

Chapter 5

Open Meetings, Public Records, Conflicts of Interest

Tom Hood

The Mississippi Ethics Commission has the following duties under the Ethics in Government Law:

- Provide forms for the online filing of financial disclosures by public officials and candidates and make the completed forms available for public inspection on the internet;
- Receive sworn complaints and subsequently investigate alleged violations of the law by public servants; and
- Issue written advisory opinions to public servants with regard to any standards of conduct set forth in the conflict-of-interest laws.

The Ethics Commission also enforces the Open Meetings Act and the Public Records Act and has limited roles under the Campaign Finance Law and the Lobbying Law.

Open Meetings Act

The Mississippi Open Meetings Act was adopted in 1975 and is recorded in Chapter 41, Title 25 of the Mississippi Code of 1972, Annotated. Code, § 25-41-1 states, "It being essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into the making of public policy, it is hereby declared to be the policy of the State of Mississippi that the formation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided herein."

The Basics

- Public meetings must be open to the public.
- Executive session must follow a specific procedure and only for certain reasons.
- Notice of meetings must be given, and minutes must be kept.
- Social gatherings are not "meetings" unless official business is discussed.
- Act never requires executive session.

Definitions

- "Public body" is any board, commission, authority, council, departmental agency, bureau or other entity of the state, political subdivision or municipality or committee thereof.
- "Meeting" is any gathering of a quorum of the public body, whether in person or by phone, to discuss a matter under the authority of the public body.

Notice

- Regular meetings of some public bodies are set in statute.
- For recess, adjourned, interim or special meetings, notice must be posted in building where meeting is held within one hour of calling the meeting.
- Copy of the notice must be placed in the minutes.

Minutes

- Minutes must be kept for all meetings, whether in open or executive session.
- Minutes must be recorded within 30 days after meeting.
- Minutes must be available for public inspection during regular business hours.
- Minutes must show
 - Members present and absent
 - Date, time, and place of meeting
 - Accurate recording of any final actions
 - A record, by individual member, of all votes taken
 - Any other information requested by the public body

Telephonic Meetings

- All members can participate by phone or video conference.
- They can be in different locations, so long as the usual meeting room is open to the public and has equipment, like a speakerphone, allowing everyone to hear.
- Meeting must be suspended if phone service is interrupted.
- Roll call votes are required.

Executive Session Procedure

- By majority vote, public body may enter closed session to discuss whether to declare executive session. A member must make a motion for a closed determination, but the motion does not require a second.
- A 3/5ths vote of the public body is required to declare executive session.
- Public body must publicly announce the reason for entering executive session. That reason and the vote must be recorded in minutes.

Executive Session Reasons

Executive session may be held for listed reasons only:

- Personnel matters relating to job performance, character, professional competence, or physical or mental health of a person holding a specific position - The Mississippi Supreme Court has held that personnel matters are restricted to employees hired by the board and not the officials themselves. *Hinds County Board of Supervisors v. Common Cause*, op. cit.
- Litigation, prospective litigation, or issuance of an appealable order, where open discussion would have a detrimental effect on the board's litigating position.
- Security personnel, plans or devices
- Investigations
- The legislature may enter an executive session for any reason.
- Cases of extraordinary emergency
- Prospective purchase, sale, or leasing of lands
- Discussions between a school board and individual students who attend a school within the jurisdiction of such school board or the parents or teachers of such students regarding problems of such students or their parents or teachers.
- Preparation of professional licensing exams
- Location, relocation, or expansion of a business
- Budget matter which may lead to the termination of employee
- Certain PERS board investments
- Certain discussions of public hospital boards

Enforcement Procedure for Open Meetings Act

Code, § 25-41-15 empowers the Ethics Commission to enforce the Open Meetings Act as follows:

- Complaint is filed with Commission. Complaint is sent to public body, which shall respond. Commission can dismiss complaint or hold a hearing.
- Ethics Commission may order public body to comply with law.
- Ethics Commission may impose a civil penalty upon the individual members of the public body found to be in violation of the "Open Meetings Act" in a sum not to exceed \$500.00 for a first offense and \$1,000.00 for a second or subsequent offense.
- Ethics Commission can mediate Open Meetings disputes.
- Either party may appeal *de novo* or enforce Ethics Commission order in local chancery court.

Open Meetings Cases

Case No. M-15-001

Noonan vs. Bay St. Louis-Waveland Sch. Bd.

- Entering into an executive session to "interview potential architects in response to the solicitation by the Board of Trustees" is not a valid reason to enter into executive session.
- The Board of Trustees did not approve the contract in executive session.
- The reason provided by a public body to the public must be "meaningful" and stated with "sufficient specificity."
- The board could have considered delegating the face-to-face interview process to the school district's Superintendent or to another member of the board's staff, who would not be required to deliberate or meet in an open forum pursuant to the Open Meetings Act.

Case No. M-14-001

Williams vs. Lauderdale Co. Bd. of Supv.

- When a board holds separate gatherings with the same consultant and discusses the same matter with each group a "meeting" has taken place.
- Must provide notice and take minutes.

Case No. M-12-001

Hood vs. Humphreys Co. Bd. of Supv.

- Board must make "closed determination" before voting on executive session.
- Board must provide a meaningful and specific reason for entering executive session.
- Minutes must record votes by "individual member."

Case No. M-10-007*Townes vs. Leflore Co. Sch. Bd.*

- Public body may make and enforce reasonable rules for conduct of persons attending meetings.
- Public body is not required to allow members of the public to speak at meetings.

Case No. M-10-002*Gates vs. New Augusta Bd. Of Ald.*

- Board must make “closed determination” before voting on executive session.
- Minutes must record votes by “individual member.”
- When vote is not unanimous, minutes must name each individual member and list how each voted.

Case No. M-09-005*Cooper vs. Adams Co. Bd. Of Supv.*

- “Personnel matters” exception does not apply to issue of funding agency simply because board members disapprove of agency employees.
- Board may not simply announce “personnel” as reason for entering executive session.
- Board must announce which exception applies to each individual matter discussed in executive session.

Public Records Act

The Mississippi Public Records Act was adopted in 1983 and is recorded in Chapter 61, Title 25 of the Mississippi Code of 1972, Annotated. Code § 25-61-1 states, “It is the policy of the legislature that public records must be available for inspection by any person unless otherwise provided by this act. Furthermore, providing access to public records is a duty of each public body and automation of public records must not erode the right to access to those records. As each agency increases its use of and dependence on electronic record keeping, each agency must ensure reasonable access to records electronically maintained, subject to the rules of records retention.”

The Basics

- All documents and other records used, prepared, possessed, or retained by state or local government, including electronic records, related to government business are public records.
- Everyone has the right to inspect or copy.
- Government can recoup actual cost of retrieving and/or copying public records.
- Many records are exempted.
- If record contains exempt material, government may have to redact and copy.

Enforcement Procedure

Code, § 25-61-13 sets forth procedure for enforcing the Public Records Act.

- Any person may file a Public Records complaint with the Ethics Commission about whether a public body has violated the Public Records Act by denying a request for records or charging excessive fees.
- A copy of the complaint will be sent to the public body, which can respond.
- The Commission can issue a decision dismissing the complaint or ordering the public body to produce records.
- Ethics Commission can fine public officials and employees \$100.00 and order payment of attorney fees.
- Either party may appeal *de novo* or enforce Ethics Commission order in local chancery court.

Response and Costs

- Public body must respond to public records request within one working day, if no policy is in place.
- Public body may adopt a policy allowing up to seven working days to respond.
- Denial of request must be in writing.
- Public body may require prepayment of reasonably calculated actual costs of searching, reviewing, redacting, duplicating, and mailing public records.

Confidential Business Information

- Public records furnished by third parties that contain trade secrets or confidential commercial or financial information are exempt from disclosure.
- Public body must give notice to third party which must have reasonable time to obtain protective order.
- If protective order is not obtained by third party, then public body must produce.

Other Exemptions

- Academic records exempt from public access, see Code, § 37-11-51.
- Appraisal records exempt from access, see Code, § 31-1-27.
- Archaeological records exempt from public access, see Code, §39-7-41.
- Attorney work product exemption, see Code, §25-1-102.
- Birth Defects Registry, see Code, §41-21-205.
- Bureau of vital statistics, access to records, see Code, §41-57-2.
- Charitable organizations, registration information, exemption from public access, see Code, §79-11-527.
- Concealed pistols or revolvers, licenses to carry, records, exemption, see Code, §45-9-101
- Confidentiality, ambulatory surgical facilities, see Code, §41-75-19.
- Defendants likely to flee or physically harm themselves or others, see Code, §41-32-7.
- Environmental self-evaluation reports, public records act, exemption, see Code, § 49-2-71.
- Hospital records, Mississippi Public Records Act exemption, see Code, §41-9-68.
- Individual tax records in possession of public body, exemption from public access requirements, see Code, §27-3-77.
- Insurance and insurance companies, risk-based capital level requirements, reports, see Code, §83-5-415.
- Judicial records, public access, exemption, see Code, §9-1-38.
- Jury records, exempt from public records provisions, see Code, §13-5-97.
- Licensure application and examination records, exemption from Public Records Act, see Code, §73-52-1.
- Medical examiner, records and reports, see Code, §41-61-63.
- Personnel files exempt from examination, see Code, §25-1-100.
- Public records and trade secrets, proprietary commercial and financial information, exemption from public access, see Code, §79-23-1.
- Workers' compensation, access to records, see Code, §71-3-66.

Model Public Records Rules And Comments

- Nonbinding unless you adopt them
- Designed for use by all state and local agencies
- Can be modified to suit your needs
- Provide guidance on questions that are not answered in the law and have not been addressed by courts
- Posted on the Ethics Commission website.

Public Records Cases

R-13-023: Ward vs. City of Tupelo

The fact that text messages reside on the mayor's personal cell phone is not determinative as to whether text messages must be produced. Rather, it is the purpose or use of the text

message that is determinative. Any text message used by a city official "in the conduct, transaction or performance of any business, transaction, work, duty or function of [the city], or required to be maintained by [the city]" is a public record subject to the Act, regardless of where the record is stored. However, purely personal text messages having absolutely no relation to city business are not subject to production under the Act. Documents described by the city as "transitory communications" should be reviewed for production on a case-by-case basis. Any doubt about whether records should be disclosed should be resolved in favor of disclosure. *Harrison County Development Commission v. Kinney*, 920 So.2d 497, 502 (Miss. App. 2006).

R-14-030: McKinney vs. Carroll Co. Chancery Clerk

No public body adopt procedures that will authorize the public body to produce or deny production of a public record later than seven working days from the date of the receipt of the request to produce the record. A public body may "establish and collect fees reasonably calculated to reimburse it for, and in no case to exceed, the actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records." Any staff time or contractual services included in actual cost can be included in the cost but must be billed at the pay scale of the lowest level employee or contractor competent to respond to the public records request. Any such fees shall be collected by the public body in advance of complying with the request.

R-14-015: McKinney vs. Carroll Co. Sheriff

A requestor must request an identifiable record or class of records before a public body can respond. An "identifiable record" is one that agency staff can reasonably locate. An "identifiable record" is not a request for "information" in general. When a public body receives a broad or vague request, it should seek clarification of the request from the requestor. The requestor should clarify the request in a good faith attempt to describe identifiable records. Both parties must work together to properly identify and produce responsive records. However, if a request is not for identifiable records, the request can be denied. See Mississippi Model Public Records Rule 4.2 (2) & (3).

R-14-003: Stallworth vs. Harrison Co. Coroner

The autopsy report and photographs sought from the office of coroner by Stallworth are investigative reports that fall within the general definition and several of the enumerated examples listed above. See Miss. A.G. Op. 2008-00142, 2008 WL 2687390 (June 6, 2008) (explaining autopsy report constitutes "investigative report" exempt from Public Records Act). A criminal defendant is, of course, provided access to additional law enforcement records under the rules of discovery in

criminal cases. See Rule 9.04, Uniform Rules of Circuit and County Court. A criminal defendant may also be entitled to certain discovery while pursuing post-conviction relief. See, e.g., Code, § 99-39-15.

R-13-005-010: MS Crime Crier vs. Various Sheriff Depts:

The names of and charges against persons arrested by the sheriff's departments are part of their Jail Dockets and are public record. However, the mug shot, the picture of the arrested individual, is not listed as an item to be recorded in the Jail Docket. Additionally, a picture, by its very nature, cannot qualify as a "narrative description" that makes up an "incident report." Accordingly, to the extent that the public records requests seek information outside of what is required to be recorded in the Jail Docket and contained in an incident report, the sheriff's departments will need to, in its discretion, make an evaluation and determine on a case-by-case basis whether to release the mug shots, as provided in Code, § 25-61-12(2)(a).

R-10-001: Webster vs. Southaven Police Dept.

Police department policy and procedure manuals are generally not exempt "investigative reports." Internal affairs complaints may be exempted "personnel records."

R-10-013: Thomas vs. City of Gulfport

A requestor must request an "identifiable record" and not simply ask questions or request information. Moreover, a public body is not required to create a public record which does not exist in response to a request.

R-09-007: Garner vs. Office of the State Treasurer

State agency fulfilled its obligation to provide "reasonable access" to public records by posting a searchable electronic version of public records on the agency's web site.

Mississippi Ethics Laws

The Mississippi Ethics Commission administers Title 25, Chapter 4, Mississippi Code of 1972, known as the Ethics in Government Law: Article 1, Mississippi Ethics Commission and Article 3, Conflict of Interest and Improper Use of Office. The Commission also enforces Section 109, Miss. Constitution of 1890, which forms the historic foundation of Mississippi's Ethics in Government Laws.

There are eight basic prohibitions contained in Mississippi's Ethics in Government Laws:

- Board Member Contracts (Section 109, Miss. Const. of 1890, and Code, § 25-4-105(2))
- Use of Office—Code, § 25-4-105(1)
- Contracting—Code, § 25-4-105(3)(a)
- Purchasing Goods and Services—Code, § 25-4-105(3)(b)
- Purchasing Securities—Code, § 25-4-105(3)(c)
- Insider Lobbying—Code, § 25-4-105(3)(d)
- Post Government Employment—Code, § 25-4-105(3)(e)
- Insider Information—Code, § 25-4-105(5)

Section 109, Miss. Constitution of 1890

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.

Notes

- Section 109 only applies to members of boards and the Legislature.
- Notice the prohibition is against an *interest*, not against an act.
- There must be some sort of contract. It need not be a written contract.
- The conflict arises when the *board* funds or otherwise authorizes the contract. *Even if the individual member does not vote*, he or she may be in violation.
- The prohibition continues until a former official has been out of office for one year.

Section 25-4-105(1)—Use of Office

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.

Notes

- The statute does not require a public servant to 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.

“Business with which he is associated” means public servant or his relative is

- officer, director, owner, partner, employee or
- holder of more than 10 percent 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.

“Relative” is the public servant’s:

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

Section 25-4-105(3)(a)—The Contractor Prohibition

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.

“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).

“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.

The following is NOT a “Material Financial Interest”:

- Ownership of less than 10 percent in a business with aggregate annual net income to the public servant less than \$1,000.00;
- Ownership of less than 2 percent in a business with aggregate annual net income to the public servant less than \$5,000.00;
- Income as an employee of a relative if neither the public servant or relative is an officer, director or partner and

any ownership interest would not be material under subparagraph 1 or 2; or

- Income of the spouse of a public servant when the spouse is a contractor, subcontractor or vendor and the public servant exercises no control, direct or indirect, over the contract.

Section 25-4-105(3)(b)—Purchasing Goods or Services

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.

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.

Section 25-4-105(3)(c)—Purchasing Securities

No public servant shall: (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.

Section 25-4-105(3)(d)—Inside Lobbying

No public servant shall: (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.

Section 25-4-105(3)(e)—Post Government Employment

No public servant shall: 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.

- 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.

Section 25-4-105(4)—Exceptions to Subsection (3)

- These exceptions only apply to Subsection (3) and not to any other provisions of law.
- Can apply to a government employee but does not protect a board member from a violation of Section 109 or Code, §25-4-105(2). The employee would still have to recuse himself or herself from any action which might otherwise violate Code, §25-4-105(1).

Section 25-4-105(5)—Insider Information

No person may intentionally use or disclose information gained during 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.

- Comes up most often in connection with economic development.
- Nonpublic information may not be revealed if it might result in a monetary benefit to anyone.
- Could apply to a former public servant.

The Complaint Procedure for the Mississippi Ethics In Government Law

General

The scope of the Commission's authority to conduct investigations is limited to:

- Violations of the Ethics in Government Laws by public servants, including persons elected, appointed or employed by the State of Mississippi or local governments; and
- Failure to file or failure to file completely and accurately all financial disclosure information required in the Ethics in Government Laws.

Complaints

Before the Ethics Commission can investigate, someone must file a sworn complaint with the Commission alleging a violation of law by a public official or public employee. All complaints, investigations and investigative records are confidential until and unless the Commission votes to remove confidentiality.

Investigations—Code, § 25-4-21

If a complaint filed with the Ethics Commission alleges a violation of law by a public servant, the Commission will authorize a confidential investigation of the complaint. During an investigation, the Commission is empowered to administer oaths upon witnesses and issue and serve subpoenas on witnesses or to produce records. When a complaint does not allege a violation of law, the Commission may dismiss the complaint without investigating.

Once the investigation is complete, the Commission must confidentially send a copy of the complaint to the person against whom it was filed, the respondent. The Commission is not able to protect the identity of the person who filed

the complaint. The Commission must also take the following actions when applicable:

- If the complaint concerns a public official in the legislative branch, the Commission must refer the complaint, confidentially, to the public official and to the appropriate committee of the House of Representatives or the Senate having jurisdiction over the ethical conduct of its members and employees.
- If the complaint concerns a public official in the judicial branch, the Commission must refer the complaint, confidentially, to the public official and to the Commission on Judicial Performance or the Chief Justice of the Supreme Court.
- If the complaint concerns a public official in the executive branch or persons not covered in the paragraphs above, then the Commission must refer the complaint, confidentially, to the public official and to the head of the department or agency, if the person is in the executive branch, or, for other public officials, to the person about whom the complaint is filed.

Anyone receiving a complaint from the Ethics Commission has thirty days within which to respond to the complaint. After receiving the response to the complaint or, if no response is received after thirty days, the Commission may, *in its discretion*, terminate the matter or proceed as follows:

- The Commission may investigate the matter further.
- The Commission may enter a voluntary settlement agreement with the respondent in which the Commission determines an appropriate disposition has occurred and terminates the case.
- If the investigation produces probable cause to believe a violation of law has occurred, the Commission may set an administrative hearing of the matter, after which the Commission may impose certain penalties.
- The Commission may also refer the complaint with any evidence gathered during the investigation to the Attorney General and to the district attorney having jurisdiction, with a recommendation that it be considered for presentation to the grand jury.

Ethics Hearings

The Commission may enforce the Ethics in Government Laws through administrative hearings held before the Commission or an independent hearing officer, to determine whether a respondent violated the law and, if so, what penalty or penalties should be imposed, if any. Hearings in ethics cases are conducted according to the Mississippi Rules of Civil Procedure and the Mississippi Rules of Evidence. A violation must be proven to the Commission by clear and convincing evidence.

Penalties

An elected official can be censured by the Commission and fined up to \$10,000.00. The Commission may also recommend to the Circuit Court for Hinds County that the elected official be removed from office.

A nonelected public servant can also be censured by the Commission and fined up to \$10,000.00. The Commission may also recommend to the Circuit Court for Hinds County that the nonelected public servant be removed from office, suspended, or subjected to a demotion or reduction in pay.

The Commission may also order restitution or other equitable or legal remedies to recover public funds or property unlawfully taken, as well as unjust enrichment, although not public funds. Any pecuniary benefit received by a public servant in violation of the Ethics in Government Laws may be declared forfeited by the Commission for the benefit of the governmental entity injured.

In the event a public servant does not appeal the decision or recommendation of the Commission, the Commission may petition the Circuit Court for Hinds County for the removal, suspension, demotion or reduction of pay of the public servant as provided by law.

Any contract made in violation of the Ethics in Government Laws may be declared void by the governing body involved or by a court of competent jurisdiction, and the contractor or subcontractor will receive no profit.

The Attorney General, the Commission, or any governmental entity directly injured by a violation of the Ethics in Government Laws may bring a separate civil lawsuit against the public servant or other person or business violating the provisions of this article to recover damages suffered because of such violation. Further, any pecuniary benefit received by or given by a public servant in violation of the Ethics in Government Laws must be declared forfeited by a circuit court of competent jurisdiction for the benefit of the governmental entity injured. In the discretion of the court, any judgment for damages or forfeiture of pecuniary benefit may include costs of court and reasonable attorney's fees.

The Ethics in Government Laws do not preclude civil or criminal liability under other laws or causes of action.

Appeals

Any person aggrieved by a decision of the Commission made pursuant to its hearing procedures may appeal to the Circuit Court for Hinds County, Mississippi, and execution of the Commission's decision is stayed upon the filing of a notice of appeal.

Other Penalties—Code, § 25-4-31

Any person who violates the confidentiality of a Commission proceeding is guilty of a misdemeanor and may be fined up to \$1,000 and imprisoned for up to one year. Any person who willfully and knowingly files a false complaint with the Commission or who willfully and knowingly affirms, reports or swears falsely regarding any material matter before the Commission is guilty of a felony and if convicted may be fined \$1,000 to \$10,000 and imprisoned for up to 5 years.

Confidential Records

The Ethics Law provides that "all commission proceedings relating to any investigation shall be kept confidential." The complaint and investigation records are strictly confidential.

All advisory opinions are public except that the request for an advisory opinion shall be confidential as to the identity of the individual making the request. The Commission, before making an advisory opinion public, must make such deletions and changes thereto as may be necessary to ensure the anonymity of the public official and any other person named in the opinion.

The Statement Of Economic Interest

The Statement of Economic Interest is a financial disclosure form filed annually by certain elected and appointed officials in state and local government. It is intended to disclose the sources of a public servant's income so that members of the public know where a public servant's personal financial interests lie. It does not disclose the amount of income a public servant receives. The Statement of Economic Interest promotes compliance with the Ethics in Government Law disclosing potential conflicts of interest. All information disclosed is for the previous calendar year. The form must be filed electronically at the Ethics Commission web site, www.ethics.ms.gov.

Persons Required to File—Code, § 25-4-25

- Persons elected by popular vote, excluding United States Senators and United States Representatives, to any office, whether it be legislative, executive, or judicial, and whether it be statewide, district, county, municipal, or any other

- political subdivision, with the exception of members of boards of levee commissioners and election commissioners;
- Members of local school boards that administer public funds, regardless of whether such members are elected or appointed;
- Persons who are candidates for public office or who are appointed to fill a vacancy in an office who, if elected, would be required to file a statement of economic interest;
- Executive directors or heads of state agencies, by whatever name they are designated, who are paid in part or in whole, directly or indirectly, from funds appropriated or authorized to be expended by the Legislature, and the presidents and trustees of all state-supported colleges, universities, and junior colleges; and
- Members of any state board, commission, or agency, including the Mississippi Ethics Commission, charged with the administration or expenditure of public funds, except for advisory boards or commissions; provided, however, to fulfill the legislative purposes of the chapter, the commission may require, upon a majority vote, the filing of a statement of economic interest by members of an advisory board or commission.
- Executive directors or board members of certain economic development entities (EDDs, REDAs, CDCs, Industrial Council) and airport authorities

Filing Dates—Code, § 25-4-29

Incumbent office holders must file on or before May 1 of each year.

- Candidates for office in primary, special, or general elections must file within fifteen days after deadline for qualification for that office.
- Appointees to offices required to file must submit a disclosure form within thirty days of their appointment.

Contents—Code, § 25-4-27

The statement must include the following information for the preceding calendar year:

- The full name and mailing address of the filer;
- The filer's title, position and offices in government;
- All other occupations of the filer, the filer's spouse or any person over the age of twenty-one who resided in the filer's household during the entire preceding calendar year;
- The names and addresses of all businesses in which the filer, the filer's spouse or any person over the age of twenty-one who resided in the filer's household during the entire preceding calendar year held a position, and the name of the position, if the person: (i) receives more than \$2,500.00 per year in income from the business; (ii) owns 10 percent or more of the fair market value in the business; (iii) owns an ownership interest in the business, the fair market value of

- which exceeds \$5,000.00; or (iv) is an employee, director, or officer of the business;
- The identity of the person represented and the nature of the business involved in any representation or intervention for compensation for any person or business before any authority of state or local government, excluding the courts, on any matter other than uncontested or routine matters. (Applies only to (i) an elected official, (ii) an executive director or head of a state agency or (i) a president or trustee of a state-supported college, university or community or junior college, including members of the State Board for Community and Junior Colleges and the State Board of Institutions of Higher Learning.)
- All public bodies, whether federal, state or local government, from which the filer, the filer's spouse or any person over the age of twenty-one who resided in the filer's household during the entire preceding calendar year received compensation more than \$1,000.00 during the preceding calendar year, whether the compensation was paid directly or indirectly through another person or business.

Required Filings

No person by reason of successful candidacy or assuming additional offices shall be required to file more than one disclosure form in any calendar year, except such official shall notify the commission of such additional offices previously not reported.

Enforcement Procedures—Code, § 25-4-29(2)

- Any person who fails to file a statement of economic interest within thirty days of the date the statement is due shall be deemed delinquent by the commission
- Commission shall give written notice to the person
- Person that is delinquent shall have fifteen days of receiving the written notice to file the statement
- Fine of \$50.00 per day, not to exceed a total fine of \$1,000.00, shall be assessed for each day in which the statement of economic interest is not properly filed.

County Officers and Employees Advisory Opinions

The State conflict of interest laws apply to all county officers and employees. However, certain sections of the conflict-of-interest laws do not apply to all county public servants or do not apply to all county public servants in the same manner. For example, Section 109, Miss. Const. of 1890, and its statutory parallel, Code, § 25-4-105(2), Miss. Code of 1972, only apply to members of boards, commissions and the Legislature. Therefore, these prohibitions apply to county supervisors but do not apply to the chancery clerk or county administrator.

Prior advisory opinions issued by the Mississippi Ethics Commission are effective in assisting county officers and employees in understanding how the state conflict of interest laws will apply to them in certain situations.

All advisory opinions issued by the Ethics Commission since 2006 are available on the commission's website at <https://www.ms.gov/msec/ethics/opinion>. The opinions are fully searchable and can be grouped by subject matter.

The Ethics Commission's authority to issue advisory opinions is set forth in Code, § 25-4-17(i), which provides a public official limited protection from liability only if all facts are presented in writing to the Mississippi Ethics Commission by the public official, the Commission provides a written opinion to the public official referencing those particular facts, and the public official in good faith follows the Commission's written opinion.

Following are summaries of advisory opinions involving county government issued in recent years and grouped by subject category.

County Agency or Department

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 Code, § 25-4-101 and restrictions imposed by Code, § 25-4-105(1), the company should not serve as a contractor or vendor to the fire department.

15-051-E A county may contract with the lowest and best bidder, who is also the spouse of a county employee, when the employee will exercise no control over the contract. When the income is that of the public servant's spouse, and the public servant exercises no control, direct or indirect, over the contract, the public servant has no material financial interest in the business, and the contract will not violate Code, § 25-4-105(3)(a).

15-041-E A county may not purchase property from a company partially owned by a member of the county tourism commission if the commission approves the purchase. Section 109, Miss. Const. of 1890, and Code, § 25-4-105(2), prohibit a member of a public board from having a direct or indirect interest in any contract authorized by the board during the board member's term or for one year thereafter.

15-036-E A county fire coordinator cannot accept a stipend, paid by a town's volunteer fire department, which is funded by a contract between the county and the town. Due to the restrictions in Code, § 25-4-105(1), and public policy concerns under Code, § 25-4-101, the county fire coordinator should not accept the stipend.

15-020-E A county economic development authority may not lease property to a limited liability company partially owned by the authority's executive director due to the potential for violations of Code, § 25-4-105(1), and serious public policy concerns under Code, § 25-4-101.

14-Ω32-E A child of a newly elected supervisor may remain employed by the county youth court. If the parent and child are financially independent, no violation of Section 109, Miss. Const. of 1890, or Code, § 25-4-105(2), will occur, and the parent's recusal will prevent a violation of Code, § 25-4-105(1).

County Coroner/Medical Examiner

15-001-E A county coroner may also serve as director of the county emergency management organization. While Code, § 25-4-105(3)(a) generally prohibits a county official from also serving as a county employee, the exception in Code, § 25-4-104(4)(h) applies because the two offices are separate component units of county government.

13-096-E A deputy sheriff or the office manager for the County Coroner's Office may also serve as Deputy Coroner. The Coroner's Office is a separate "authority" of county government from the Sheriff's Office. Therefore, the exception codified in Code, § 25-4-105(4)(h) will apply, and the deputy sheriff may also serve as deputy coroner without violating Code, § 25-4-103(a). Also, the positions and duties of deputy coroner and office manager could be combined to avoid a violation of Code, § 25-4-105(3)(a).

11-025-E A deputy county coroner may also work for the county E-911 commission because the coroner's office and E-911 commission are separate authorities of county government, the exception codified in Code, § 25-4-105(4)(h) will apply.

11-004-E A state employee may recommend and the county board of supervisors may employ a relative of the county administrator to work for the county office of the state agency under the supervision of the state employee. One cannot hire, recommend or directly supervise one's relative without violating Code, § 25-4-105(1). However, in this case the county administrator will not be hiring, recommending or supervising his or her relative.

10-0Ω2-E A funeral home partly owned by a county supervisor may contract from time to time with the county coroner or county employees. Pursuant to Section 109, Miss. Const. of 1890, and Code, § 25-4-105(2) the funeral home is absolutely prohibited from transacting any business with the county during the supervisor's term or for one year thereafter. Therefore, no potential should exist for the coroner or county employees to violate Code, § 25-4-105(1) if they receive income from a funeral home which does no business with the county.

County Employees

15-026-E A business owned by a public servant of several counties may serve as a contractor, subcontractor or vendor to a municipality, state agency or other counties. While Code, § 25-4-105(3)(a) prohibits a public servant of a county from having a material financial interest in a business which serves as a contractor, subcontractor, or vendor to his own county, a municipality, state agency, or another county is a separate governmental entity from each county which the public servant serves.

14-076-E The director of a city-county recreational authority may also serve on the municipal school board and the municipal housing authority. The municipal school district and the municipal housing authority are separate governmental entities from the county and the municipality, and no violation of Code, § 25-4-105(3)(a) will result. However, the requestor should fully recuse himself from all matters coming before the school board involving agreements or disputes between the school district and the recreational authority in compliance with Code, § 25-4-101.

14-074-E An attorney may serve as a youth court referee in two counties and as public defender in circuit court in another county. The three counties are separate governmental entities, and no violation of Code, § 25-4-105(3)(a) should result from the youth court referee in two counties also serving as public defender in another county.

14-047-E The county inventory control and insurance clerk may be appointed to the board of trustees of the county hospital. The inventory control and insurance clerk is employed by the board of supervisors, which is a separate authority of county government from the hospital board of trustees. Therefore, the inventory control and insurance clerk may be appointed to the hospital board of trustees without violating Code, § 25-4-105(3)(a).

14-036-E A towing service owned by a county supervisor and a dispatcher for the county's emergency communications district may not be placed on the wrecker rotation list maintained by the sheriff due to the potential for a violation of Code, § 25-4-105(1) and public policy concerns that arise under Code, § 25-4-101. Moreover, a towing service owned by a supervisor and county employee is strictly prohibited by Section 109, Miss. Constitution of 1890, Code, § 25-4-105(2), and Code, § 25-4-105(3)(a) from contracting with the county or having any interest in any contract for towing services which is in any way authorized or funded by the board of supervisors.

County Prosecuting Attorney

15-008-E A county prosecutor may serve as the attorney for an economic development authority created by local and private legislation. This particular economic development authority is a separate "governmental entity" from the county, as that term

is defined in Code, § 25-4-103(h). Thus, Code, § 25-4-105(3)(a) does not prohibit the county prosecutor from serving as the attorney for the economic development authority.

13-126-E A county supervisor and an unelected county prosecutor employed by the board of supervisors may not jointly own a business. A supervisor and employed county prosecutor's joint ownership of the business creates a common financial interest that could result in a violation of Section 109, Miss. Const. of 1890, and Code, § 25-4-105(2). Due to the potential for a violation of these sections, the Commission advises the supervisor and county prosecutor against entering the proposed business arrangement.

09-019-E A county prosecuting attorney may also serve as school board attorney. A county and a school district, whether a county or municipal school district, are separate governmental entities, and no violation of Code, § 25-4-105(3)(a) will result from serving both.

County Sheriff

14-044-E A member of the board of directors of a recreational district may also serve as a volunteer to the sheriff's department and patrol the property owned and administered by the recreational district. There will be no contract with regard to the board member's volunteer service, and no violation of Section 109, Miss. Const. of 1890, or Code, § 25-4-105(2) should arise. Likewise, as a volunteer, the board member will not be a "contractor" to the district or the county, and no violation of Code, § 25-4-105(3)(a) should result.

14-036-E A towing service owned by a county supervisor and a dispatcher for the county's emergency communications district may not be placed on the wrecker rotation list maintained by the sheriff due to the potential for a violation of Code, § 25-4-105(1) and public policy concerns that arise under Code, § 25-4-101. Moreover, a towing service owned by a supervisor and county employee is strictly prohibited by Section 109, Miss. Constitution of 1890, Code, § 25-4-105(2), and Code, § 25-4-105(3)(a) from contracting with the county or having any interest in any contract for towing services which is in any way authorized or funded by the board of supervisors.

13-096-E A deputy sheriff or the office manager for the County Coroner's Office may also serve as Deputy Coroner. The Coroner's Office is a separate "authority" of county government from the Sheriff's Office. Therefore, the exception codified in Code, § 25-4-105(4)(h) will apply, and the deputy sheriff may also serve as deputy coroner without violating Code, § 25-4-103(a). Also, the positions and duties of deputy coroner and office manager could be combined to avoid a violation of Code, § 25-4-105(3)(a).

13-080-E A newly elected mayor may not continue to work as a part-time deputy sheriff when the town pays the county

for housing city arrestees. An interlocal agreement between the city and the county which funds the mayor's contract of employment with the county can give rise to a violation of Section 109, Miss. Const. of 1890, and Code, § 25-4-105(2).

13-027-E The sheriff may not hire the county's youth court referee/judge to represent his office and the regional correctional facility. This arrangement raises concerns that should be avoided pursuant to the public policy set forth in Code, § 25-4-101.

County Supervisors

15-032-E A county may not continue to purchase merchandise at a retail store which employs a candidate for county supervisor and may not continue to purchase insurance from an agency which employs the candidate's spouse if the candidate is elected. If elected, the candidate will have a prohibited interest in transactions between the county and the store and agency, and those transactions will be authorized by the board of supervisors in violation of Section 109, Miss. Const. of 1890, and Code, § 25-4-105(2).

15-025-E A county supervisor may participate in deliberations and actions by the board which do not result in any pecuniary benefit to either of his financially independent brothers. When the supervisor and his brothers are financially independent, no violation of Section 109, Miss. Const. of 1890, or Code, § 25-4-105(2) will occur, and the supervisor must only recuse himself from matters which would result in a pecuniary benefit to either brother to comply with Code, § 25-4-105(1).

15-007-E A county supervisor may be an officer of a corporation which has a zero-sum lease with the county. If the corporation does not charge the county any lease payments, and the corporation receives no other monetary benefit from the lease, then the supervisor will not have a prohibited interest in the zero-sum lease, and no violation of Section 109, Miss. Const. of 1890, or Code, § 25-4-105(2) will result from the lease. However, the supervisor should recuse himself from any approval of the lease to comply with Code, § 25-4-101, and he must recuse himself from any dispute which might arise under the lease in compliance with Code, § 25-4-105(1). A county supervisor may also be an officer of a corporation which has a lease with a nonprofit community action agency where the board of supervisors appoints one member of the agency's board of directors. If the county does not appropriate money to the nonprofit community action agency or take any other action which would have the effect of approving the contract between the agency and the corporation, then no violation of Section 109, Miss. Const. of 1890, or Code, § 25-4-105(2) will result from the lease. However, the supervisor should recuse himself from the board of supervisors' appointment to the agency's board of directors to comply with Code, § 25-4-101.

14-068-E A county supervisor's spouse may not perform services for a company under a contract which is funded by the county-owned hospital, pursuant to Section 109, Miss. Const. of 1890, and Code, § 25-4-105(2).

14-057-E A supervisor be may not be employed by a community mental health center which is partially funded by the board of supervisors, pursuant to Section 109, Miss. Const. of 1890, and Code, § 25-4-105(2).

14-040-E A county employee may not continue to work for the county if his or her spouse is elected supervisor. The supervisor will have a prohibited interest in his or her spouse's employment contract which will be authorized by the board of supervisors in violation of Section 109, Miss. Const. of 1890, and Code, § 25-4-105(2).

14-031-E A county supervisor may be employed by a school district. While the board of supervisors does approve the ad valorem tax levy for the county school district, the board of supervisors would not in any way be authorizing any contract between the school board and the supervisor, as proscribed in Section 109, Miss. Const. of 1890, and Code, § 25-4-105(2). Moreover, the county and the school district are separate governmental entities, and no violation of Code, § 25-4-105(3)(a) will result from holding both positions.

County Tax Assessor and/or Collector

15-023-E A county tax assessor may participate in the tax sale of a separate county. While public servants of the county are prohibited from participating in a tax sale conducted by that same county, pursuant to Code, § 25-4-105(3)(b) they are not prohibited from participating in a tax sale conducted by a separate county.

14-070-E The county tax assessor may accept compensation from the circuit clerk for assisting with the electronic voting system on election night. The office of the tax assessor and office of the circuit clerk are separate authorities of county government, and the exception codified in Code, § 25-4-105(4)(h) applies.

14-027-E An LLC owned by the county tax assessor may not purchase surplus real property at a sale conducted by his or her own county. Code, § 25-4-105(3)(b) prohibits an LLC owned by the county tax assessor from purchasing land at a sale conducted by or on behalf of the county. This transaction also presents the potential for a violation of Code, § 25-4-105(5) and public policy concerns under Section 25-4-101.

12-029-E A bank may continue to serve as a county depository if a bank employee marries the county tax collector/assessor. Under these particular facts, the tax collector/assessor will not acquire a material financial interest in the bank, and no violation of Code, § 25-4-105(1) or (3)(a) will result.

11-032-E A county tax collector may not purchase real property from an owner who purchased the property at a county tax sale. If the tax collector were to purchase the property from the current owner, the tax collector would be purchasing the property indirectly from the county. Such an indirect purchase is prohibited in Code, § 25-4-105(3)(b).

County Constables

15-030-D A county constable may also be employed as the county Emergency Manager and E-911 Director. The exception codified in Code, § 25-4-105(4)(j) allows a constable to be simultaneously employed by the county in another position.

15-002-E A state employee may simultaneously serve as a county constable. The state and the county are separate governmental entities, and no violation of Code, § 25-4-105(3)(a) should result from service with both.

14-075-E A municipal employee may simultaneously serve as a county constable. The municipality and the county are separate governmental entities, and no violation of Code, § 25-4-105(3)(a) should result from service with both. However, Code, § 25-4-105(1) prohibits the municipal employee from using municipal resources, equipment or work time in furtherance his or her duties as constable.

12-067-E A county emergency management director may also serve as a city alderman, and a municipal police officer may also serve as county constable. A county and a municipality are separate governmental entities, and a county emergency management director is not prohibited from serving as a municipal alderman, nor is a municipal police officer prohibited from serving simultaneously as a county constable, pursuant to Code, § 25-4-105(3)(a). Moreover, a county emergency management director is not prohibited by Code, § 25-4-105(1) from using his or her position to benefit a municipality which he or she serves as alderman when the individual will not receive any benefit.

Circuit Clerks

14-070-E The county tax assessor may accept compensation from the circuit clerk for assisting with the electronic voting system on election night. The office of the tax assessor and office of the circuit clerk are separate authorities of county government, and the exception codified in Code, § 25-4-105(4)(h) applies.

11-078-E A circuit clerk may serve on the board of directors of a nonprofit corporation which is unlikely to have any interaction with the office of circuit clerk. While the nonprofit corporation is a “business with which [the circuit clerk] is associated,” the clerk is unlikely to have any opportunity to use his or her position to obtain or attempt to obtain any pecuniary benefit for the corporation, as proscribed in Code, § 25-4-105(1).

Chancery Clerks

15-049-E A candidate for chancery clerk, if elected, may be a part owner of a limited liability company which provides abstracting services to private clients. However, if elected, the candidate for chancery clerk must completely refrain from taking any actions which would benefit the limited liability company or harm its competitors to ensure no violation of Code, § 25-4-105(1) occurs. The Commission cautions the requestor against using or disclosing non-public information to comply with Code, § 25-4-105(5). No violation of Code, § 25-4-105(3)(a) will occur under these facts if the limited liability company does not serve as a contractor, subcontractor, or vendor to the county.

13-060-E A former chancery clerk may bid on and purchase land at a tax sale conducted by the county which he or she previously served. While Code, § 25-4-105(3)(b) prohibits public servants of the county from bidding on or purchasing land at the county tax sale, this section does not prohibit a retired chancery clerk from bidding on and purchasing land at that sale.

13-021-E The son of the chancery clerk/county administrator may not serve as a vendor to the county. When claims submitted by the chancery clerk’s son must be processed, reviewed and approved by the purchase clerk, who is appointed and supervised by the chancery clerk/county administrator, an appearance of impropriety will arise under Code, § 25-4-101.

12-101-E A county election commissioner may also be employed by the chancery clerk. Pursuant to the exception found in Code, § 25-4-105(4)(h) the county election commission and the chancery clerk’s office are separate authorities of county government. However, the public servant cannot use his official position as election commissioner or employee of the chancery clerk to obtain a pecuniary benefit for himself in violation of Code, § 25-4-105(1).

Mississippi Ethics Commission

Established: November 15, 1979.

Composition: Eight members.

Term: Members are appointed to serve a four-year term and upon expiration of that term a member may be reappointed to serve.

Method of Selection: Two members of the Commission shall be appointed by each of the following officers: Governor, Lieutenant Governor, Speaker of the House of Representatives, and Chief Justice of the State Supreme Court.

Qualifications: The member must be a qualified elector of the State of Mississippi of good moral character and integrity. Not more than one person appointed by each appointing authority shall be an elected official.

Responsibility: To see that the legislative purpose is satisfied by exercising all duties and powers contained in the enabling legislation.

Staff: The Commission employs a full-time staff supervised by an executive director who serves at the Commission's will and pleasure.

Office/Address

660 North St., Suite 100-C
Jackson, MS 39202

P.O. Box 22746
Jackson, MS 39225-2746

Telephone/Fax

601-359-1285 601-359-1292 (fax)

E-mail/Web

info@ethics.state.ms.us www.ethics.ms.gov