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SCOTT RANKIN, Executive Director

OFFICIAL ADVISORY OPINION NO. 05-043-E

June 3, 2005

This Advisory Opinion concerns the following issues as formulated from facts and/or circumstances furnished by a requestor. The Commission approved this opinion on June 3, 2005, basing its approval solely on the facts and circumstances stated herein.

- ISSUE 1:** May a County Supervisor or other elected county official, bid on and purchase land at the tax sale conducted in his/her own county for unpaid county and/or school taxes?
- ISSUE 2:** May a public servant of a county purchase land from a tax sale conducted in another county?
- ISSUE 3:** May a public servant of a county purchase land from a tax sale conducted by a municipality within his/her county for unpaid municipal taxes collected by the municipality itself?
- ISSUE 4:** May a public servant of a county purchase land from a tax sale conducted by the county on behalf of a municipality for which the county collects municipal taxes?

State law restricts the Mississippi Ethics Commission to interpreting and issuing opinions on Sections 25-4-101 through 25-4-119, 1972 Mississippi Code Annotated and Article IV, Section 109, Mississippi Constitution of 1890. Therefore, this opinion does not address the Mississippi laws outside the Commission's jurisdiction nor the governmental entity's internal rules and regulations.

Your opinion request to the Office of the Attorney General dated April 19, 2005, was referred by that Office to the Mississippi Ethics Commission on May 5, 2005, as your request involves the above issue that concern the Mississippi conflict of interest laws.

The pertinent conflict of interest laws to be considered here are:

Code Section 25-4-103(g)(i)(ii), (h) and (p)(i)(ii)(iii) states:

“(g) ‘Government’ means the state and all political entities thereof, both collectively and separately, including but not limited to:

- (i) Counties; and
- (ii) Municipalities.

(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.”

Code Section 25-4-105(3)(b) states:

“(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.”

Pertinent facts and circumstances provided by the requestor, absent identifying data, are set forth as follows and considered a part of this opinion.

I am writing as Board Attorney for the County Board of Supervisors to request an official opinion on the following issue:

May a County Supervisor or other elected county official, bid on and purchase land at the tax sale conducted in his/her own county for unpaid county and/or school taxes? May they participate in a tax sale conducted in another county? What if the tax sale is by a municipality within his/her county for unpaid municipal taxes? Would this change if the county collects the municipal taxes on behalf of the municipality and conducts any tax sale for those unpaid municipal taxes?

Based solely on the facts and circumstances presented by the requestor, the Commission's opinion is as follows.

ISSUE 1: Pursuant to Section 25-4-105(3)(b), Miss. Code of 1972, quoted above, "[n]o public servant shall ... [b]e 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." Therefore, no supervisor, other county elected official or any other public servant of the county may purchase land at a tax sale conducted by the county.

ISSUE 2: A public servant of the county may purchase land from a tax sale conducted in another county. The two counties are separate governmental entities, as defined in Section 25-4-103(h), Miss. Code of 1972, quoted above. A public servant of a particular county is only prohibited from purchasing at a sale conducted by the county "of which he is an officer or employee." Section 25-4-105(3)(b).

ISSUE 3: Like two separate counties, a municipality and the county in which it lies are separate governmental entities. Once again, a public servant of a county is only prohibited from purchasing at a sale conducted by the county "of which he is an officer or employee." Id.

ISSUE 4: No public servant of a county may purchase land at a tax sale conducted by that county, even when that tax sale is conducted on behalf of a municipality for which the county collects municipal taxes. The tax sale is still being conducted "by the governmental entity of which [the county public servant] is an officer or employee," and all public servants of that county are therefore prohibited from participating as a purchaser.

Scott Rankin
Executive Director