chairman
Gulfport

SEAN A. MILNER, Vice-Chairman
Clinton

RON CROWE, Secretary
Brandon

STEPHEN W. BURROW
Pascagoula

MISSISSIPPI ETHICS COMMISSION

660 North Street, Suite 100-C

Jackson, Mississippi 39202

Telephone: 601-359-1285

Facsimile: 601-359-1292

www.ethics.ms.gov

BOBBY WAITES
Brandon

MAXWELL J. LUTER
Tylertown

ERIN P. LANE
Ridgeland

SAMUEL C. KELLY
Madison

TOM HOOD
Executive Director and Chief Counsel

ETHICS ADVISORY OPINION NO. 23-006-E

April 7, 2023

Question Presented: May an individual serve on the board of a state agency and be associated with a nonprofit institute which provides services similar to some of those provided by the state agency?

Brief Answer: Yes, but the board member must ensure he does not share nonpublic information from the agency with anyone who could receive a pecuniary benefit in violation of Section 25-4-105(5), Miss. Code of 1972, or use his position on the board to obtain a pecuniary benefit, as proscribed in Section 25-4-105(1).

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.

(d) “Business with which he is associated” means any business of which a public servant or his relative is an officer, director, owner, partner, employee or is a holder of more than ten percent (10%) of the fair market value or from which he or his relative derives more than Two Thousand Five Hundred Dollars (\$2,500.00) in annual income or over which such public servant or his relative exercises control.

(l) “Pecuniary benefit” means benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain. Expenses associated with social occasions afforded public servants shall not be deemed a pecuniary benefit.

(m) “Person” means any individual, firm, business, corporation, association, partnership, union or other legal entity, and where appropriate a 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.

(q) “Relative” means:

(i) The spouse of the public servant;

(ii) The child of the public servant;

(iii) The parent of the public servant;

(iv) The sibling of the public servant; and

(v) The spouse of any of the relatives of the public servant specified in subparagraphs (ii) through (iv).

Section 25-4-105, Miss. Code of 1972.

(1) No public servant shall use his official position to obtain, or attempt to obtain, pecuniary benefit for himself other than that compensation provided for by law, or to obtain, or attempt to obtain, pecuniary benefit for any relative or any business with which he is associated.

(5) No person may intentionally use or disclose information gained in the course of or by reason of his official position or employment as a public servant in any way that could result in pecuniary benefit for himself, any relative, or any other person, if the information has not been communicated to the public or is not public information.

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 presently a member of the Board of [a State Agency] My role on this Board is uncompensated and I am not now, nor have I ever been, a government employee, contractor, or vendor.

I am seeking an Ethics Opinion on my continued service on the Board, namely whether I can continue serving, or if I continue serving, if there are matters on which I should recuse myself.

The circumstances that lead me to make this request relate to the launch of a non-profit organization. In January of 2023, I started [...] a non-profit, non-partisan digital only news and information organization.

[This Non-profit Institute] does not receive any government funding or grants. We rely on the generosity of charitable contributors to maintain our operations. We also have no relationship, pecuniary or otherwise, with [the State Agency]. We are not in, or seeking, any contractual relationship with [the State Agency]. We are not a vendor or supplier. Likewise, I personally have no pecuniary relationship with [the State Agency] and am not seeking any type of contract or to become a vendor.

My question relates not to any pecuniary benefit, but to whether there is a conflict of interest in the Ethics Commissions' mind of being involved in providing news at [the Non-profit Institute] when [the State Agency] also provides news. In my estimation, there is not. We have very different revenue models, very different products, and different audiences. It's not inconceivable that there could occasionally be overlap in coverage or audience, though.

Importantly, I am not now, nor have I ever, used any information I gained as a board member about the operation of [the State Agency] to the detriment of [the State Agency] or to the advantage of [the Non-profit Institute]. In other words, in those

instances in which some overlap in coverage or audience exists, that is not occurring as a byproduct of, or in any way influenced by, inside information gained as a result of my service on the Board.

Board discussions generally do not get into the weeds of [the State Agency] coverage decisions and [the Non-profit Institute]'s coverage decisions are made in real time by reporters who have no insights into the content of quarterly [State Agency] Board meetings. In my mind, there is actually an advantage to [the State Agency] of having someone on its Board with knowledge about the media industry. Ultimately, though, I want to be sure I am operating in compliance with the law and not in a way that would bring reproach to [the State Agency], [the Non-profit Institute], or me.

I have recused myself from voting at [State Agency] Board meetings since [the Non-profit Institute]'s launch in January. In the interim, I've made previous requests for the process to obtain an ethics opinion, along with some of the above information.

In February I was informed that there was no formal process and that I simply needed to send an email or letter. I also was provided some insights into the issues the Ethics Commission will use in analyzing this case. This email is intended to serve as that inquiry. Please do not hesitate to reach out if I can answer any questions or supply additional information.

III. ANALYSIS

Section 25-4-105(5), Miss. Code of 1972, prohibits a public servant such as the requestor from intentionally using or disclosing information gained in the course of or by reason of his official position as a public servant in any way that could result in a pecuniary benefit for himself, any relative, or any other person, if the information has not been communicated to the public or is not public information. The facts provided above do not indicate any particular potential for a violation of this subsection. Nevertheless, since the state agency and the nonprofit institute provide similar services, it is conceivable that a member of the board could possibly obtain information which could be beneficial to individuals at the nonprofit. If such a situation were to present itself, the best practice would be for the board member to remove himself from the situation so that he would not receive such information until it becomes public. In the alternative, the board member should ensure that he does not share nonpublic information from the agency with anyone who could use it for their benefit.

Likewise, the requestor may not use his position on the board to obtain or attempt to obtain any pecuniary benefit for himself, a relative or a business with which he is associated, as proscribed in Section 25-4-105(1). Because the nonprofit entity does not receive any public funds, it is not a "business," as defined in Section 25-4-103(c). See also definitions in Section 25-4-103(l), (q) and (d).

The requestor also states the nonprofit entity will not enter a contract with or provide services to the state agency. If those circumstances change during the requestor's term of office on

the board or within one year thereafter, a violation of Section 109, Miss. Constitution of 1890, and Section 25-4-105(2) and (3)(a) could arise. In that event, the requestor would need to seek a supplemental opinion.

MISSISSIPPI ETHICS COMMISSION

BY: _____
Tom Hood, Executive Director and
Chief Counsel