

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

September 21, 2018

The Honorable Derek Hopson, Sr.
Municipal Court Judge
City of Clarksdale
Post Office Box 266
Clarksdale, Mississippi 38614-0266

Re: City of Clarksdale

Dear Judge Hopson:

I am in receipt of a copy of your letter dated September 7, 2018. In your letter, you state:

I am the Municipal Court Judge for the City of Clarksdale, Mississippi (hereinafter sometimes "City"). I also continue a private practice.

Prior to taking office, I was counsel of record in a criminal case in which the defendant, my client, was accused of embezzling money from Clarksdale Public Utilities, which has a separate governing board; but appointed by the Board of Mayor & Commissioners of the City of Clarksdale, Mississippi. The case is not being prosecuted by any local prosecutor (City, County or DA). The prosecutor is the Office of the Attorney General, Public Integrity Division. Assistant Attorney General Marvin Sanders is the assigned attorney from the AG's Office. None of the proceedings have been initiated in or gone through municipal court where I currently preside.

After speaking with Mr. Sanders, neither of us believe that I have a conflict of interest. However, to remove any and all remote possibility, I would like confirmation as a city judge. This communication is to request your official opinion on the following questions:

Can you ethically and lawfully represent and defend a former employee (Maple Melton) of a city utility (CPU) in circuit court against charges of embezzlement from the city utility (CPU)?

We are aware of no state law that would govern your particular situation. Section 21-23-3 of the Mississippi Code Annotated provides for appointment of municipal judges and

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requires that such judges be attorneys. Obviously, the statute implicitly recognizes a right to continue private practice but does not set forth the limitations on such private practice. In a prior opinion, this office opined that "we find no statutory prohibition to an individual appointed as municipal judge continuing to practice law while holding the office of municipal judge. . . ." but that a "judge should recuse himself in any situation in which a conflict of interest presents itself." MS AG Op., Austin (June 18, 1999). A municipal judge would obviously be subject to the applicable provisions of the Code of Judicial Conduct. As an attorney, the municipal judge would be subject to any applicable Rules of Professional Conduct.

We note that your letter was directed to the Mississippi Judicial Performance Commission (the "Commission"). With regard to any issues arising out of the Code of Judicial Conduct (the "Code"), we recommend that you discuss those issues with the Commission, and this office defers to its advice. We are not sure from your letter whether you are currently representing the individual in a continuing manner from your retention as counsel prior to your appointment as a municipal judge or whether you are seeking to reassume such representation. These facts could affect whether or not you could obtain an opinion from the Mississippi Bar Standing Committee on Ethics. However, to the extent that your facts raise issues under the Rules of Professional Conduct (the "Rules"), we suggest that you discuss those issues with the Mississippi Bar's Office of General Counsel.

Because the issues in your letter do not raise questions of state law but, instead, are what we perceive as issues arising under the Code and/or Rules, we defer to the Commission and Bar on these matters. Additionally, because it appears that the issue could involve a question of attorney recusal or disqualification in a pending litigation matter, this office must decline to respond to your questions by way of an official opinion.¹

If our office can be of further assistance, do not hesitate to contact us.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:


Ricky G. Luke
Assistant Attorney General

cc: Shad White, State Auditor, Mississippi Office of the State Auditor
Adam Kilgore, Esq., General Counsel to the Mississippi State Bar
Thomas Hood, Esq., Executive Director, Mississippi Ethics Commission
Margarette Meeks, Esq., City Attorney, City of Clarksdale, Mississippi
Mississippi Judicial Performance Commission

¹ Section 7-5-25 limits this office to issuing opinions on matters of state law. Likewise, that section prohibits our office from opining in matters where either civil or criminal litigation is pending.