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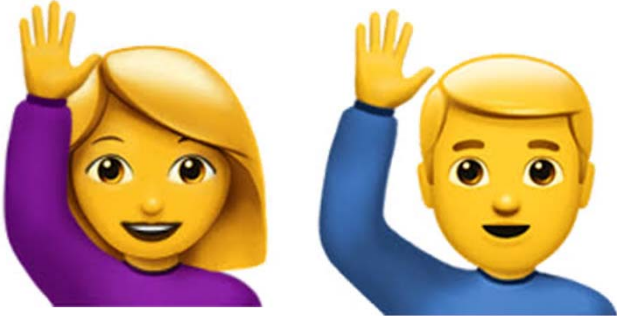
**Compliance with Mississippi Laws,
Rules and Regulations While
Conducting Business and
Interacting with Local and State
Governmental Entities and Officials**

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PLEASE INTERRUPT ME!



Otherwise, you may forget your question by the end.



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DISCLAIMER

- This is not legal advice. This presentation will be a general discussion of legal topics relevant to interactions with state and local government.
- If you need legal advice on a specific topic, please contact me after the presentation.

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ETHICS IN GOVERNMENT

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MISSISSIPPI ETHICS IN GOVERNMENT ACT

Section 25-4-101 – Declaration of Public Policy

- The Legislature declares that elective and public office and employment is a **public trust** and any effort to realize **personal gain** through **official conduct**, other than as provided by law, or as a natural consequence of the employment or position, is a **violation of that trust**. Therefore, public servants shall endeavor to **pursue a course of conduct which will not raise suspicion among the public** that they are likely to be engaged in acts that are in **violation of this trust** and which will **not reflect unfavorably upon the state and local governments**.

MISSISSIPPI ETHICS IN GOVERNMENT ACT

• WHO ARE PUBLIC OFFICIALS AND GOVERNMENTAL ENTITIES?

- **“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.

MISSISSIPPI ETHICS IN GOVERNMENT ACT

- **“Government”** means the state and all political entities thereof, both collectively and separately, including, but not limited to:
 - i. Counties;
 - ii. Municipalities;
 - iii. All school districts;
 - iv. All courts; and
 - v. Any department, agency, board, commission, institution, instrumentality, or legislative or administrative body of the state, counties or municipalities created by statute, ordinance or executive order including all units that expend public funds.

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MISSISSIPPI ETHICS IN GOVERNMENT ACT

- **“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.
 - All definitions are found in Miss. Code Section 25-4-105(3).

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ETHICS IN GOVERNMENT ACT: EIGHT BASIC PROHIBITIONS

1. Board Member Contracts
2. Use of Office
3. Contracting
4. Purchasing Goods and Services
5. Purchasing Securities
6. Insider Lobbying
7. Post-Government Employment
8. Insider Information

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KEY DEFINITIONS IN ETHICS IN GOVERNMENT ACT

- **"Relative"** means:
 - i. The spouse of the public servant;
 - ii. The child of the public servant;
 - iii. The parent of the public servant;
 - iv. The sibling of the public servant; and
 - v. The spouse of any of the relatives of the public servant specified in subparagraphs (ii) through (iv).
- **"Business with which he is associated"** means any business of which a public servant or his relative is an officer, director, owner, partner, employee or is a holder of more than ten percent (10%) of the fair market value or from which he or his relative derives more than Two Thousand Five Hundred Dollars (\$2,500.00) in annual income or over which such public servant or his relative exercises control.

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SECTION 109, MS CONSTITUTION OF 1890 & SECTION 25-4-105(2)

❑ Section 109, MS 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.

❑ 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.

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SECTION 109 & 25-4-105(2): CONTRACTING PROHIBITION

- Section 109 & Section 25-4-105(2) only apply 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.

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SECTION 25-4-105(1) – USE OF OFFICE PROHIBITION:

- 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**.

USE OF OFFICE PROHIBITION

- The statute does not require that a public servant misuse his or her position to violate the prohibition.
- 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 25-4-105(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.

SECTION 25-4-105(3) (B) – THE PURCHASER PROHIBITION

- 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.
 - Advisory Opinion No. 14-043-E: Pursuant to Section 25-4-105(3)(b) no official or employee of a municipality may be a direct or indirect purchaser at any sale conducted by or on behalf of that municipality. However, the statute does not prohibit a city employee or official from purchasing items from another governmental entity.

SECTION 25-4-105(3) (E) – POST GOVERNMENT EMPLOYMENT

- 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.
- 14-071-E: A former employee of a city may perform work under a contract between the city and an accounting firm that employs the former public servant. Here, there is reportedly no matter currently ongoing or that previously transpired between the city and the accounting firm while the former public servant worked for the city. Therefore, no violation of Section 25-4-105(3)(e) should arise if the former public servant performs work related to the contract between the accounting firm and the city.

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SECTION 25-4-105(4) – EXCEPTIONS TO SUBSECTION (3)

- A public servant or his relative
 - (a) May be an officer/stockholder in a bank where public entity has funds;
 - (b) May be a **contractor or vendor with any authority of the governmental entity other than the authority of which he is a member**, officer, employee or agent or have a **material financial interest in a business** which is a contractor or vendor with any authority of the governmental entity **other than the authority of which he is a member**, etc. where such contract is let to the **lowest and best bidder after competitive bidding** and three (3) or more legitimate bids are received or where the goods, services or property involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws.

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SECTION 25-4-105(4) - EXCEPTIONS TO SUBSECTION (3)

- (c) May be a **subcontractor** with any authority of the governmental entity **other than the authority of the governmental entity of which he is a member**, officer, employee or agent or **have a material financial interest in a business which is a subcontractor** with any authority of the governmental entity other than the authority of the governmental entity of which he is a member, officer, employee or agent where the primary contract is let to the **lowest and best bidder after competitive bidding** or where such goods or services involved are reasonably available from two (2) or fewer commercial sources, provided such transactions comply with the public purchases laws.
- (d) – (j) other exceptions.

SECTION 25-4-105(5) – INSIDER INFORMATION

- 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**.

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CONTRACTS IN VIOLATION OF §25-4-105 VOIDABLE

- Under Section 25-4-105(6), any contract made in violation of this section may be declared void by the governing body of the contracting or selling authority of the governmental subdivision.

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SUMMARY OF ETHICS IN GOVERNMENT ACT

- Be wary of
 - A public official suggesting that you hire his relative or do business with a company with which he is associated.
 - A public official having an interest in any contracts that have been or are entered into as part of the Project.
 - A public official having a material financial interest in any business that is a contractor or vendor with the governmental entity of which he is a member, etc.
- Seek advice and counsel if approached.

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POLITICAL CONTRIBUTIONS LOBBYING, AND ENTERTAINMENT

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REQUESTS FOR POLITICAL CONTRIBUTIONS FROM PUBLIC OFFICIALS

- 2019 is an Election Year in Mississippi for state and local candidates.
- General Rules of Political Contributions:
 - Section 97-13-15: Unlawful for **Corporations, Incorporated Companies and Incorporated Associations** to make campaign contributions in excess of \$1000 to candidates in Mississippi.
 - This limitation extends to a corporation's agents, employees and officers who may donate "directly or indirectly" any funds **of the corporation**.
 - Criminal misdemeanor - fine of not less than \$1000 but no more than \$5000.
 - No limits on what individuals or entities other than **Corporations** can give to state and local candidates but know that if a campaign contribution exceeds \$200, then it is reportable by the candidate or his/her committee in campaign finance reports.

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GIFT PROHIBITION

- **Under Mississippi law, there are statutory prohibitions against gifts to certain public officials:**
 - § 77-1-11 – No gifts to a Public Service Commissioner, a candidate for that office or any employee of the Public Service Commission or the Public Utilities Staff by any person interested as owner or that person's representative of a common or contract carrier or any other utility coming under the jurisdiction of the Commission.



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ENTERTAINMENT OF PUBLIC OFFICIALS AND EMPLOYEES

- Takeaways:
 - If have a matter before the MDEQ Permit Board or Board of Supervisors – approval of permit or license – prudent to avoid entertaining or making campaign contributions so as to avoid any appearance of impropriety.
 - If make a campaign contribution, may want to keep below \$200 reportable limit.
 - If do have an event coming up, spend less than \$200 on an individual public official in a calendar year to fall within exemption of Lobbying Law.
 - Avoid giving “gifts” to public officials.

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LOBBYING OF PUBLIC OFFICIALS – LEGISLATIVE AND EXECUTIVE BRANCHES

- But I'm not a lobbyist. At least I don't think I'm a lobbyist....
- Section 5-8-3(k):
 - **“Lobbying”** means:
 - i. Influencing or attempting to influence legislative or executive action through oral or written communication; or
 - ii. Solicitation of others to influence legislative or executive action; or
 - iii. Paying or promising to pay anything of value directly or indirectly related to legislative or executive action.

LOBBYING OF PUBLIC OFFICIALS – LEGISLATIVE AND EXECUTIVE

- Section 5-8-3(l): **“Lobbyist”** means:
 - i. An individual who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, for the purpose of lobbying;
 - ii. An individual who represents a legislative or public official or public employee, or who represents a person, organization, association or other group, for the purpose of lobbying;

LOBBYING OF PUBLIC OFFICIALS – LEGISLATIVE AND EXECUTIVE

- iii. A sole proprietor, owner, part owner or shareholder in a business who has a pecuniary interest in legislative or executive action, who engages in lobbying activities; or
- iv. Any individual described in subparagraphs (i), (ii) or (iii) of this paragraph (l) who is employed by or has contracted with any agency, legislative or public official or public employee, or any other public entity for the purpose of providing any type of consulting or other similar service but also engages in any type of lobbying activities. Such individual shall not qualify for any exemption under Section 5-8-7.

LOBBYING OF PUBLIC OFFICIALS

- Section 5-8-3(m): “Lobbyist’s Client” means the person in whose behalf the lobbyist influences or attempts to influence legislative or executive action.



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PERSONS EXCLUDED FROM DEFINITION OF LOBBYIST – SAFE HARBORS:

- According to Section 5-8-7(b), Lobbyist registration and reporting requirements do not apply to:
 - An individual who:
 - i. Represents or purports to represent only the individual;
 - ii. Receives no compensation or anything of value for lobbying; and
 - iii. Has no pecuniary interest in the legislative or executive action.
 - An individual lobbying in his or her own interest, his or her own business interest, who pays, or promises to pay, offers to pay or causes to be paid to public officials, legislative officials or public employees any thing or things of value aggregating in value to less than Two Hundred Dollars (\$200.00) in any calendar year.

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PERSONS EXCLUDED FROM DEFINITION OF LOBBYIST – SAFE HARBORS:

- An individual lobbying on behalf of his or her employer's business interest where such lobbying is not a primary or regular function of his employment position if such individual pays, promises to pay, offers to pay, or causes to be paid individually or on the employer's behalf to public officials, legislative officials, or public employees any thing or things of value aggregating in value to less than Two Hundred Dollars (\$200.00) in any calendar year.
 - Note these slides include pertinent exclusions; this is not a complete list.

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EMPLOYEE ACTIONS AND POTENTIAL REPORTING OBLIGATIONS

- What actions on the part of an employee could trigger obligation on part of the company to register or report?
 - Taking members of the Board of Supervisors to dinner could be viewed as lobbying...
 - Taking Publicly Elected or Appointed officials to the Foreigner concert at the Hard Rock Casino could be viewed as lobbying...
 - Taking the Executive Director or Board Members of Solid Waste Authority to a Biloxi Shuckers game could be viewed as lobbying...
 - If the amount exceeds \$200 per public official.

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OVERLAP BETWEEN ECONOMIC DEVELOPMENT ACTIVITIES & LOBBYING

- Stennett Attorney General Opinion 95-0336:
 - In the context of company employees involved in economic development activities, the Attorney General explained that no reporting of expenditures by non-lobbyist employees was required even though such employee may urge legislative or executive action if
 - (a) lobbying was not a primary function of the employee's job, and
 - (b) expenditures related to influencing action are less than \$200 during the calendar year.

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VIOLATIONS AND PENALTIES

- **Bribery, Kickbacks & Improper Financial Dealing With Contractors**
 - Public funds (bonds, grants, etc.) must be utilized on the project.
 - Example: MS Beef Plant
 - No circumventing requirement for competitive bids or invoice splitting – Section 35-7-13(o).
 - Misdemeanor – fine and/or imprisonment in county jail
 - No Kickbacks – Section 31-7-23
 - Any rebates, refunds, gratuities must go to the governing authority, not to any public officials or employees.

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VIOLATIONS AND PENALTIES

- No offers of inducement – Section 97-11-53
 - No public official shall directly or indirectly accept, receive, offer to receive or agree to receive any gift, offer, or promise of any money, property or other tangible or intangible thing of value as an inducement or incentive for (a) the awarding or refusal to award a contract ...; (b) the purchase, sale or lease of property ...; or (c) the accomplishment of any official act or purpose involving public funds or public trust.
 - Felony – imprisoned not more than 10 yrs &/or fined not more than \$5000.
 - If convicted, the public official would be forever disqualified from holding public office or employment with the political subdivision.
 - The company may be barred for 5 years from doing business with the State of MS or the political subdivision (ex. County).

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VIOLATIONS AND PENALTIES

- Commercial Bribery – offer, promise of gift of money or property to an agent, employee or fiduciary without the knowledge/consent of the principal or employer, with the intent to influence the agent's, employee's or fiduciary's action in relation to the principal's or employer's affairs. Section 97-9-10
 - Misdemeanor – fine and/or imprisonment
- Bribing or attempting to influence member of the Legislature – Section 97-7-55
 - Giving or withholding his vote or not attending the house or committee
 - Felony – imprisoned not to exceed 10 years

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VIOLATIONS AND PENALTIES

- Bribing Highway commission members and employees - § 97-15-3
 - No Highway Commissioner, engineer or employee acting on behalf of the Commission can accept any money or gratuity in exchange for anything of value, contract, or political influence regarding a pending decision or action in his official capacity.
 - Guilty of a felony, imprisoned for 1 – 5 years, and disqualified from holding office.
- Influence Peddling – § 97-7-57
 - Every person who obtains, or seeks to obtain, money or other thing of value from another person upon a pretense, claim or representation that he can or will improperly influence, in any manner, the action of any member of the legislature or officer thereof, in regard to any vote or legislative matter, shall be guilty of felony, and, upon conviction, shall be imprisoned in the penitentiary not exceeding ten years.

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OPEN MEETINGS

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OPEN MEETINGS

- Official meetings of public bodies to be public and open.
- What constitutes a “meeting”?
 - Section 25-41-5(1): All official meetings of any public body, unless otherwise provided in this chapter or in the Constitutions of the United States of America or the State of Mississippi, are declared to be public meetings and shall be open to the public at all times unless declared an executive session as provided in Section 25-41-7.

RECENT ETHICS COMMISSION & MISSISSIPPI SUPREME COURT OPINIONS

Gregory vs. Columbus City Council

- Deliberations of a quorum must take place in a proper public meeting.
- When a quorum of the council splits into separate groups and discusses the same matter of city business with the mayor, a quorum is deliberating, and a “meeting” has occurred.

Mayor and City Council and City of Columbus v. The Commercial Dispatch

- The Mississippi Supreme Court found that the sub-quorum, pre-arranged, non-social meetings involving the Mayor and pairs of councilmen over four days to discuss City business, including economic development and public building renovations, illustrated the City’s intent to circumvent the Act. “[T]he deliberative stages of the decision-making process that lead to ‘formation and determination of public policy’ are required to be open to the public.”

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VIOLETIONS OF OPEN MEETINGS ACT

- Members of Boards, dividing up into separate groups of less than a quorum and meeting on different dates can violate the Open Meetings Act.
- Violations of the Open Meetings Act can occur using email, texts or social media.

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OLIVER V. CITY COUNCIL FOR THE CITY OF BAY ST. LOUIS

- A member of a public body violates the Open Meetings Act when he or she sends an email to a quorum of the public body in an attempt to influence the public body regarding a matter under its authority.
- Thus, matters should have been discussed in a properly noticed and conducted meeting.

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NEELY V. BOARD OF TRUSTEES

- The executive director's initial emails to the Board merely communicated information to the entire Board, but the reply emails by board members resulted in a quorum of the Board discussing matters under their jurisdiction.
- These discussions should have occurred in a properly noticed and conducted public meeting.
- Be careful when communicating with public officials using email – Your email can be forwarded or people (other members of the board) can be added to the conversation.

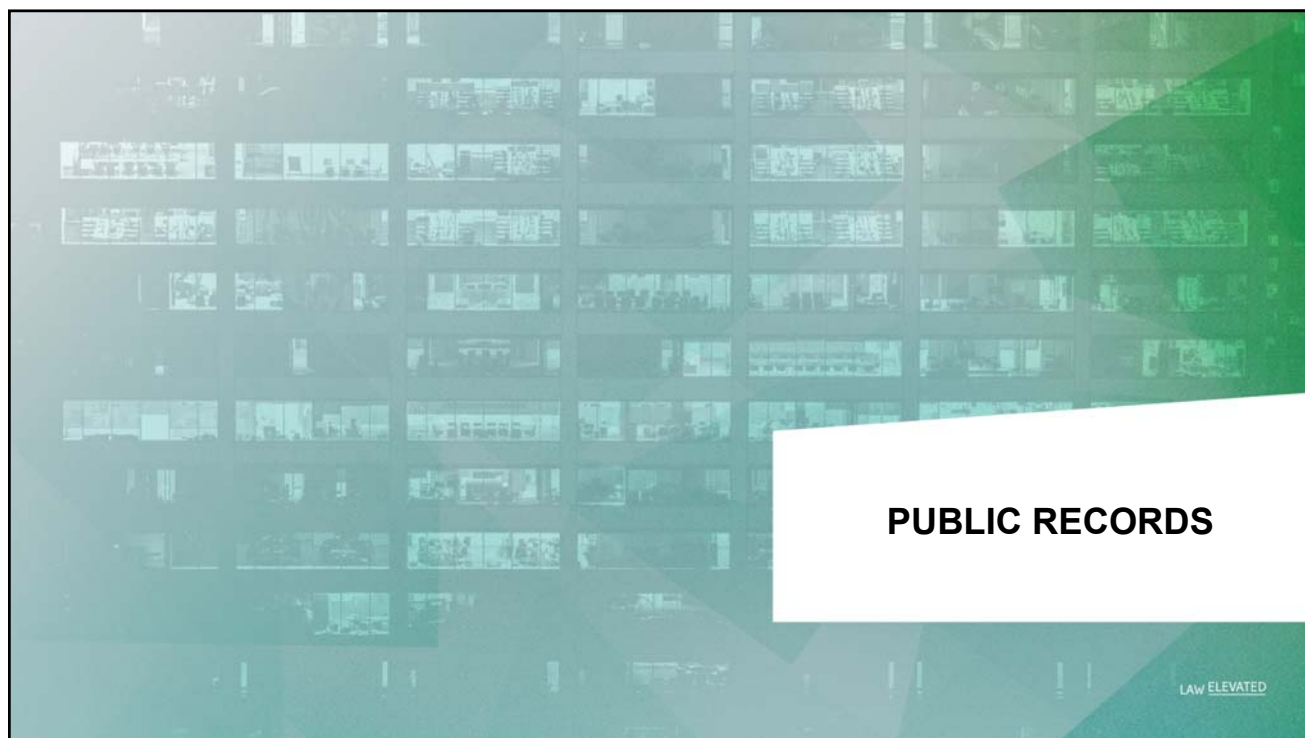
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CAN SOCIAL MEDIA POSTS VIOLATE THE OPEN MEETINGS ACT?

- If an exchange of emails among members of a city council can be considered “deliberations” via “teleconference device,” then a social media post on which a quorum of members comment sharing information or opinions about a matter under Board authority could violate the Open Meetings Act.

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PUBLIC POLICY – THE PUBLIC SHOULD HAVE ACCESS TO PUBLIC RECORDS

Section 25-61-2

- It is the policy of this state that public records shall be available for inspection by any person unless otherwise provided by this chapter; furthermore, providing access to public records is a duty of each public body and automation of public records must not erode the right of access to those records.
- As each public body increases its use of, and dependence on, **electronic record keeping**, each public body must ensure reasonable access to records electronically maintained, subject to records retention.

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WHAT ARE PUBLIC RECORDS?

Section 25-61-3

- (a) “Public body” shall mean any department, bureau, division, council, commission, committee, subcommittee, board, agency and any other entity of the state or a political subdivision thereof, and any municipal corporation and any other entity created by the Constitution or by law, executive order, ordinance or resolution....
- (b) “Public records” shall mean all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body, or required to be maintained by any public body.

PUBLIC RECORDS SUMMARY

- All documents and other records, including electronic records, related to government business are public records.
- Everyone has the right to inspect or copy.
- Many records are exempted.
- If record contains exempt material, government may have to redact and copy.
- Government can recoup actual cost of retrieving and/or copying public records and can require pre-payment. Must provide estimate of costs to requestor.
- Many times, given the number of documents that are responsive, the requestor may not want to pay the copying costs.

RESPONSE TO RECORDS REQUESTS & COSTS

- **Process for responding:**
 - Public body may adopt a policy allowing up to 7 working days to respond.
 - If no policy adopted, then must respond within 1 working day.
 - If public body cannot respond within 7 working days, then must provide written explanation.
 - Must provide the requested documents within 14 working days.
 - Denial of request must be in writing.

COULD DOCUMENTS BECOME PUBLIC RECORDS?

- Documents provided to Public Bodies could very likely be considered used, possessed or generated in the conduct or function of public business.
 - Documents provided to State and Local Public Officials or Agencies, Boards or Commissions related to permits/licenses.
 - Draft letter of support for the Project provided to a local elected official = public record
 - Documents provided to MDEQ or the Counties or other public would be stored in MDEQ's or the County's files and therefore would likely be "public records."

ARE COMMUNICATIONS WITH PUBLIC OFFICIALS “PUBLIC RECORDS”?

- The following electronic communications have been found to be public records:
 - **Emails – Ellis v. Rankin County School District, Opinion No. R-14-034 (June 16, 2015)**
 - The district is obligated to conduct a search of that email account and produce any emails which fit the **statutory** definition of public records and which are not subject to an exemption.
 - **Text messages – Ethics Opinion No. R-13-023**
 - Texts concerning city business by the mayor in his role as chief executive officer of the city qualify as public records... even if sent from the mayor on his personal cell phone.
 - Any text message used by a government official “in the conduct, transaction, or performance of any business, transaction, work, duty or function of [the government]” is a public record, regardless of where the record is stored.

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WHAT ABOUT SOCIAL MEDIA POSTS?



- If social media post meets definition of public record,
- then it must be retained by the public body as a public record and
- provided upon request.

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EXEMPTIONS FROM DISCLOSURE OF PUBLIC RECORDS

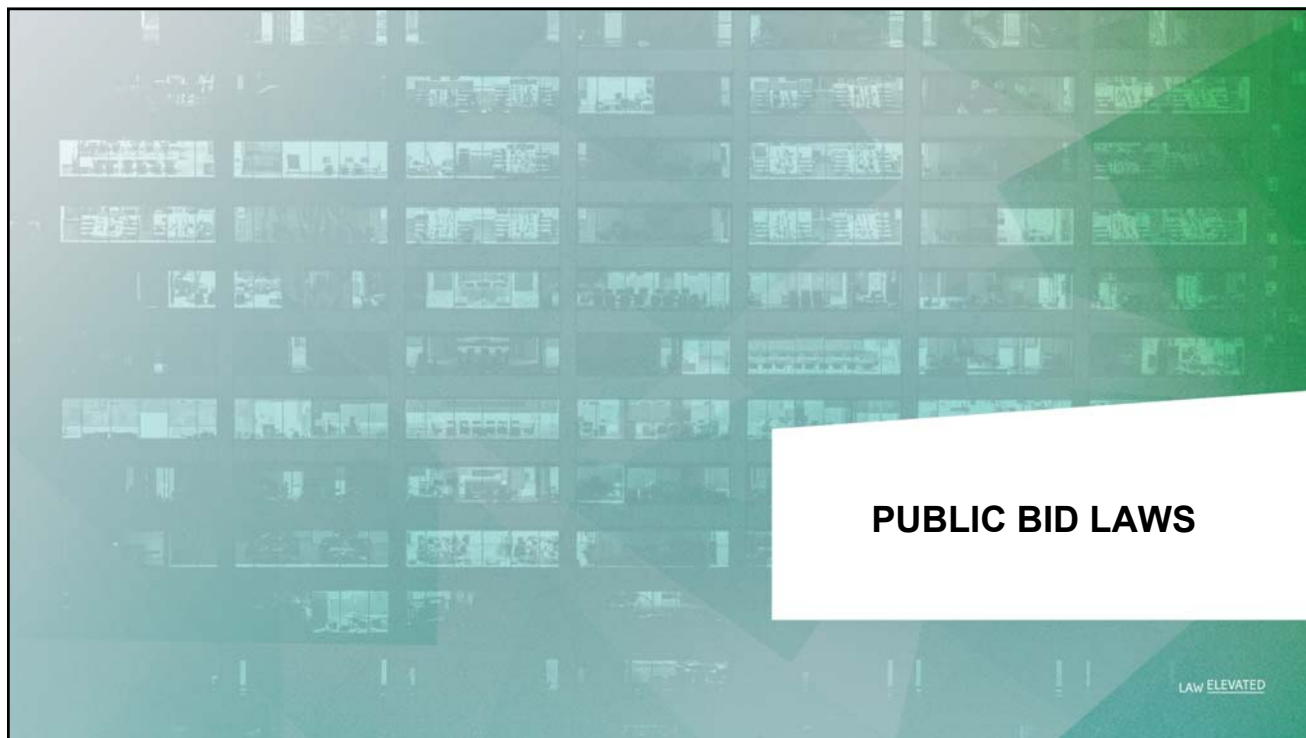
- **Some Statutory Exemptions:**
 - Academic records, § 37-11-51.
 - Attorney work product, § 25-1-102.
 - Individual tax records, § 27-3-77.
 - Licensure application and examination, § 73-52-1.
 - Personnel files, § 25-1-100.
 - Workers' compensation records, § 71-3-66.
 - **Trade secrets, proprietary commercial and financial information, § 79-23-1.**

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PROCESS FOR THIRD PARTY TO MAINTAIN EXEMPTION

- If documents in the possession of the public body contain trade secrets or confidential financial and commercial information, then those documents are exempt from the Public Records Act.
- However, it is on the Person/Company who is seeking to protect the information to the public body must give notice to the Person/Company about the request, and it is up to Person/Company to seek a protective order to maintain the confidentiality of those records in court within 21 days of the notice.
- If the public record which is held to be exempt from disclosure contains material which is not exempt pursuant to this chapter, the public body must separate the exempt material and make the nonexempt material available for examination or copying, or both.

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PUBLIC BIDDING

- **SECTION 31-7-13 – PURCHASE PROCEDURE PER AMOUNT**

- All agencies and governing authorities shall purchase
 - Their commodities and printing;
 - Contract for garbage collection or disposal;
 - Contract for solid waste collection and disposal;
 - Contract for sewage collection and disposal;
 - Contract for public construction; and
 - Contract for rentals

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PUBLIC BIDDING

• SECTION 31-7-13 – PURCHASE PROCEDURE PER AMOUNT

- Purchases of \$5,000 and less, exclusive of freight and shipping charges
 - i. No competitive bids required;
 - ii. No advertising required;
 - iii. Does not prohibit from seeking bids or advertising

PUBLIC BIDDING

• SECTION 31-7-13 – PURCHASE PROCEDURE PER AMOUNT

- Purchases of over \$5,000 but not over \$50,000, exclusive of freight and shipping charges
 - i. May be made from the **lowest and best bidder** without publishing or posting advertisement for bids; provided that;
 - ii. Obtain two competitive written bids
- Governing Authorities purchasing commodities may authorize its purchasing agent or clerk, or his designee, to accept the lowest and best competitive written bid.
 - Authorization shall be made in writing by the governing authority
 - Purchasing agent or clerk shall be liable for any penalties or damages imposed by law for a violation of this act.

PUBLIC BIDDING

• SECTION 31-7-13 – PURCHASE PROCEDURE PER AMOUNT

- Purchases over \$50,000
 - May be made from the **lowest and best bidder** after
 - Advertising for competitive bids once each week for two (2) consecutive weeks in a regular newspaper
 - Counting days do not include the day of publication or the day of the opening
 - Designee may be appointed to open bids
 - If no bids are received, must rebid
 - Reverse Auction, shall be primary method for receiving bids during the bidding process.
 - If purchasing entity determines that a reverse auction is not in the best interest of the state, then the Public Procurement Review Board must approve that determination.

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PUBLIC BIDDING LAWS

• LOWEST AND BEST BIDS

- If a governing authority accepts a bid other than the lowest bid actually submitted, then it must place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid.
- Shall include freight and shipping charges
- Life-cycle costing, total cost, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation.
- Shall no accept a bid based on items not included in the specifications

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PUBLIC BIDDING LAWS

- **COMPETITIVE BIDS**

- Bids are developed based upon comparable identification of the needs and are developed independently and without knowledge of other bids or prospective bids

- **Best Bid Negotiations – Apply to Construction Only**

- If the lowest and best bid is not more than 10% above the amount of funds allocated, then the governing authority shall be permitted to negotiate with the lowest bidder in order to enter into a contract for an amount not to exceed the funds allocated.

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PUBLIC BIDDING LAWS

- **Lease Purchase**

- Includes equipment, furniture and software
- Financing may also be obtained from the vendor or from a third party source after having solicited and obtained at least two written competitive bids without advertising
- All lease purchases are exempt from State sales tax, use and ad valorem taxes
- Interest paid on any lease purchase shall be exempt from State income taxes

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PUBLIC BIDDING LAWS

• EMERGENCY PURCHASE PROCEDURE

- If an emergency exists regarding the purchase of commodities or repair contracts, and the delay to conduct competitive bidding would be detrimental to the interests of the state, the governing authority has authority to approve the bill.
- At the next board meeting, documentation of the contract, including a description of the purchase, the price and the nature of the emergency must be presented to the board and placed on the minutes of the board.
- Total purchases shall only be for the purpose of meeting needs created by the emergency situation

LAW ELEVATED

PUBLIC BIDDING LAWS

• Waste Disposal Facility Construction Contracts

- Construction of incinerators and other facilities for disposal of solid waste in which products either generated therein, such as steam or recyclable are to be sold or otherwise disposed of;
- Shall publicly issue requests for proposals, advertised for in the same manner for public construction projects
- Shall contain terms and conditions relating to price, financial responsibility, technology, environmental compatibility, legal responsibilities
- May select the most qualified proposal or proposals on the basis of price, technology and other factors and
- May negotiate and enter contracts with one or more of the persons or firms submitting proposals.

LAW ELEVATED

PUBLIC BIDDING LAWS

- **Garbage, Solid Waste and Sewage Contracts**

- Before entering a contract for
 - Garbage collection or disposal
 - Solid Waste Collection or disposal
 - Involving expenditures of more than \$50,000
- Shall issue publicly a request for proposals concerning the specification in the same manner as public bid requirements (2 consecutive weeks in newspaper)
 - Shall include terms and conditions related to price, financial responsibility, technology, legal responsibilities and other relevant factors
- After responses are received – Governing Body may
 - Select most qualified person or firm based conditions in the RFP
 - May negotiate with and enter into contracts with one or more persons or firms

LAW ELEVATED

PUBLIC BIDDING LAWS

- **Reciprocal Preference Law – Section 31-7-47**

- In letting of public contracts, preference shall be given to resident contractors, and a nonresident bidder domiciled in a state, city, county, parish or political subdivision having laws granting preference to local contractors shall be awarded to Mississippi only on the same basis as the nonresident bidder's state, city, county or political subdivision.
- In the bid documents, a non-resident bidder is required to submit its local preference law or the bid is void.

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PUBLIC BIDDING LAWS

- **Price Adjustment Clauses**

- Bid proposals and contracts may include price adjustment clauses with relation to the cost to the contractor based upon a nationally published industry-wide or nationally published and recognized cost index.

- **Life of Contract**

- All contracts for purchase of commodities, equipment and public construction may be let for periods of not more than 60 months; subject to the end of the term restrictions
- All contracts greater than 24 months shall be subject to ratification or cancellation by governing boards taking office

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EXISTING EXCEPTIONS TO PUBLIC BIDDING

- **EXCEPTIONS TO BIDDING REQUIREMENTS**

- Outside equipment repairs
- In House equipment repairs
 - Parts may be purchased; however, cannot purchase an entire engine or transmission
- Intergovernmental sales and transfers
- Governmental Equipment Auctions
 - Purchased from federal, state or local government
- Single source items

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VIOLATIONS AND PENALTIES

- **Civil and Criminal Liability**
 - Unlawful to fail to make purchases without complying with the public purchasing law – Sections 31-7-55 & 31-7-57
 - Misdemeanor – fine and/or imprisonment in county jail
 - If intentional, willful or knowing, public officials can be removed from office.
 - If divert benefits to personal use, then depending on amount can be a misdemeanor or felony [if over \$500].
 - Public official of a governing authority, executive head or employee who authorizes the expenditure of money to an object not authorized by law can be personally liable for the amount misappropriated.

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