

# **MISSISSIPPI ETHICS COMMISSION**

**Certified Mississippi Purchasing  
Agent (CMPA) Program**

**Ethics in Government**

# Primary Areas of Jurisdiction for the Ethics Commission

- Ethics in Government Law
- Public Records Act
- Open Meetings Act

# **ETHICS IN GOVERNMENT LAW**

# **ETHICS COMMISSION ROLES** **UNDER ETHICS IN GOVERNMENT** **LAW:**

- 1. ISSUE ADVISORY OPINIONS**
- 2. ENFORCE ETHICS LAWS (COMPLAINTS)**
- 3. FILE STATEMENTS OF ECONOMIC INTEREST**

# MISSISSIPPI'S ETHICS IN GOVERNMENT LAW

"The Legislature hereby declares it essential to the proper operation of democratic government that public officials and employees be independent and impartial; that governmental decisions and policy be made in the proper channels of the governmental structure; that public office not be used for private gain other than the remuneration provided by law; that there be public confidence in the integrity of government; and that public officials be assisted in determinations of conflicts of interest."

*Section 25-4-1, Miss. Code of 1972*

# Eight Basic Prohibitions in Ethics Law

- Board Member Contracts
- Use of Office
- Contractor, Subcontractor or Vendor
- Purchasing Goods and Services
- Purchasing Securities
- Insider Lobbying
- Post Government Employment
- Insider Information

# Board Member Contracts

## Section 25-4-105(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.

*(This prohibition is also in Section 109 of the Mississippi Constitution)*

# Advisory Opinion 12-116-E

An insurance agency that employs a candidate for alderman may not serve as agent of record for a municipality if the candidate is elected. Section 109, Miss. Const. of 1890, and its statutory parallel, Section 25-4-105(2), Miss. Code of 1972, prohibit a member of a public board from having any direct or indirect interest in a contract funded or otherwise authorized by that board during his or her term or for one year thereafter.

# Advisory Opinion No. 10-095-E

A company may not continue to do business with the school district if one of the company's employees is elected to the school board of trustees. Section 109 and Section 25-4-105(2) prohibit a member of a public board from having any direct or indirect interest in a contract which is funded or otherwise authorized by that board during his or her term or for one year thereafter.

# **Use of Office**

## **Section 25-4-105(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**.

# Section 25-4-105(1)

- The statute does not require a public servant misuse his or her position.
- To avoid a violation, a public servant must totally and completely *recuse* himself or herself from the matter giving rise to the conflict.
- A board member must leave the board meeting before the matter comes up for discussion, may only return after the matter is concluded, and must not discuss the matter with anyone.
- An abstention is considered a vote with the majority and is not a recusal. The minutes of the meeting should accurately reflect the recusal.
- **Recusal *does not* prevent other violations.**

# Section 25-4-103(q)

**“Relative”** is the public servant’s

- spouse,
- child,
- parent,
- sibling (brothers and sisters) or
- spouse of a relative (in-laws).

# Section 25-4-103(c)

- 'Business with which he is associated'**  
means public servant or his relative is
- officer, director, owner, partner, employee
  - holder of more than ten percent (10%) of the fair market value or
  - from which he or his relative derives more than \$2,500 in annual income or
  - over which such public servant or his relative exercises control.

# Advisory Opinion 13-081-E

A company owned by an alderman's financially independent brother-in-law may serve as a vendor to the city. If the alderman and the brother-in-law are indeed financially independent, no violation of Section 109 or Section 25-4-105(2) should occur. **However, the alderman must recuse himself or herself from any matter which would result in a pecuniary benefit to the brother-in-law's business to comply with Section 25-4-105(1).**

# Advisory Opinion 10-066-E

The chief of police may not send police cars to an auto repair shop owned by his son-in-law. Section 25-4-105(1) prohibits the chief from using his position to obtain or attempt to obtain any pecuniary benefit for his son-in-law or his son-in-law's business.

# Advisory Opinion 15-058-E

A company which employs the fire chief's father may not serve as a contractor and vendor to the county fire department. Due to public policy concerns which arise under Section 25-4-101 and restrictions imposed by Section 25-4-105(1), the company should not serve as a contractor or vendor to the fire department.

# Advisory Opinion 09-013-E

A city may purchase from a business owned by the child of a city employee when the employee will have no involvement in the purchase. If the city contracts with an independent firm to write specifications for the purchase, the firm has no contact with the employee and the employee otherwise fully recuses himself or herself from the transaction, then no violation of Section 25-4-105(1), Miss. Code of 1972, should occur.

# Advisory Opinion No. 09-032-E

A department of a university may not make purchases from a business which employs the department head's spouse when the department head approves all purchases of the department. The business is one with which the department head is associated, and the department head may not use his or her position to benefit that business, as proscribed in Section 25-4-105(1), Miss. Code of 1972. Moreover, the department head may not have a material financial interest in a business which is a vendor to the university, pursuant to Section 25-4-105(3)(a).

# Advisory Opinion No. 12-095-E

An employee of a school district may not accept a gift from a contractor to the school district for attending an informational session concerning the contractor's contract with the district. Pursuant to the public policy codified in Section 25-4-101, Miss. Code of 1972, and the potential for violations of Section 25-4-105(1) and (3)(d), the public servant should deliver the gift to the school district.

# **Contractor, Subcontractor, Vendor**

## **Section 25-4-105 (3)(a)**

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.

# Advisory Opinion No. 10-086-E

A police chief, who is a veterinarian, may not provide services to the city in the form of boarding and disposing of stray animals pursuant to Section 25-4-105(3)(a) if other reasonably available contractors can be found in the area after a diligent search. Under no circumstances may the police chief use his position to obtain or attempt to obtain any monetary benefit for himself or his business, under Section 25-4-105(1).

# Advisory Opinion No. 11-019-D

A member of one state board may have a material financial interest in a business which does business with a separate state agency. Section 25-4-105(3)(a) prohibits a state official from having a material financial interest in a business which is a contractor, subcontractor or vendor to state government. However, Section 25-4-105(4)(h) provides an exception which allows a state official to contract with a separate "authority" of state government, such as a separate state agency.

# Purchaser Prohibition

## Section 25-4-105(3)(b) (goods/services)

(3) No public servant shall: (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.

# Purchaser Prohibition

## Section 25-4-105(3)(b)

For example, this subsection prohibits a government employee or official from purchasing anything at an auction or other sale conducted on behalf of his or her governmental entity.

# Post Government Employment

## Section 25-4-105(3)(e)

(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.

# Post Government Employment

## Section 25-4-105(3)(e)

- Applies after someone leaves government.
- If you worked on a matter while you were in government, you cannot work on that same matter in the private sector.
- But a former government employee can work for a government contractor on other matters.

# Advisory Opinion No. 10-071-E

A former state agency head may be employed by a contractor to the agency to work in other states but cannot work in Mississippi or with his former agency until the current contract is no longer in effect, pursuant to Section 25-4-105(3)(e).

# Advisory Opinion No. 10-043

A city employee may retire and begin working for a private company which may do business with the city in the future but has not done so in the past. Because the future employer has done no business with the city in the past and will not engage in any ongoing contracts or projects, no violation of Section 25-4-105(3)(e) should occur if the city employee retires, begins working for the company and then sells merchandise to the city. Pursuant to Section 25-4-105(3)(a), the company should do no business with the city until the city employee is no longer employed by the city.

# **Insider Information**

## **Section 25-4-105(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.**

# Mississippi Procurement Manual

## Chapter 9: Ethics in Public Contracting

<http://www.dfa.state.ms.us/Purchasing/documents/ProcurementManual.pdf>

- Supplements the Ethics Law
- Does not replace Ethics Law
- Should not contradict Ethics Law

# Mississippi Procurement Manual

## Gratuities

It shall be a breach of this regulation for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or proposal thereof.

# Mississippi Procurement Manual

## Gratuities

In addition, the gratuity or offer of employment must be made in relation to any proceeding or application, request for a ruling, determination, claim or controversy, or other particular matter, to constitute a breach, and in connection with any:

- (1) Decision
- (2) Approval
- (3) Disapproval
- (4) Recommendation
- (5) Preparation of any part of a program requirement or a purchase request
- (6) Action to influence the content of any specification or procurement standard
- (7) Rendering of advice
- (8) Investigation
- (9) Auditing
- (10) Other advisory capacity

# Mississippi Procurement Manual

## Gratuities

### ■ Family

- This prohibition extends to the giving of gratuities to anyone on the state employee's or former state employee's behalf such as a member of that employee's immediate family

# Mississippi Procurement Manual

## Gratuities

### When Prohibition Against Gratuities Not Applicable

Section 9.105, Gratuities, does not prohibit:

- (1) The solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative when the circumstances make it clear that the motivation for the transaction is unrelated to any procurement or program requirement with the State and is based upon a personal or family relationship;
- (2) The participation in the activities of, or the acceptance of an award for, a meritorious public contribution or achievement from a charitable, religious, professional, social, or fraternal organization, or from a non-profit educational, recreational, public service, or civic organization;
- (3) Acceptance only on current customary terms of finance of a loan from a bank or other financial institution for proper and usual activities of state employees, such as home mortgage loans; or
- (4) Acceptance of unsolicited advertising products or promotional material, such as pens, pencils, note pads, calendars, and other such items.

# Contact Us

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# Activity

**Break into groups to complete the  
“Ethics Activity”**

# Review Questions

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