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ETHICS ADVISORY OPINION NO. 24-027-E

October 4, 2024

Question Presented: May a former state employee work in the private sector on matters in which he or she was not directly or personally involved while employed in state government?

Brief Answer: Yes. Section 25-4-105(3)(e), Miss. Code of 1972, merely prohibits former public servants from working for pay in the private sector on any matter in which he or she was directly or personally involved while working for the government.

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.

(e) “Compensation” means money or thing of value received, or to be received, from any person for services rendered.

(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.

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

(3) No public servant shall:

(e) Perform any service for any compensation for any person or business after termination of his office or employment in relation to any case, decision, proceeding or application with respect to which he was directly concerned or in which he personally participated during the period of his service or employment.

II. FACTS

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

Over the past 12 years, I have served in state government for multiple agencies in the executive department. For the past seven years, I have served as executive director of [a state agency]. I plan to end my state service soon. One potential opportunity I am considering would involve working with a multi-state public affairs firm. I would be focused on providing research, consulting, and advisory services to clients in the [same, broad economic] sector. The firm does not receive funding from, and does not have active contracts, pending contracts, or anticipated contracts with the state agency I’ve led. Some of the employees of the existing firm are registered as lobbyists for businesses that either contract with the agency or provide reimbursable services to the agency.

My understanding is that the state ethics laws related to post-government employment are not intended to ban former public servants of the agency from having a business relationship with any businesses or individuals who may have received a benefit of a program administered by the agency. Rather, the law prohibits a former public servant from working for compensation in the private sector on any matter – i.e., any case, decision, proceeding, or application – in which he or she was directly or personally involved while working in the government. Based on the statutory language, I would be precluded from working for compensation for a client on any case, decision, proceeding, or application in which I was personally or directly involved during government service. However, any limitations on my ability to work for compensation on a specific matter would not be imputed to others in the firm. I could use general knowledge or experience gained through the course of my government service in my representation of private clients. See Opinion No. 11-039-E. I also could represent private sector clients on matters in which I was not directly or personally involved, even when the matter involved a law, regulation, or policy which I helped craft. See Opinion No. 12-079-E. And because each matter typically can stand on its own, my involvement in one matter does not prevent me from working for pay on a separate matter in which I was not directly or personally involved. Id.

Please advise me if there are any additional limitations regarding the representation of private sector clients.

III. ANALYSIS

Section 25-4-105(3)(e), Miss. Code of 1972, addresses successive government and private sector employment. Section 25-4-105(3)(e) will not necessarily prohibit a former public servant from being employed by an entity which contracts with his or her former government employer. The law merely prohibits the former public servant from working for pay in the private sector on any *matter* in which he or she was directly or personally involved while working for the government.

Therefore, if the former public servant was *not* directly concerned with and did *not* personally participate in the matter in question, then the former public servant may legally accept payment from the private entity to work on that matter. Elec. Data Sys. Corp. v. Miss. Div. of Medicaid, 853 So.2d 1192, 1204, 1205 (¶¶ 35, 39) (Miss. 2003). If the former public servant was directly concerned with and *did* personally participate in the matter in question, then the private entity may still contract with the government, but the former public servant may not be paid in relation to that matter. Id.

Since the firm anticipates entering no contracts with the state agency, no contracts are in question. The nature of the firm and the role of the state agency do not coincide, although clients of the firm could interact with the state agency. It is difficult to anticipate any specific “case, decision, proceeding or application” in which the requestor was personally or directly involved and “in relation to” which the firm would compensate the requestor. Yet as the head of the state agency, the requestor has likely been directly involved in many individual matters. Each of those matters must be analyzed on an individual basis according to the facts available at that time.

The requestor's general apprehension of the law is correct, as further explained in Advisory Opinions No. 11-039-E and 12-079-E. After the requestor leaves government service and enters the private sector, he or she will still be entitled to request opinions about specific circumstances which arise in the future but which may relate to his or her past government service. In any event, the requestor is certainly not prohibited from working for the firm after leaving state government, and any potential conflicts which may arise under Section 25-4-105(3)(e) would, at most, preclude the requestor from working for compensation on specific matters but would not affect others in the same firm.

MISSISSIPPI ETHICS COMMISSION

BY: _____
Tom Hood, Executive Director and
Chief Counsel