



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

November 3, 2023

The Honorable Ben Gaston  
District 3 Supervisor, Sunflower County  
100 Dogwood Circle  
Indianola, Mississippi 38751

Re: Prohibition from Hiring Convicted Embezzlers for Public Employment

Dear Mr. Gaston:

The Office of the Attorney General has received your request for an official opinion.

#### **Question Presented**

If a county is prohibited from hiring or contracting with a person convicted of a felony under Mississippi Code Annotated Section 25-1-113, is this county also prohibited from hiring or contracting with a corporation or limited liability company that is controlled or wholly owned by a person convicted of a felony?

#### **Brief Response**

Section 25-1-113 prohibits a county from employing a person convicted of embezzlement. It does not prohibit a county from contracting with a corporation or limited liability company that is controlled or wholly owned by a person who would otherwise be prohibited under Section 25-1-113 from being employed by the county.

#### **Applicable Law and Discussion**

Section 25-1-113(2) provides:

From and after July 1, 2014, the state and any county, municipality or any other political subdivision shall not employ or continue to employ a person who has been convicted or pled guilty in any court of this state, another state, or in federal court of any felony in which public funds were unlawfully taken, obtained or misappropriated in the abuse or misuse of the person's office or employment or

money coming into the person's hands by virtue of the person's office or employment.

This office previously opined that the prohibition in Section 25-1-113 does not apply to contracts or contractors. MS AG Op., *Hines* at \*1 (Oct. 10, 2014). Explaining further, *Hines* states, in pertinent part:

Section 25-1-113 is found in Title 25 which is entitled "Public Officer and Employees; Public Records" and in Chapter 1 which is entitled "Public Officers; General Provisions." The Legislature could have applied Section 25-1-113 to contracts and contractors by specifically including such references. It did not. Moreover, as your opinion request points out, Section 25-1-113, if applied to contracts, would have to be read to avoid existing contracts with public entities which could be contracts of specific terms. In other words, application of Section 25-1-113 would, under certain circumstances, have to be read to require public entities to breach otherwise valid contracts. Article I, Section 10 of the United States Constitution states that "[n]o State shall . . . pass any . . . law impairing the obligations of contracts . . . ." Furthermore, Section 16 of the Mississippi Constitution states that a "law impairing the obligation of contracts, shall not be passed." These prohibitions are not absolute, and a state's ability to pass a law that does impair a contract is at its strongest when the legislation is an exercise of police power and when the contracts at issue do not involve a governmental entity. These circumstances are inapplicable to the application of Section 25-1-113.

*Hines* at \*1. Moreover, this office has previously opined that with respect to Section 25-1-113, "the term 'employ' contemplates an employer/employee relationship wherein the employee's compensation is reported for tax purposes on a W- 2." MS AG Op., *Austin* at \*2 (Oct. 10, 2014). Accordingly, it is the opinion of this office that Section 25-1-113 does not prohibit a county from contracting with a corporation or limited liability company that is controlled or wholly owned by a person who would otherwise be prohibited under Section 25-1-113 from being employed by the county.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Beebe Garrard

Beebe Garrard  
Special Assistant Attorney General