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TOM HOOD
Executive Director and Chief Counsel

ADVISORY OPINION NO. 12-081-E

October 5, 2012

Question Presented: May a public servant of the county bid on and purchase land at the tax sale conducted in his or her own county?

Brief Answer: No. Section 25-4-105(3)(b), Miss. Code of 1972, prohibits an employee of a governmental entity, including a county, from purchasing real property, directly or indirectly, at a tax sale conducted by the governmental entity.

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.

(h) "Governmental entity" means the state, a county, a municipality or any other separate political subdivision authorized by law to exercise a part of the sovereign power of the state.

(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:

(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.

II. FACTS

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

I write to solicit your opinion with regard to an issue relating to tax sales. I am a County employee for a County. I work for the Sheriffs Department. My wife's sister is the Tax Assessor and Collector.

She was recently elected and took office at the beginning of this year. In her position as Tax Collector, she is required to handle the tax sales. In our county, the tax sales are held the last Monday of August.

Would my position as an employee of the Sheriffs Department or as the brother-in-law of the Tax Collector preclude me under the Ethics Laws from participating in the tax sale process and purchasing property at the tax sale?

I did not participate this year as I was concerned about it. Prior to next year's tax sale, I would like to have a more definitive answer so that I will be sure I am not violating any of the ethics laws of the State of Mississippi.

III. ANALYSIS

Pursuant to Section 25-4-105(3)(b), Miss. Code of 1972, “[n]o public servant shall ... [b]e a purchaser, direct or indirect, at any sale made . . . by the governmental entity of which he is an officer or employee.” See definitions in Section 25-4-103(h) and (p), above. Therefore, no county employee may purchase land at a tax sale conducted by the county.

MISSISSIPPI ETHICS COMMISSION

BY: _____
Tom Hood, Executive Director and
Chief Counsel