

**SUMMARY OF INVESTIGATION AND  
APPLICABLE LAW REGARDING ALLEGED  
UNDUE INFLUENCE IN BUILDING FLOWOOD FRONTAGE ROAD**

**I. THE FACTS**

**A. DUTY TO INVESTIGATE**

In a series of articles published in the Clarion Ledger in July, 2018, questions were raised about improper influence being exerted by the Lieutenant Governor and/or senator(s) upon the Mississippi Department of Transportation, forcing it to widen Lakeland Drive and, more specifically, to build a frontage road to a gated subdivision in which the Lieutenant Governor owns a home.

Section 65-1-86 of the Mississippi Code of 1972, as amended, provides:

The attorney general shall, with or without a request by the state highway commission, bring any lawsuit, in the name of the state highway commission, to recover any monies lost through illegal contracts, fraud, false pretense or any other criminal act, and the highway commission shall, at the direction of the attorney general, supply internal audits or perform any other necessary act to furnish the attorney general with any evidence pertaining to such loss for use by the attorney general in the preparation of said lawsuits.

Further, Miss. Code Ann. §25-4-113 states that the attorney general may bring an action against a public official or legislator acting in violation of section 25-4-105 by entering into a contract or using his office for his own pecuniary interest contrary to our ethics laws. Section 25-4-113 of the Mississippi Code of 1972, as amended, provides:

The Attorney General of the State of Mississippi, the commission, or any governmental entity directly injured by a violation of this article

may bring a separate civil action against the public servant or other person or business violating the provisions of this article for recovery of damages suffered as a result of such violation. Further, any pecuniary benefit received by or given by a public servant in violation of this article shall be declared forfeited by a circuit court of competent jurisdiction for the benefit of the governmental entity injured. In the discretion of the court, any judgment for damages or forfeiture of pecuniary benefit may include costs of court and reasonable attorney's fees.

See also Miss. Code Ann. §§7-5-1 and 59.

The duty of the Attorney General to investigate this matter also originates from the duties imposed upon this Office by the Mississippi Constitution. As discussed below, the facts revealed by this investigation indicate a potential violation of Section 109 of the Mississippi Constitution. This provision is a constitutional bulwark against public corruption and abuse of office. "Under Section 109 of the Mississippi Constitution, the attorney general has the right to have a court declare contracts made in violation thereof void and to recover all sums paid under said void contracts." *Moore ex rel. Benton Cty. v. Renick*, 626 So. 2d 148, 154 (Miss. 1993).

No other public office, neither the State Auditor nor the Mississippi Ethics Commission, have an independent obligation to enforce Section 109. Statutes define the important role of the State Auditor and authorize that office to make demands related to misspent funds but ultimately the pursuit of judicial enforcement of Section 109 falls upon the Attorney General. The Mississippi Ethics Commission has an important role to play in the investigation and enforcement of the Mississippi Ethics Statutes, Miss. Code Section 25-4-101 *et*

seq., which are similar but separate from the prohibition under Section 109. Yet, these statutes require the Commission to enlist the aid of the Attorney General for any judicial enforcement action. That process is distinctly statutory and does not include enforcement authority for the Commission with regard to Section 109. The Mississippi Constitution places the weight of enforcement of Section 109 squarely upon the Attorney General and duty demands that this weight is borne and the obligation to investigate discharged by this Office. As a result, we commenced an investigation.

The investigation was assigned to the Public Integrity Division, hereinafter referred to as PID, to conduct the investigation for any criminal and/or civil violations. An investigative report by the lead PID Investigator Larry Ware, which summarized the interviews, is attached as Exhibit "A." Investigators from the Cyber Crime Division were assigned to review electronic transmissions including emails and texts produced by the Mississippi Department of Transportation, hereinafter referred to as MDOT.

## **B. REQUEST FOR DOCUMENTS**

On July 18, 2018, a litigation hold letter was sent to the Lieutenant Governor, all senators, MDOT Commissioners and employees, and other relevant entities. The recipients were directed to preserve any communications, electronic transmissions and documents of all those who worked on any aspect of the road project, including current and former employees employed by the

Office of Lieutenant Governor, from January 1, 2012 until July 18, 2018. The letter also requested that the Lieutenant Governor and the Mississippi State Senate produce the following communications: “copies of all communications, including but not limited to emails and text messages, between your office, the Mississippi Senate and/or the Mississippi Department of Transportation related to the road project.” See Exhibit “B.”

On July 26, 2018, a letter from the Lieutenant Governor stated that he had no legal duty to provide the requested communications, and none were produced. The letter further stated:

After having conducted two independent reviews of electronic legislative communications by and between me and any members of my staff with anyone at the Department of Transportation regarding the frontage road project, and without waiving the legislative privilege that I and the other Senators undisputedly have under Mississippi law, no written documents have been found that meet the criteria of your request.

The Lieutenant Governor attached a letter from the director of the Legislative Budget Office which stated, “No policy exists regarding Long [sic] term archiving of data. Documents and emails, once created, are maintained on the system until the owner deletes the documents or the owner is no longer associated with the Legislature.” Neither letter stated whether any or how many communications had been deleted. See Exhibit “C.”

On August 28, 2018, former President *Pro Tempore* of the Senate Terry C. Burton, sent a letter which attached a copy of the senate policy regarding requests for expense records. The policy only provides for the disclosure of

some expenses and states, “No other records are subject to the release under this policy.” See Exhibit “D.”

Due to the refusal to provide the requested documents, no interview of the Lieutenant Governor or senator was requested because it is necessary to have the underlying documents to conduct a proper examination.

### **C. RECORDS RETENTION**

Section 25-59-1 *et seq.* of the Mississippi Code of 1972, as amended in 1981, contains the record retention law of the state. Section 25-59-15 states,

It shall be the duty of each state agency and each appointed or elected state official to: . . . (d) Submit to the department for review by the state records committee and in accordance with the rules and regulations of the department, a recommended retention schedule for records in its custody, . . .

This section requires that all “agency heads or appointed and elected state officials” have a duty to file “records control schedules,” which state how long records will be retained. If the schedule is approved by the “state records committee,” then the records may be destroyed after the approved period has passed. If no records control schedule has been submitted and approved, then the agency or elected official has a duty to retain the records indefinitely.

There is no record at the Department of Archives and History of any records control schedule being filed or approved by the Lieutenant Governor or the Senate. Section 25-59-23 provides:

[A]lteration or destruction of records by any person or persons in a manner not authorized by an applicable records control schedule . . . under this chapter shall constitute a misdemeanor, punishable by a

fine of not less than five hundred dollars (\$500.00) and not greater than one thousand dollars (\$1,000.00).

None of the records requested have been produced by the Lieutenant Governor, the Senate, or any member or staff of the Legislature. The refusal to produce records has impeded the investigation and prevented a full report on the subject.

#### **D. EMAIL COMMUNICATIONS**

The following series of emails primarily include Michael Arnemann, who served as the legislative liaison for MDOT, Kenny Ray Ellis who is the Lieutenant Governor's Legislative Liaison, and Lee Weiskopf, his former Policy Director.

1. On July 15, 2014 10:26 PM, Kenny Ellis kennyray [ellis@gmail.com](mailto:ellis@gmail.com) to Michael Arnemann <[michaelarnemann@gmail.com](mailto:michaelarnemann@gmail.com)>

Do you know the current status of this and do you mind If [sic] I give you a call tomorrow so that I can get up to speed?  
http://www.clarionledger.com/story/news/2014/07/15/1-ake-lan-d-rive-motorists-see-orange-barrels/1271a111/

2. On July 16, 2014, at 10:02 AM, Michael Arnemann <[michaelarnemann@gmail.com](mailto:michaelarnemann@gmail.com)> responded to Kenny Ray Ellis:

Yes, call me this afternoon, Kenny Ray. I'm In and our [sic] of meetings In north MS but if I miss you I'll call you back.

3. On Wed, July, 16, 2014 at 10:18 AM, Kenny Ellis <[kennv.rav.ellis@gmail.com](mailto:kennv.rav.ellis@gmail.com)> wrote to Michael Arnemann:

Sounds good.

4. On July 17, 2014, at 9:22 AM, Kenny Ellis <kennyray [ellis@gmail.com](mailto:ellis@gmail.com)

wrote to Michael Arnemann:

Arnemann, here is the list of questions that the **LTG** would like answers to in regards to the Lakeland project. I realize that you are out of the office today, but would you mind either forwarding this to the appropriate Individual, or directing me towards that person?  
What % of right of ways have been purchased for phase 1?  
What [sic] % of right of ways have been purchased for phase 2?  
What utilities have been moved?  
What utilities have not yet been moved?  
What Is [sic] expected date to start moving dirt?  
What Is [sic] the current budget?  
What is expected completion date for phase 1?  
How much money has been spent?

Thanks,  
KRE

(emphasis added)

Although MDOT officially uses project numbers, the term phase 1 in the communications referred to the Lakeland widening project, and phase 2 referred to the frontage road. In a letter from MDOT Executive Director Melinda McGrath to Lieutenant Governor Tate Reeves, the widening of Lakeland and the frontage road are not two separate projects, as asserted by the Lieutenant Governor in his letter to Melinda McGrath, because the frontage road was “part of the widening project.”

5. On Thu, July, 17, 2014 at 1:19 PM, Michael Arnemann

<[michaelarnemann@gmail.com](mailto:michaelarnemann@gmail.com)> wrote to Kenny Ray Ellis:

Kenny Ray,  
Our people are going to compile this data for y'all. The person that has most of it is out of the office the rest of this week so I should have something for you early next week.

6. On July 17, 2014, at 2:19 PM, Kenny Ellis <kennyray

[ellis@gmail.com](mailto:ellis@gmail.com)> wrote to Michael Arnemann:

Is there anyway [sic] we can get this a little sooner? The **LTG seemed especially interested when I spoke to him about it this morning**

(emphasis added)

7. On July 17, 2014 at 9:30 pm. Michael Arnemann

<[michaelarnemann@gmail.com](mailto:michaelarnemann@gmail.com)> wrote to Kenny Ellis

<kennyrayellis@gmail.com>:

Re: Lakeland

Melinda is [sic] working on this now. She is out of town and wants to personally handle this for LTG to ensure that everything is 100% accurate, She says she'll have something for him Monday morning. Sorry for the delay,

8. On July 24, 2014 at 9:44 am from Michael Arnemann to Kenny Ellis on state email system:

From: Arnemann, Michael B [mailto:marnemann@mdot.ms.gov]  
Sent: Thursday, July 24, 2014 9:44 AM  
To: Kenny Ellis; Kenny Ellis  
Subject: Lakeland widening

Hey, man. Sorry for the delay. We wanted to get y'all something with some substance in the short term; but we were having trouble getting firm info on utility movements.

Also no firm date can be given on programming the project for construction until we are know the utilities are fully moved. See attached. Hope this helps.

Arnemann

9. On July 24, 2014 at 9:51 am from Kenny Ellis to Michael Arnemann:

From: Kenny Ellis <KEllis@senate.ms.gov>  
Date: July 24, 2014 at 9:51:27 AM CDT  
To: "Arnemann, Michael B" <marnemann@mdot.ms.gov>  
Subject: RE: Lakeland widening

Thank you Sir. So when the utilities are fully moved will we be able to get a date, or at least a loose projected date that we can base expectations off of?

10. On July 24 at 5:33 pm from Michael Arnemann to Kenny Ellis:

From: "Arnemann, Michael B"  
<MDOT/CENTRAL/RECIPIENTS/MARNEMANN>  
Sent: 7/24/2014 17:33:06 -0500  
To: Kenny Ellis <KEllis@senate.ms.gov>  
Subject: Re: Lakeland widening

I don't see anything on my phone. Can you resend? Call you back in a minute.

11. On July 24, 2014, at 4:56 pm, from Kenny Ellis to Michael Arnemann

with both on state email system:

From: Kenny Ellis <KEllis@senate.ms.gov>  
Sent: 7/24/2014 16:56:20 -0500  
To: "Arnemann, Michael B" <marnemann@mdot.ms.gov>  
Subject: RE: Lakeland widening

Arnemann, the response to the question of "What is the current budget?" was "\$35M for construction, \$1M for right of way." Is that for the entire project or just phase 1?  
-KRE

12. On July 24, 2014 5:36 PM from Kenny Ellis <

[KEllis@senate.ms.gov](mailto:KEllis@senate.ms.gov)> on state email system to Michael Arnemann's gmail

account:

Sorry, I've been having some issues with my computer lately. I've copied the previous email below.  
Arnemann, the response to the question of "What is the current budget?" was "\$35M for construction, \$1M for right of way." Is that for the entire project or just phase 1?  
-KRE  
Kenny Ellis

At some point Kenny Ray Ellis left the employ of the Lieutenant Governor and Lee Weiskopf took over his duties.

13. On Friday September 26, 2014, the following email was sent with an attachment from Michael Arnemann to Lee Weiskopf:

From: Arnemann, Michael B  
Sent: Friday, September 26, 2014 10:18 AM  
To: 'Lee Weiskopf'  
Subject: frontage roads  
Attachments: Lakeland Frontage Rd .. png  
This is for illustrative purposes only. Nothing is set in stone. FYI

The attachment to the above email is attached hereto as Exhibit "E" and shows the proposed routes for the frontage road.

14. On November 4, 2014 at 10:05 am, an internal MDOT email states that the Lieutenant Governor's staff called for an update:

From: Arnemann, Michael B  
Sent: Tuesday, November 04, 2014 10:05 AM  
To: Foster, David  
Cc: McGrath, Melinda  
Subject: Hwy 25  
David, the Lt. Gov's staff called to ask what utilities we're waiting on for Lakeland project. Please advise when you can.

15. Also on November 4, 2014, at 1:18 am, a response was sent to Michael Arnemann:

>> From: Foster, David  
>> Sent: Tuesday, November 04, 2014 11:18 AM  
>> To: Arnemann, Michael B  
>> Cc: McGrath, Melinda; McConnell, Mark  
>> Subject: RE: Hwy 25  
>>  
>> Phase 1 Mainline widening  
>>

>> Entergy - They have submitted their agreement and permit. The agreement has been submitted by the District to Jackson for approval at the next Commission meeting. Entergy has informed the District that they will not begin relocating their facilities until after the first year as they are awaiting internal funding to do so.

>>

>> Comcast - They have submitted their agreement and permit. The agreement has been submitted to Jackson for approval by the Commission at its next meeting. Upon approval of the agreement, Comcast intends to begin relocating their underground facilities this quarter but will be waiting on Entergy to relocate its facilities so that they (Comcast) can relocate their aerial on Entergy's poles.

>>

>> CenterPoint - Their permit has been approved. No agreement is needed. The District expects them to begin relocations at any time.

>>

>> AT&T - District is waiting on them to submit their permit. No agreement is needed.

>>

>> City of Flowood - District is waiting on the City to submit agreements and permits for both water and sewer.

>>

>> Phase 2 Frontage Road

>>

>> In the event the frontage road will be constructed, permits will be needed from Telepak, CenterPoint, and the City of Flowood.

>>

>>

>> The District is focusing solely on getting the needed permits and agreements for Phase 1 only at this time as they are the most critical.

(emphasis added)

16. On November 5, 2014 at 9:05 am from Michael Arnemann to Lee

Weiskopf:

From: Arnemann, Michael B [mailto:marnemann@mdot.ms.gov]

>> Sent: Wednesday, November 05, 2014 9:05 AM

>> To: Lee Weiskopf

>> Subject: FW: Hwy 25

>>

>> Lee,

>>  
>> Take a look below from our District Engineer, and let me know what you think.  
>>  
>> MBA  
>>  
>>  
>> Michael B. Arnemann  
>> Government Affairs  
>> Mississippi Department of Transportation  
>> (601) 906-9828

17. On Nov 5, 2014, at 9:24 AM, Lee Weiskopf <[LWeiskopf@senate](mailto:LWeiskopf@senate.ms.gov)

[.ms.gov](mailto:LWeiskopf@senate.ms.gov)> wrote to Michael Arnemann:

Thank you, sir. Big wins last night

Lee Weiskopf  
Director of Policy  
Office of Lt. Governor Tate Reeves  
601-359-3258  
[lweiskopf@senate.ms.gov](mailto:lweiskopf@senate.ms.gov)  
[www.ltgovreeves.ms.gov](http://www.ltgovreeves.ms.gov)

18. On November 5, 2014, at 9:33 am from Michael Arnemann to Lee

Weiskopf:

From: Arnemann, Michael B [<mailto:marnemann@mdot.ms.gov>]  
Sent: Wednesday, November 05, 2014 9:33 AM  
To: Lee Weiskopf  
Subject: Re: Hwy 25

Hopefully we'll capitalize on it

19. On November 5, 2014, at 9:58 am from Lee Weiskopf

[LWeiskopf@senate.ms.gov](mailto:LWeiskopf@senate.ms.gov) to Arnemann, Michael B

<marnemann@mdot.ms.gov:

Can you get more specifics on AT&T issue? Not sure what their timeline is like compared to Entergy, Comcast... I guess, is MDOT waiting, or are they all working together well?

20. On April 3, 2015, at 7:40 am from Michael Arnemann to Lee Weiskopf:

From: Arnemann, Michael B [mailto:marnemann@mdot.ms.gov]  
Sent: Friday, April 03, 2015 7:40 AM  
To: Lee Weiskopf  
Subject: Thanks

Thanks for all your help this Session. Yall helped us out considerably. When the dust settles let's all hang out soon.  
MBA

21. On April 6, 2015, at 2:11 pm from Lee Weiskopf to Michael Arnemann:

From: Lee Weiskopf <[LWeiskopf@senate.ms.gov](mailto:LWeiskopf@senate.ms.gov)>  
Sent: Monday, April 6, 2015 2:11 PM  
To: Arnemann, Michael B  
Subject:  
RE: Thanks

Always a pleasure .... Glad I was able to help where I could, and minimize the hurt in some places. Thanks for you and Melinda working with us. Lets catch up soon with lunch or beer.  
Lee

22. On September 18, 2015, at 1:51pm, Barrie Nelson, who is the scheduler for the Lieutenant Governor, sent an email to Michael Arnemann:

From: Barrie Nelson <[mbarrie.nelson@gmail.com](mailto:mbarrie.nelson@gmail.com)>  
Sent: 9/18/2015 13:51:56 -0500  
To: "Arnemann, Michael B" <[marnemann@mdot.ms.gov](mailto:marnemann@mdot.ms.gov)>  
Subject: Re: Lakeland??

I think we are going to have a mini-meeting on Monday AM - will get this in front of the LTG then! Thank you!

23. On January 22, 2016, at 6:42 am from Michael Arnemann to Lee

Weiskopf:

From: Arnemann, Michael B  
Sent: Friday, January 22, 2016 6:42 AM  
To: Lee Weiskopf  
Subject: Info

Working on getting you that info. Putting the finishing touches on it. I expect the finished product early next week.

24. On February 1, 2016 at 9:04 am from Michael Arnemann to Melinda

McGrath *et al* stating he received a phone call from the Lieutenant Governor's staff:

From: Arnemann, Michael B  
Sent: Monday, February 01, 2016 9:04 AM  
To: McGrath, Melinda  
Cc: Mood, Amy; Edwards, Cheryl  
Subject: Lt. Governor Reeves

The Lt. Gov staff just called me to ask for an official update on:

1. Lakeland Drive project
2. The frontage road and exactly what has been decided on signals and access to the two subdivisions.

Michael B. Arnemann  
Government Affairs  
Mississippi Department of Transportation  
(601) 906-9828

25. On Feb 1, 2016, at 9:42 AM, "Arnemann, Michael B"

<[marnemann@mdot.ms.gov](mailto:marnemann@mdot.ms.gov)> wrote to David Foster and copied Melinda

McGrath:

David,

The Lt. Governor (staff) has called to ask if we could provide a comprehensive update on:

1. The progress of the Lakeland Drive construction project
2. The latest ongoing on the access to the two gated neighborhoods, specifically related to signalization and the frontage road that has been discussed.

a. The last I heard, we were currently in discussions with the City on the Frontage Road.

That's all I know as of now. If you have any additional information, please advise.

Michael B. Arnemann  
Government Affairs  
Mississippi Department of Transportation  
(601) 906-9828

(emphasis added)

26. On February 1, 2016 at 9:54 am from Michael Arnemann to David

Foster, MDOT :

From: Arnemann, Michael B  
Sent: Monday, February 1, 2016 9:54 AM  
To: Foster, David  
Cc: McGrath, Melinda  
Subject: RE: Lakeland update

I'll wing #2. Thanks.

27. On February 1, 2016, at 9:53 am from David Foster to Michael

Arnemann:

From: Foster, David  
Sent: Monday, February 01, 2016 9:53 AM  
To: Arnemann, Michael B  
Cc: McGrath, Melinda  
Subject: Re: Lakeland update

Michael:

I'll get Freddy to give you something on #1. As for #2, I'm not going to be of any help.

David

28. On February 2, 2016, at 8:56 am from Michael Arnemann to Lee

Weiskopf:

From: Arnemann, Michael B [<mailto:marnemann@mdot.ms.gov>]  
Sent: Tuesday, February 02, 2016 8:56 AM  
To: Lee Weiskopf  
Subject: Lakeland

Lee,

I copied the Engineer's response as opposed to forwarding the voluminous email thread. It went to multiple folks in the field to double check the facts.

"The project is basically on schedule. They have completed the outside widening from old fannin to airport and have shifted traffic to start on inside widening in this segment. They are almost complete with inside widening from old fannin to grants ferry and hope to start on outside widening in next few weeks. They have one box culvert extension left and they should finish in next couple weeks then they will begin on bridge widening at Flowood drive. Bridge at detour has been removed and is almost completely back filled. Hope to have this section complete in next few weeks and get traffic off detour. Do you need more detail than this? "

**We're currently in discussions with the City about the details of the frontage road.** I should know more about that and the specifics of it in in couple weeks as discussions progress. Let me know if you need any additional information.

Michael  
Michael B. Arnemann  
Government Affairs  
Mississippi Department of Transportation  
(601) 906-9828

(emphasis added)

29. On February 2, 2016, at 5:56 pm Lee Weiskopf to Michael Arnemann:

From: Lee Weiskopf <[LWeiskopf@senate.ms.gov](mailto:LWeiskopf@senate.ms.gov)>  
Sent: Tuesday, February 2, 2016 5:56 PM  
To: Arnemann, Michael B  
Subject: RE: Lakeland

Never told you **thank you for this, but thank you. Very helpful.**  
Lee

30. On January 10, 2017, at 4:22 pm from Michael Arnemann to Melinda McGrath, *et al* documenting a text message from Rebekah Staples:

From: Arnemann, Michael B  
Sent: Tuesday, January 10, 2017 4:22 PM  
To: McGrath, Melinda  
Cc: Loflin, Trudi; Edwards, Cheryl; Mood, Amy; Williams, James  
Subject: Office of Lt. Gov. Tate Reeves

I just received a text from Rebekah Staples that said the following:  
“Hey – can you get me how much money MDOT spent in FY 2014, 15, and 16 purchasing right of way?... LTG asking”

**Michael B. Arnemann**  
Government Affairs  
Mississippi Department of Transportation  
(601) 906-9828  
(emphasis added)

#### **E. OBFUSCATION**

Although the July 26, 2018, letter signed by the Lieutenant Governor states that no records were found, there were 22 emails between the Lieutenant Governor’s staff and the MDOT regarding the topic, with 15 specifically concerning the frontage road. See letter attached as Exhibit “C”. In fact, there were 11 emails found from his staff to the MDOT, 11 from the MDOT to his staff, three documented calls from his staff to the MDOT, one text message from Rebecca Staples on his staff to MDOT, at least two meetings were mentioned in MDOT records, and one meeting with the Lieutenant Governor in which the project was discussed. Of the 22 emails between the Lieutenant Governor’s staff

and the MDOT, 14 were both sent and received on the state email system.

As stated above, the July 18, 2018, letter to the Lieutenant Governor requested that he produce all communications between his office and the MDOT and that he forward the letter to all current and former employees. The Response of the Lieutenant Governor represented that there were no such communications.

#### **F. THE INTERVIEWS**

Ten interviews were conducted in November and December of 2018 by Public Integrity Division Investigator Larry Ware and two special assistant attorneys general. A report summarizing the interviews is attached hereto as Exhibit "A". Out of an apparent fear of reprisal, the interviewees exhibited hesitancy to be interviewed and did not volunteer information, other than what they were asked. They were given the choice of having their interview recorded. Nearly all preferred not to record the interviews.

Since the investigation was initiated with the possibility that criminal violations might be found, the rule regarding the protection of confidential informants was followed. One witness, hereinafter referred to as CI-1, was granted confidential informant status to the extent he/she provided information involving potential criminal activity. We downloaded texts from his/her phone to confirm the veracity of his/her statements.

On November 16, 2018, an interview of CI-1 was conducted wherein he/she stated that Senator Willie Simmons, Chairman of the Senate

Transportation Committee, said that Lieutenant Governor Tate Reeves wanted to do something about the traffic on Lakeland Drive because it was bad and that it takes a long time to get from the interstate to his home. MDOT Executive Director Melinda McGrath's staff were reluctant to pursue the project because there were more critical needs throughout the state due to safety, and those projects would be bumped down the list.

CI-1 stated that Lee Weiskopf came to MDOT for a meeting with CI-1 and Melinda McGrath shortly before a map of the proposed frontage road was sent to Weiskopf on September 26, 2014. McGrath advised Weiskopf that the traffic signal option would violate their minimum distance policy between traffic signals and that the J-turn alternative was rejected. In response, C-1 stated that the question, "What about a frontage road?" was posed.

CI-1 stated there was an agreement to "get them what they wanted," which was a frontage road. A note downloaded from the phone of CI-1, created on August 1st, 2014 at 08:38:46 states,

Tate: emphasize that we have been working on multiple drafts of the letter. That's what caused delay (as well as MAGIC, budget and federal Reauthorization) Melinda is trying to minimize political exposure for the Lt. Gov. With [sic] Lakeland project and it's re prioritization. However, she said she is not going to be as friendly with other projects earmarked. And we need his help to cut those out going forward.

The investigative report summarized CI-1's feelings on the influence of the Lieutenant Governor as follows:

CI-1 felt like there was **influence from the Lt. Governor by using**

his position to get the frontage road so the CI-1 put it on MDOT's server via email so that he/she would have a record of it because the CI-1 felt "queasy" about it. The CI-1 would do this on everything because the CI-1 would get requests from Legislative staff often. . .

CI-1 went on to provide that it was expressed by the Lt. Governor's staff that the Lt. Governor was not satisfied with the pace of the project and that they wanted more updates.

CI-1 stated that utilities companies can be slow in which the Lt. Governor's staff asked for an update at one point in which the CI-1 told the Lt. Governor's staff to contact the utilities companies to see if things could be sped up; CI-1 related that that was done and things were sped up.

CI-1 related that the Lt. Governor was actively participating through his staff as it relates to the construction of the project.

CI-1 stated that there was not an overt threat made towards him/her pertaining to the project, **but it was implied**. C-1 related that C-1 knew what they were capable of and if you don't do what they say, it will be "hell" to pay.

CI-1 stated that the Lt. Governor saying that he knew nothing about the project is not true and that the Lt. Governor knew. CI-1 went on to state that they were invited to the Lt. Governor's Office to meet regarding the road and bridge closures in which McGrath told the Lt. Governor to let her update him on the project, in which she did.

CI-1 related that MDOT was prevented from carrying out its job or duties as it relates to Vision 21. CI-1 stated that the Lakeland Drive project needed to be done but other things throughout the state needed to be done as well. CI-1 went on to state that the Lakeland Drive project was pushed up the list. . .

CI-1 stated that he/she was contacted by Senator Josh Harkins right after the Litigation Letters went out in which the CI-1 described him as being worried, squeamish, and very warm during the phone call. CI-1 related that she/he thought that Senator Harkins was either recording the conversation or was on speaker phone. CI-1 went on to say that Senator Harkins stated that the CI-1 was going to get Subpoenaed in which the CI-1 told him that the CI-1 was going to go and tell what the CI-1 knows.

(emphasis added)

In a November 20, 2018, interview with investigators, MDOT Executive Director Melinda McGrath stated that, from 2014 to 2016, there were numerous updates provided to the Lieutenant Governor's Office and several meetings with the Lieutenant Governor in which she provided updates to him. She acknowledged that there were numerous undocumented phone calls from the Lieutenant Governor's Office.

She first heard that the Lieutenant Governor's Office wanted a traffic light at the intersection of Lakeland and Oakridge Trail, but the MDOT engineers determined that the proposed red light would be too close to the Dogwood / Lakeland red light. After the red light and J-turn options were turned down, it appeared that the project was dead. The project was resurrected due to communication with the Lieutenant Governor's Office.

She said that she met with Lee Weiskopf, who worked for the Lieutenant Governor on transportation issues, concerning a request for the frontage road project. (CI-1 stated that the meeting occurred shortly before the map of the proposed frontage roads was sent to Weiskopf on September 26, 2014.)

When asked about her reference to political pressure being applied to her, McGrath related that there was interest by the Lieutenant Governor's Office. She meant by her "legislative wrangling comment" that she had to compromise, or she would not get her budget, and McGrath mentioned that the April 2-3, 2014 Special Session was required due to the frontage road project being added. An

April 1, 2014, article in the Clarion Ledger addressed the dispute over the \$10 million to cover the frontage road as follows: “(Representative Robert) Johnson (House Transportation Committee Chair) complained on the House floor about the Senate earmark of \$10 million for an upgrade for Lakeland Drive/Mississippi 25, which some in the House noted was near Lt. Gov. Tate Reeves’ home area.” (emphasis added)

Flowood Mayor Gary Rhodes told McGrath that if she did not build the frontage road, the Legislature would write it into law. She stated that in maybe 2014, but it was actually 2013, there was an earmark for the City of Flowood to buy the right-of-way instead of giving the right-of-way to MDOT. In order for Flowood to access the money, the city had to enter into an agreement with MDOT.

She stated that when the story broke in the news, Mayor Rhodes said that the Lieutenant Governor called him and cursed him out. She told Mayor Rhodes to just hang up on the Lieutenant Governor like Commissioner Hall does.

On November 20, 2018, Lisa Horton the Utilities Coordinator at MDOT was interviewed. She stated in her emails that the project was very, very, very political and confirmed in her interview that the Lieutenant Governor was pushing for the project.

The investigative report of November 20, 2018 interview with David Seal MDOT Assistant Roadway Design Engineer, summarized his statements as follows:

Seal stated that the first time that he became aware of the project was in December of 2013 in which his boss at the time, John Reese, asked him to develop a frontage road and to also complete a cost estimate. Seal stated that they worked hard on the project and in September of 2014, they were told that the project was not going to be a part of the six (6) lane widening project. Seal related that the project came back up in 2016 from an operations standpoint as it relates to if the frontage road would work. . . Seal stated that they were told to focus on making the deadline and that it was clear that the deadline needed to be met. Seal related that at the onset of the project, there were three (3) team members and the number of team members increased to approximately eight (8). Seal went on to say that they were told that failure was not an option. Seal related that everyone kind of knew why they were doing what they were doing and that everyone knew who lived in the neighborhood.

(emphasis added)

## G. LETTERS

In his July 11, 2018, letter to Melinda McGrath following the media stories, the Lieutenant Governor stated that the Lakeland widening project was separate from the frontage road and that they were “two separate projects (one of which I was heavily involved in and one of which I was not)”. He goes on to state that Commissioner Hall never discussed the frontage road project with him. He added that “I have not . . . ever stated a position on whether or not the state utilizes a service road as part of this expansion.”

An October 7, 2013, letter drafted by Commissioner Dick Hall to Lieutenant Governor Tate Reeves, stated,

It has recently come to my attention that the City of Flowood has lobbied to administer the \$4.9 million dollars you earmarked for the Highway 25 Improvements in this year's bond bill. After our last conversation it was my understanding that you and I agreed that the funds and project would be administered by the Mississippi Department of Transportation.

As you know the Mississippi Department of Transportation has already spent time, manpower, and money to get this project moving. As you requested I instructed our Director and her staff to engage in the design and planning of the project, which is now well underway. Furthermore, our right of way agents have already been contacting land owners prior to the writing of this letter.

The City of Flowood and their consultants cannot administer this project as efficiently or cost effectively as MDOT. Their involvement adds an unnecessary layer of bureaucracy only to serve as a 'middleman' in a project the staff at MDOT is fully capable of completing. Even if the City were involved MDOT would still have to provide oversight on the project as it is still a State Highway, and MDOT is charged with providing the safest route possible for the traveling public in a cost efficient manner -- responsibilities that a consultant may not highly prioritize. I think you would agree that having the City of Flowood involved in this manner is not the best and most efficient use of taxpayer funds.

See Exhibit "F" (emphasis added). However, it is not clear if this letter was submitted to the Lieutenant Governor.

In her July 25, 2018, response letter to the Lieutenant Governor, Melinda McGrath disputed that there were two separate projects and noted that the MDOT 2015 appropriation bill covered one project. She stated that the Vision 21 statute, MCA §65-3-97 requires MDOT to develop and implement a statewide systematic methodology for identifying and prioritizing needs based upon safety metrics to prioritize the most needy projects. Due to under funding by the Legislature, the MDOT Commissioners instructed the staff to prioritize road preservation over expansion. She added that the Lakeland earmark in the MDOT's 2015 budget appropriation bill bypassed the statutory Vision 21 priority

process by requiring that the project begin immediately without additional funding. This forced MDOT to divert funding and significantly delay multiple road and bridge projects across the state. See Exhibit “G.”

MDOT has nine separate warrants, or tests, that are considered before implementing a traffic improvement, and most are volume based. They also consider crashes in the area and if a signal will improve the traffic flow, based on their engineering judgement. The frontage road request did not meet any of these tests. Numerous MDOT staff interviews made clear that the Oakridge Trail intersection was a perceived safety issue and matter of annoyance for the residents rather than an actual safety issue, based on the data.

According to Commissioner Hall and MDOT, the project would cost anywhere from 1.2 to 2 million. The project was authorized, and funds were allotted for the right of way and movement of utilities for the frontage road, totaling \$611,500. This included \$489,200 in federal funds and \$122,300 in state funds. The total amount expended was \$463,022.58, including \$322,721 for rights of way and approximately \$80,000.00, on preliminary engineering on pursuit of the frontage road.

## **H. LIEUTENANT GOVERNOR’S MEDIA STATEMENTS**

The Lieutenant Governor stated in a July 11, 2018, press conference that he had not gotten involved in the frontage road project, but his office frequently contacted MDOT on behalf of constituents about other projects. See Exhibit “H.”

In an interview with investigators on November 20, 2018, MDOT Executive Director stated that she was not aware that the Lieutenant Governor's Office had contacted the MDOT about a project other than the Lakeland widening and frontage road project.

The Lieutenant Governor stated that the five meetings he had with Melinda McGrath had been requested by her and that they never discussed the frontage road. (Video 14:35 and 16:49, respectively). CI-1 stated that the Lieutenant Governor's Office invited Melinda McGrath and other MDOT personnel to the Office of the Lieutenant Governor to give an update. The Lieutenant Governor further stated that he never had a discussion with anyone at MDOT or any other elected official about the frontage road. (Video 16:53). However, MDOT Executive Director Melinda McGrath stated in said interview that from 2014 to 2016 there were numerous updates provided to the Lieutenant Governor's Office and **several meetings with the Lieutenant Governor in which she provided updates on the project to him.** The investigator's report summarized Melinda McGrath's statement as follows:

McGrath stated that the Lt. Governor would not say much during these meetings and once the updates were given, he responded by saying, "sounds good." McGrath related that the Lt. Governor would be paying attention but he just would not say much about it.

(emphasis added)

The Lieutenant Governor did not deny discussing the matter with members of his neighborhood association by stating that there had been discussion in the

neighborhood. (Video 20:59) He stated that “we” had suggested the red light to MDOT through a staffer. (Video 25:00)

Two of the emails from the Lieutenant Governor’s staffer Kenny Ray Ellis expressly stated that the “**LTG would like answers**” and “Is there anyway [sic] we can get this a little sooner? The **LTG seemed especially interested when I spoke to him about it this morning.**” July 17, 2014 at 9:22 am and 2:19 pm, respectively. In the text from Rebekah Staples on January 10, 2017, she stated, “Hey - can you get me how much money MDOT spent in FY 2014, 15, and 16 purchasing right of way? . . . **LTG asking**”. (emphasis added)

Mayor Rhodes statement to Melinda McGrath that the Lieutenant Governor called him and cussed him out after the news broke, indicates he discussed the matter with Mayor Rhodes.

## **I. MISSISSIPPI TRANSPORTATION COMMISSION**

In order to help remove political considerations from the decisions concerning the determination of the objective transportation needs of the State and the application of vast sums of money to meet those needs, the Mississippi Legislature created the Mississippi Transportation Commission, and the Mississippi Department of Transportation. These public entities act within the executive branch and are intended to provide a check against vital transportation decisions being made based on non-objective political factors, including self-interest and abuse of power. See Miss. Code §65-3-97 (Vision 21).

The Transportation Commission shall construct, upgrade or improve the segments described in paragraphs (f), (g) and (h) of this subsection, the projects described in Section 65-39-1 and other highway construction under its jurisdiction, in accordance with a priority schedule based upon a needs analysis performed by the Mississippi Department of Transportation.

Miss. Code §65-3-97(5)(a)(i).

In 2014, the Transportation Commission directed Melinda McGrath to stop all widening projects until they could address critical infrastructure needs.

According to MDOT's Year of Need Analysis, widening Lakeland between Highway 475 and Grant's Ferry Road was ninth on the list; yet MDOT was required to start the project ahead of the other eight projects, including bridge repair, and to add the frontage road to the widening project in order to obtain their budget. See Exhibit "I."

At no point, did the Mississippi Transportation Commission and the Mississippi Department of Transportation consider the median cut on Lakeland Drive directly north of the intersection of Lakeland Drive and the private drive to Oakridge Subdivision in Flowood, Rankin County, Mississippi, an issue to be addressed with state tax dollars. Nor did the Mississippi Transportation Commission and the Mississippi Department of Transportation have any plans to study, plan or construct a frontage road to the private drive to Oakridge Subdivision to a municipal street.

In 2007 and after, the median cut on Lakeland Drive directly north of the intersection of Lakeland Drive and the private drive to Oakridge Subdivision was

safe, and the sentiments of the users of that median cut are best described as follows:

As someone who utilizes our existing median cross-over for westbound turns on a daily basis, I can tell you that the traffic lights at Dogwood Festival Boulevard and further east at Luckney Road are timed such that we have ample opportunities to safely cross at the existing median cross-over. We submit that our existing cross-over is no less safe than the right turn / U-turn alternative.... We do not want our existing median cross-over to be reconfigured in a manner which precludes our ability to turn left into the westbound lane of Lakeland Drive. We have used that cross-over for more than ten years (since the inception of our neighborhood) with relatively few safety problems.

(members of the Oakridge Property Owners' Association, Inc., speaking through its president in correspondence dated June 13, 2017) See Exhibit "J" (emphasis added).

According to a February 9, 2016, email from Andy McNair of MDOT, a frontage road connecting the above referenced private drive to another municipal street, adjacent shopping center and intersection would be unnecessary and "underutilized" if constructed. See Exhibit "K." A prior February 5, 2016, email from David Seal of MDOT described the frontage road project as "resurrected" and proposed as a one-way single lane road. See Exhibit "L." The "frontage road would basically be utilized by a small group and not the public at large," according to Don Drake in an email dated August 4, 2017, to Trudi Loflin, MDOT Right-Of-Way Division Director. See Exhibit "M." Per the Executive director of MDOT, such a road would have never been considered or advanced based upon

a request from officials of Flowood alone.

#### **J. REEVES AND THE OAKRIDGE PROPERTY OWNERS ASSOCIATION**

Since 2004, Jonathan Tate Reeves has owned property and resided in the Oakridge Subdivision located in Flowood, Rankin County, Mississippi. Oakridge Subdivision is gated to prevent the public from coming on the premises of the subdivision and accessing the private streets located beyond the gate and guardhouse. There are 42 lots and 27 houses in the subdivision. As a lot owner, Reeves and his spouse own a membership share in the Oakridge Property Owners' Association, Inc., (OPOA). The fence, guardhouse, gates, streets and common areas of Oakridge Subdivision are maintained by OPOA. OPOA funds its operations by an assessment on each membership, and the payment of the assessment is secured by the member's lot. See Covenants attached as Exhibit "N."

Reeves' membership share allows Reeves to vote on matters of control of the OPOA, on the election of officers, the actions of OPOA including financial matters, the transfer of assets of OPOA, maintenance and improvements. According to the annual minutes of the meeting of members of OPOA in 2018, OPOA had accumulated cash capital of \$127,433.96 and total assets of \$129,809.63.

In March 2017, the members of OPOA held a special meeting at which the membership decided to demand that MDOT pay OPOA for any property interest

acquired from OPOA for the construction of the frontage road. The demand included a proposed agreement that the Lakeland median cross-over “be left as it is and has been and we will be able to continue to use it as we have since the inception of our neighborhood.” March 28, 2017, email from Brand to McLemore: “MDOT, City of Flowood, and/or other parties will not disturb, block, or barricade our current Lakeland Drive median crossover (opposite the Dogwood / OakRidge driveway) in a manner which would preclude OakRidge and Dogwood residents from turning left onto the west/south bound lane of Lakeland Drive, or driving straight across Lakeland Drive to the shopping areas across Lakeland Drive from our neighborhood.” The demands of OPOA also included control over the road design and construction access and a reservation of rights and potential claims against the State.

MDOT did not agree to OPOA terms and the project stopped. On June 12, 2017, Flowood’s mayor, Gary Rhoads wrote to Melinda McGrath, the executive director of MDOT, demanding that the median cut north of the private drive used by Reeves and others be blocked such that Reeves and others would have to turn right and if going north or west to proceed a short distance and make a turn in route to their destinations.

On June 13, 2017, the president of OPOA wrote to Rhoads objecting to Rhoads’ request that the median cut be blocked.

On July 21, 2017, the president of OPOA communicated to MDOT that

OPOA, subject to final approval of the members of OPOA, withdrew its demand for compensation in exchange for the proposed property transfers. The OPOA also withdrew its demand for construction control and requested that “MDOT and the City of Flowood give every consideration to leaving the median crossover open....” OPOA reserved “the right to be paid for damage to our remaining property and to the easement property which will revert to us, and we have requested that the documents be amended to so reflect.” July 21, 2017, emails from Brand to McLemore.

In July 31, 2017, Don McLemore, an outside attorney assisting MDOT with right-of-way acquisitions, notified the President of the OPOA: “MDOT instructed me to point out that this project is for the **benefit solely of the Oakridge homeowners** and expeditious execution of both instruments would be appreciated.” See Exhibit “O”; (emphasis added). The letter also informed Reeves and other members that if the project went forward another property owner “is to be compensated for its property conveyance based on the assertion the Frontage Road will be of no benefit to the [other property owner].” These statements are consistent with MDOT’s internal documents which reflect the recognition that the “frontage road would basically be **utilized by a small group and not the public at large.**” See email from Don Drake email dated August 4, 2017, to Trudi Loflin, MDOT Right-Of-Way Division Director attached as Exhibit “M.”

By letter dated August 23, 2017, the president of OPOA, informed Reeves and other members that “MDOT is adamant the project is **solely for the benefit of the OPOA**” and that MDOT would not pay as demanded in March, 2017. Furthermore, as a result of the letter, Reeves was fully aware that that the State of Mississippi would have to acquire a right-of-way and construction easements from the OPOA, a property owners association in which Reeves owned a membership share and had proportional control. See email attached as Exhibit “P”; (emphasis added).

After several supplemental requests to the POA counsel and to MDOT,- the OPOA provided the state with several documents which indicate that the Lieutenant Governor was made aware of the negotiations between the OPOA and MDOT. See Exhibit “P.”

On September 19, 2017, Reeves’ spouse was elected as a director on the board of directors of OPOA. See Exhibit “Q.” In October, 2017, the president of OPOA informed MDOT, that OPOA did not “want to make the conveyances until we are sure the project is going forward. If for any reason the project does not go forward, we do not intend to make the conveyances. Would you be willing for us to hold the instruments until you notify us that MDOT is going to, and is ready to, proceed with the project? I need to know this so I can advise my board.”

By October 31, 2017, OPOA had settled on the following terms of its

contract with the State:

Per your authorization and our recent communications, I am retaining the original instruments in my possession (for OPOA as its Board President) pending satisfactory notification from you that all other interests necessary for construction of the subject frontage road have been obtained by MDOT, all other prerequisites necessary for construction of the frontage road have been satisfied, and that MDOT will proceed to construct and complete the frontage road. Upon receipt of such notification, OPOA will deliver the original instruments to you and at that time make the conveyances specified therein.

On April 17, 2018, the president of OPOA delivered two (2) transfer documents dated October 31, 2017, from OPOA to the Mississippi Transportation Commission. The documents were delivered in trust and the terms of the trust were:

The enclosed instruments are provided to you in trust pending and for the purpose of simultaneous recordation of both the OPOA instruments and the Hogg and Canebrake instruments in the Rankin County land records....

The Mississippi Transportation Commission/Mississippi Department of Transportation ("MDOT") has represented to OPOA that the subject frontage road project, as depicted and described to us in numerous prior communications, will be constructed and completed by MDOT. The conveyances reflected in the enclosed OPOA instruments are made in reliance upon these representations, and solely for this purpose. If you or MDOT have any information or understanding that the subject frontage road project will not be constructed and completed by MDOT, then please return the enclosed instruments to me immediately and without recording the same.

See Exhibit "R."

In order to meet the contractual demands of OPOA, MDOT expended \$322,721.00, in taxpayer funds to obtain rights-of-way and construction

easements necessary to construct the frontage road. Likewise, in order to meet the contractual demands of OPOA, MDOT spent approximately \$80,000.00, on preliminary engineering on pursuit of the frontage road, which includes \$12,000.00, in engineering expenses plus \$68,000.00, paid to utilities to design the relocation of utilities. MDOT design engineering staff, at taxpayer expense, spent approximately 1,740 hours on the frontage road.

## **II. THE LAW**

### **A. POTENTIAL CIVIL VIOLATIONS**

#### **1. CONSTITUTIONAL PROVISIONS**

Article 4, section 109 of the Mississippi Constitution of 1890, provides:

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.

(emphasis added) It does not matter that the public officer did not vote. Simply being a member of the Legislature or board while a law is passed authorizing a contract with the state in which said member has a direct or indirect interest is a violation of section 109. In other words, Section 109 does not require that the member “use” his or her position, vote or even “attempt to influence” other members. *Towner*, 604 So. 2d at 1100.

Section 109 essentially prohibits a contract when the following facts exist: membership in the legislature, passage of a law during term of office, contract or contracts with the State made possible by such law and an interest, direct or indirect, of a member in such contracts.

The Lieutenant Governor was a member of the legislature when the appropriations bill was passed to finish the Lakeland widening project and the frontage road. The "Lieutenant Governor [is] a powerful legislative creature, a super-senator, vested with sufficient legislative authority to virtually dominate the entire Senate." *Dye v. State ex rel. Hale*, 507 So. 2d 332, 348 (Miss. 1987)(dissent, Hawkins, J.) The powers and the role of president of the senate place the office in the legislative branch. *Id.* at 336. "If [a] legislator ... used [his] position in the Legislature to gain special privileges that were not available to all others in his class, a true conflict of interest would exist." *Jones v. Howell*, 827 So. 2d 691, 701 (Miss. 2002). See also Miss. Const. Art. 3, §5 ("All political power is ... instituted solely for the good of the whole."). This conflict arises from the violation of Miss. Const. Art. 4, §109, which provides: "No ... member of the Legislature shall be interested, directly or indirectly, in any contract with the State ... authorized by any law passed ... during the term for which he shall have been chosen, or within one year after the expiration of such term."

Senate bill 2002SG stated, "Of the funds appropriated in Section 1, it is the intention of the Legislature that Ten Million Dollars (\$10,000,000.00) shall be used for new construction on Highway 25/Lakeland Drive." See Exhibit "S." This

earmark was the culmination of a legislative process where the House of Representatives previously rejected the earmark on two (2) occasions. The original earmark appeared when the Senate Appropriations Committee amended HB 1475 during the 2014 Regular Session. The House rejected the Senate's amended version. The bill went to conference, and the House did not adopt the conference report. The earmark reappeared during the special session and was passed into law.

OPOA contracted with MDOT and OPOA extracted and received valuable consideration from MDOT in exchange for OPOA's property interest. The contract between OPOA and MDOT required that MDOT expend over \$300,000.00 for additional rights-of-way as a condition of OPOA's performance. The contract further required that MDOT's commit to OPOA to complete the \$1.2+ million project which was for the benefit of OPOA and its members. The Lieutenant Governor had an interest in the contract as a member of the OPOA.

Although it is not necessary for him to have voted on the appropriation bill or for the conveyance by the OPOA, the voting ballot expressly states that his wife voted for the contract of conveyance on her behalf and on behalf of the Lieutenant Governor. She was also a member of the Board of Directors of the OPOA. See Exhibit "T."

The mere existence of such an interest renders such contracts void and subjects the office holder, and his or her surety, to liability for any public funds expended by the government as consideration for the forbidden contract or in the

performance thereof.

There is no requirement that the member of the legislature be a party to the contract in question to have an interest in a contract which violates Section 109. *Jones v. Howell*, 827 So. at 698 (citation omitted). Furthermore, a violation of Section 109, does not require that the public official profit from a prohibited transaction. The prohibition is not limited to financial interests nor does it prohibit only contracts with a for-profit businesses. Miss. Const. Art. 4, §109. Section 109 does not require that a prohibited interest be “direct,” and the prohibition extends to those interest which fall into the category of “indirect.” *Id.* Members of boards of supervisors, alderpersons and school board members are often found in violation of section 109, even where they recuse themselves from voting on a matter which might help their spouse or a business in which they have an interest. *Frazier v. State By & Through Pittman*, 504 So. 2d 675 (Miss. 1987); *Towner v. Moore*, 604 So.2d 1093, 1100 (Miss. 1992). Miss. Ethics Comm., 08-130-E (Nov. 7 2008). The facts would likely be further developed through production of documents and depositions should a civil action be filed.

The mere existence of such an interest renders such contracts void and subjects the office holder, and his or her surety, to liability for any public funds expended by the government as consideration for the forbidden contract or in the performance thereof. “Under Section 109 of the Mississippi Constitution, the attorney general has the right to have a court declare contracts made in violation thereof void and to recover all sums paid under said void contracts.” *Moore ex rel.*

*Benton Cty. v. Renick*, 626 So. 2d 148, 154 (Miss. 1993).

Imposing legal liability on a public official in such circumstances is nothing new. A “Section 109/Section 25-4-105(2) issue ‘is always an issue of fact.’” *Towner*, 604 So.2d at 1098. The facts in this instance would be further developed through production of documents and depositions should a civil action be filed. In *Frazier v. State By & Through Pittman*, 504 So. 2d 675 (Miss. 1987), a member of a board of supervisors was found to be in violation of Section 109 because the board of supervisors contracted with a bank in which the supervisor owed \$200.00 in stock. *Id.* at 679; (emphasis added). The supervisor was also a bank officer. *Id.* The court did not require a showing that the bank was profitable, the stock had a market value or the bank had paid, was paying any stock dividend, or even that the contract financially benefited the supervisor. *Id.*

The law provides that “[t]hose who violate the specific prohibitions of Section 109 are liable.” *Waller v. Moore ex rel. Quitman Cty. Sch. Dist.*, 604 So. 2d 265, 266 (Miss. 1992). Good faith, long practice or value received are not defenses to Section 109 violations. *Id.* The remedies available to the state for violations of Section 109 include restitution from the public official.

## **2. STATUTORY PROVISIONS**

In addition to section 109, the Legislature passed statutory provisions addressing conflicts of interest. Section 25-4-105(2) of the Mississippi Code of 1972, as amended, provides:

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.

Section 25-59-15(a) of the Mississippi Code of 1972, as amended, provides:

It shall be the duty of each state agency and each appointed or elected state official to:

(a) Cooperate with the department in complying with the provisions of this chapter.

(b) Establish and maintain an active and continuing program for the economical and efficient management of records.

(c) Cause to be made and preserved records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency or office and designed to furnish the information necessary to protect the legal and financial rights of the government and of the persons directly affected by the agency's activities.

(d) Submit to the department for review by the state records committee and in accordance with the rules and regulations of the department, a recommended retention schedule for records in its custody, except schedules for certain types of records common to all agencies or offices which may be established by the department and the state records committee. No records will be scheduled for retention any longer than is absolutely necessary in the performance of the required functions of the agency or office. Records not actively required for the performance of the agency's or official's duties will be transferred to the records center or the Mississippi State Archives in accordance with rules and regulations established by the department. Records which have been identified as archival, or which must be retained permanently, may be transferred directly to the Mississippi State Archives, consistent with the provisions of this chapter.

(e) As of July 1, 1981, state agencies and appointed or elected state officials shall not lease additional space for records storage or renew existing leases for that purpose without approval of the state records committee. Further, with the development of records control schedules, such records now in storage in leased offsite facilities will

be removed from them in accordance with the rules and regulations of the department.

(f) Nothing in this chapter shall be construed to divest state agency heads or appointed or elected state officials of the authority to determine the nature and form of records acquired in the administration of their several responsibilities.

Furthermore, it is the stated purpose of the Mississippi Ethics Commission to see “that public office not be used for private gain” and “that there be public confidence in the integrity of government.” Miss. Code Ann. § 25-4-1(Supp.1997).

### **3. THE CONSTITUTION AND CONFLICTS OF INTEREST**

In the 19th Century, these checks against corruption and abuse of power were incorporated into Mississippi’s fundamental and controlling legal document. Under Mississippi’s Constitution, political power is derived from the people and is further checked and balanced among three branches. Within the legislative and judicial branches, power is further disbursed among a collective and not concentrated in a single person. In contrast to the federal system, the executive powers of state government are disbursed among several separate and independent executive offices with limited powers.

Our state constitution provides additional prohibitions on the exercise of political power to ensure that public officials use political power not in their own self interest or to benefit a small group but only in the interest of the governed as a whole. See *Jones v. Howell*, 827 So. 2d 691, 702 (Miss. 2002)(“We find that the best analysis hinges upon whether an individual member of the Legislature was in

a position to advance the rights and benefits for himself, his friends and family beyond common rights ....”). Mississippi’s Bill of Rights secures for the people the fundamental mandate that political power be exercised “for the good of the whole.” (“All political power is vested in, and derived from, the people; all government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.” Miss. Const. Art. 3, §5). In addition office holders are required to make an oath to faithfully discharge the duties of their office. (All public officers in Mississippi must take and subscribe to an oath of office. Ms. Const. Art. 4 §40 (legislators), Art. 6 §155 (judges) and Art. 14 §268 (other public officer). These oaths provided that the officer faithfully discharge the duties of their office).

#### **4. ADDITIONAL VIOLATIONS OF CIVIL LAW**

The above discussion of civil law made apparent by the facts gathered in this investigation is not intended to be an exhaustive or complete listing of violations or potential violations. As set forth above, this investigation was hampered by misleading public statements and the refusal to produce documents which should be available to the public as a matter of course. Personal interviews of witnesses were limited to those persons who made full disclosures and volunteered to be interviewed. Ambiguity as to either facts or law warrants restraint, but it should be noted that the failure to include a civil law in this report should not be taken as the absence of additional violations or of additional potential claims if litigation is later determined to be necessary.

## **B. POTENTIAL CRIMINAL VIOLATIONS**

Due to the refusal to provide documents and lack of court process to force production of documents, the investigation of potential criminal violations is not complete. Therefore, this report focused on civil law that may be tried in chancery court. However, the several sections of the criminal code are implicated. Section 97-7-57 of the Mississippi Code of 1972, as amended, prohibits the offering to influence legislation in exchange for money or valuable thing and possible obstruction of justice. Should a civil action be filed, forcing the production of documents and depositions, potential evidence of obstruction of justice result.