

MISSISSIPPI DEPARTMENT of EMPLOYMENT SECURITY
State Policy Number 5
CONFLICT of INTEREST
Workforce Innovation and Opportunity Act (WIOA)

I. SCOPE AND PURPOSE

This policy sets forth the requirements to ensure that individuals or representatives of organizations entrusted with public funds do not personally or professionally benefit from the award or expenditure of such funds. Individuals or representatives of organizations entrusted with public funds, as referenced above, shall hereinafter be understood to include a State Workforce Development Board (SWDB) member, SWDB staff, a Local Workforce Development Board (LWDB) member, and local workforce area staff.

The SWDB and each LWDB must develop a conflict of interest policy that incorporates MDES State Policy Number 5 and meets the minimum federal and state requirements described in Section III, herein.

II. LAWS GOVERNING CONFLICTS OF INTEREST

A. Federal Requirements

The laws governing conflicts of interest under WIOA are found at *Workforce Innovation and Opportunity Act, 113 P.L. 128, Section 101(f) and 101(h)*. These sections state as follows:

A member of a State board may not:

- (1) vote on a matter under consideration by the State Board (A) regarding the provision of services by such member (or by an entity that such member represents); or (B) that would provide direct financial benefit to such member or the immediate family of such member; or (2) engage in any other activity determined by the Governor to constitute a conflict of interest as specified in the State plan.

A member of a local board may not:

- (1) vote on a matter under consideration by the local board (A) regarding the provision of services by such member (or by an entity that such member represents); or (B) that would provide direct financial benefit to such member or the immediate family of such member; or (2) engage in any other activity determined by the Governor to constitute a conflict of interest as specified in the State plan.

B. State Requirements

State law is more proscriptive than federal law; therefore, the policies of the SWDB or individual LWDBs should include additional State requirements, as outlined below. References to the Ethics Commission Opinions are provided for further clarification.

1. State Law

Mississippi Code Annotated §25-4-105(1) (1972), prohibits a public servant from using his position in government to obtain pecuniary benefit for himself, certain relatives or a “business with which he is associated.” A public servant may avoid using his position, and therefore avoid a violation of *Section 25-4-105(1)*, by recusing himself from the matter giving rise to the conflict of interest. An abstention is considered a vote with the majority and is *not* a recusal.

Section 109 of the Mississippi Constitution of 1890, and its statutory parallel, *Mississippi Code Annotated §25-4-105(2)*, prohibit a member of a public board from having any direct or indirect interest in a contract with the government funded or otherwise authorized by that board during his or her term or for one year thereafter.

A recusal will *not* prevent or ameliorate a violation of *Section 109* and *Section 25-4-105(2)*, as these sections do not require any affirmative act by an individual member to give rise to a conflict, but merely action by the board. Accordingly, recusal by the affected SWDB or LWDB member will not prevent a violation of these sections.

2. Mississippi Ethics Commission Opinion 13-014-E

In Advisory Opinion 13-014-E, the Mississippi Ethics Commission interpreted the application of Section 109 and Section 25-4-105(2) as follows:

The LWDB is a public board subject to statutory sections. If the LWDB funds a contract in which a member of that board has a prohibited interest, that member will be in violation of these sections. Any contract, which violates either section, is null and void.

The owner and CEO of a business will have an interest in all contracts entered by the business. Employees of these businesses also presumably have an interest in all contracts entered by their employer. Accordingly, a business whose owner, CEO, or employee

serves on an LWDB is prohibited by *Section 109* and *Section 25-4-105(2)* from receiving any contract that is funded by the LWDB. This prohibition applies to all contracts funded during the LWDB member's term and for one year after the LWDB member's term.

A recusal will not prevent or ameliorate a violation of Section 109 and Section 25-4-105(2), as these sections do not require any affirmative act by an individual member to give rise to a conflict, but merely action by the board. Accordingly, recusal by the affected SWDB or LWDB member will not prevent a violation of these sections. *See also* Ethics Commission Opinion 06-099-E & 04-076-E.

MDES notes that advisory opinions from the Mississippi Ethics Commission, including No. 13-014-E, are merely advisory and they are merely opinions. They do not have the force of law possessed by a statute or a court decision.

3. Recusal

A total and complete recusal requires that the public servant not only avoid debating, discussing or taking action on the subject matter during official meetings or deliberations, but also avoid discussing the subject matter with staff or any other person. This includes casual comments, as well as detailed discussions, made in person, by telephone or by any other means.

Furthermore, the minutes or other record of the meeting should state the recusing member left the room before the matter came before the public body and did not return until after the vote.

III. POLICY REQUIREMENTS

The SWDB and each LWDB shall have a conflict of interest policy, which at a minimum meets the requirements shown below:

1. A written code of standards or conduct governing the performance of persons engaged in the award and administration of WIOA contracts and subgrants.
2. No individual in a decision-making capacity shall engage in any activity, including participation in the selection, award, or administration of a subgrant or contract supported by WIOA funds, if a conflict of interest (real, implied, or apparent) would be involved.

3. No member of the SWDB or LWDB shall cast a vote, or participate in any decision-making capacity, on the provision of services by such member (or any organization which that member directly represents), or on any matter which would provide any direct financial benefit to the member, the immediate family of such member, or to the member's organization.

A conflict of interest under paragraphs 2 or 3 would arise when one of the following persons or groups has a financial or other interest, either through ownership or employment, and participates in the selection or award of funding for themselves, their family, or that organization or firm.

- An individual; i.e., employee, officer, or agent,
 - Any member of the individual's immediate family (parent, spouse, children, or siblings),
 - The individual's business partner, or
 - An organization which employs, or is about to employ any of the above individuals (individual has received a job offer from the organization),
4. The officers, employees, agents, or members of the SWDB or LWDB making the awards will neither solicit nor accept gratuities, favors, or anything of monetary value from awardees, potential awardees, or other parties to agreements.
 5. Reference the Mississippi Ethics in Government Laws and their applicability to members of the SWDB and LWDB, including a statement that advises members of all relevant opinions from the Mississippi Ethics Commission and the proper procedure for recusal.
 6. The code of conduct shall contain penalties, sanctions, or other disciplinary actions in accordance with state and local law for violations of the provisions against conflict of interest.

IV. REQUIRED ACTION

- A. In accordance with Training and Employment Guidance Letter 35-10, issued by the United States Department of Labor, SWDB and LWDB members are encouraged to regularly review and be aware of the relevant Federal, state, and board rules guiding procurement decisions and other board responsibilities.
- B. The SWDB and LWDB must develop a conflict of interest policy that incorporates State Policy Number 5. The SWDB or LWDB policy may be more proscriptive, at the discretion of the board. In either case, the policy and the background information should be reviewed regularly with state and local

boards, and all boards should include this guidance in orientations for new board members.

- C. The SWDB and LWDB must develop a Conflict of Interest Acknowledgement form that must be signed by each member of the SWDB and LWDB and local workforce area staff stating that they have been made aware of the federal and state conflict of interest requirements, and will abide by those requirements in the service of these boards.

V. REFERENCES

29 U.S.C. 2821(f) (1998)
29 U.S.C. 2832 (g) (1998)

U.S. Department of Labor TEGL 35-10

Section 109, Mississippi Constitution of 1890

Section 25-4-103, Mississippi Code of 1972

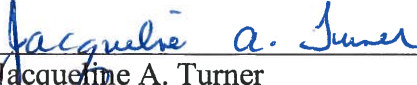
Mississippi Ethics Commission Opinion 13-014-E

Mississippi Ethics Commission Opinion 06-099-E

Mississippi Ethics Commission Opinion 04-076-E

VI. EFFECTIVE DATE

This policy shall be effective as of July 1, 2015.


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