

## **Ethical Requirements for Government Officials**

### **Conflicts of Interest**

The matter of conflicts of interest with regard to the office of County Supervisor is principally governed by Section 109 of the Mississippi Constitution of 1890 and the Mississippi Ethics in Government Act, Miss. Code Ann. §§25-4-1 through 25-4-119 (Supp. 1990), as amended, as well as the separation of powers provisions set forth in Sections 1 and 2 of the Mississippi Constitution of 1890.

### **Section 109**

Section 109 of the Mississippi Constitution of 1890 provides:

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.

### **Mississippi Ethics in Government Act**

It was pursuant to this constitutional provision that the Mississippi Legislature enacted the Ethics in Government Act, and established the Mississippi Ethics Commission as the lead agency to administer, interpret and promote enforcement of the Act, key sections of which are discussed below. All proceedings and records of the Mississippi Ethics Commission “shall be kept confidential.”<sup>6</sup> A defendant in any trial for violation of provisions of the Act shall have the right to trial by jury, although in an appropriate case the summary judgment procedure provided by Rule 56 of the Mississippi Rules of Civil Procedure may be invoked as in any other civil proceeding in circuit court.<sup>7</sup>

### **Statements of Economic Interest**

All Supervisors are required to file statements of economic interest as provided by Miss. Code Ann. §25-4-25 (Supp. 1990), including among other information the following:

- All other occupations of such person and his spouse during the preceding calendar year and up to the

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<sup>6</sup>*Mississippi Ethics Commission v. Committee on Professional Responsibility of Mississippi Bar*, 672 So. 2d 1222 (Miss. 1996)(Commission is not authorized, however, to disobey a properly ordered subpoena from the Mississippi Supreme Court, issued at the behest of the Committee on Professional Responsibility)..

<sup>7</sup>*Towner v. Moore ex rel. Quitman County Sch. Dist.*, 604 So. 2d 1093 (Miss. 1992).

date of filing.

- The positions held by such person or his spouse during the preceding calendar year and up to the date of filing in any business, partnership or corporation organized for profit, listed by name and address.

- The names and addresses of all business or corporations in which such person or his spouse has or had an interest during the preceding calendar year and up to the date of filing which is equal to ten (10%) percent or more of all interests in any such business.

- Types of the gross income sources of such person or his spouse for the preceding calendar year in excess of Twenty-Five Hundred (\$2500.00) Dollars, including the name of the general type of business or enterprise and the nature of income, whether salary, fees, dividends, interest, profit, commissions, royalty, rent or other.

- All retainers listed by type, but not amount, received by each person or his spouse during the preceding calendar year and up to the date of filing.

- A listing of all public bodies for which he or his spouse received compensation in excess of One Thousand (\$1,000.00) Dollars during the preceding calendar year.

### **Prohibited Acts, Relationships and Interests**

Miss. Code Ann. §25-4-105 (Supp. 1994) describes the actions, activities and business relationships which are prohibited or authorized by the Ethics in Government Act, as follows:

- (1) No public servant shall use his official position to obtain pecuniary benefit for himself other than that compensation provided for by law, or to obtain pecuniary benefit for any relative or any business with which he is associated.
- (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, 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.
  - (b) Be a purchaser, direct or indirect, at any sale made by him in his official capacity or by the governmental entity of which he is an officer or employee, except in respect of the sale of goods or services when provided as public utilities or offered to the general public on a uniform price schedule.
  - (c) Be a purchaser, direct or indirect, of any claim, certificate, warrant or other

- security issued by or to be paid out of the treasury of the governmental entity of which he is an officer or employee.
- (d) Perform any service for any compensation during his term of office or employment by which he attempts to influence a decision of the authority of the governmental entity of which he is a member.
  - (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.
- (4) Notwithstanding the provisions of subsection (3) of this section, a public servant or his relative:
- (a) May be an officer or stockholder of banks or savings and loan associations or other such financial institutions bidding for bonds, notes or other evidences of debt or for the privilege of keeping as depositories the public funds of a governmental entity thereof or the editor or employee of any newspaper in which legal notices are required to be published in respect to the publication of said legal notices.
  - (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 an officer or employee 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 an officer or employee 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 or services involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws.
  - (c) May be a subcontractor with any authority of the governmental entity other than the authority of the governmental entity of which he is an officer or employee or have a material financial interest in a business which is a subcontractor with any authority of the governmental entity other than the authority of the governmental entity of which he is an officer or employee where the primary contract is let to the lowest and best bidder after competitive bidding or 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.
  - (d) May be a contractor, subcontractor or vendor with any authority of the governmental entity of which he is an officer or employee 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 an officer or employee 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.
  - (e) May purchase securities issued by the governmental entity of which he is an

- officer or employee if such securities are offered to the general public and are purchased at the same price as such securities are offered to the general public.
- (f) May have an interest less than a material financial interest in a business which is a contractor, subcontractor or vendor with any governmental entity.
  - (g) May contract with the Mississippi Veteran's Home Purchase Board, Mississippi Housing Finance Corporation, or any other state loan program, for the purpose of securing a loan; however, public servants shall not receive favored treatment.
  - (h) May be employed by or receive compensation from an authority of the governmental entity other than the authority of the governmental entity of which the public servant is an officer or employee.
  - (i) If a member of the Legislature or other public servant employed on less than a full-time basis, may represent a person or organization for compensation before an authority of the governmental entity other than an authority of the governmental entity of which he is an officer or employee.
- (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.
  - (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.
  - (7) Any person violating the provisions of this section shall be punished as provided for in Sections 25-4-109 and 25-4-111.

A number of Supreme Court decisions and Advisory Opinions issued by the Mississippi Ethics Commission have helped clarify the scope and applicability of the Ethics in Government Act.

### **Meaning of “Contractor” and “Member” of Board**

In *Moore ex rel Chickasaw County v. McCullough*, 633 So. 2d 421 (Miss. 1993), the Mississippi Ethics Commission sued McCullough, the Chancery Clerk of Chickasaw County, to recover interest payments as a pecuniary benefit obtained under a lease-purchase agreement in violation of §25-4-105(3)(a). The facts of the case were that the Board of Supervisors had accepted a bid from a supply company on a lease-purchase basis for a used front-end loader for \$70,000.00 at 8 percent interest over a 60 month term, with monthly payments by the County of \$1,419.35. On the same day that a lease-purchase agreement was executed by the supply company and the Board of Supervisors, the supply company assigned the lease-purchase agreement to M & H Loans, which was in effect the clerk, Durwood McCullough, and M & H Loans received monthly payments of \$1,419.25 from the County under the lease-purchase agreement from October 1988 through March 1990, totally \$25,548.30, of which \$7,392.84 was interest. The trial court dismissed the action, finding

that the assignment of the lease-purchase agreement to McCullough did not amount to a violation of §25-4-105(3)(a), and the Mississippi Supreme Court upheld the lower court's decision to dismiss the action based on the conclusion that there was no violation of that statute. In its opinion the Court found there was no authority for the view that an assignment of a contract to a public servant's business violates the statute, and that in this instance neither the Chancery Clerk himself nor his business, M & H Loans, could be termed a contractor, subcontractor or vendor with the County. The Court also held that a public servant with purely ministerial duties and with no power to vote on matters considered by the governmental entity with which he is associated is not considered a "member" of that entity as that term is used in §25-4-101, et seq.

In related federal proceedings, *United States v. McCullough*, 760 F. Supp. 101 (N.D. Miss. 1991), the U. S. District Court concluded that there was no conflict between M & H Loans' purchase of the lease agreement and §25-4-105, since *McCullough*, through M & H Loans, was neither a contractor with the County nor did he have a material financial interest in a business which was a contractor with the County. The federal court also concluded that for the government to attempt to interpret §25-4-105 so as to make a prosecutable offense out of the Chancery Clerk's acts was overreaching and beyond the intent of the writers of the statute.

#### **Requesting Advisory Opinions from the Mississippi Ethics Commission**

Advisory opinions may be requested and obtained by Supervisors and other public officials required to file a Statement of Economic Interest from the Mississippi Ethics Commission as to whether certain prospective actions or matters are ethical or prohibited by §109 or the provisions of the Mississippi Ethics in Government Act.