PROCEDURAL RULE 24 Requests for Declaratory Opinions

Scope of Rules

100 These sections set forth the Commission's rules governing the form and content of requests for declaratory opinions and the Commission's procedures regarding the requests as required by Mississippi Code § 25-43-2.103.

Persons Who May Request Declaratory Opinions

101.01 Any person with a substantial interest in the subject matter may make a request to the Commission for a declaratory opinion by following the specified procedures.

101.02 "Substantial interest in the subject matter" as used in this chapter means: that a party is directly affected by the Commission's administration of the laws within the Commission's primary jurisdiction.

101.03 "Primary jurisdiction of the Agency" as used in this chapter means the Commission has a constitutional or statutory grant of authority in the subject matter at issue.

101.04 (Reserved)

Subjects Which May Be Addressed In Declaratory Opinions

201 The Commission will issue declaratory opinions regarding the applicability to specified facts of:

1. a statute administered or enforceable by the Commission,
2. a rule promulgated by the Commission, or
3. an order issued by the Commission.

Circumstances In Which Declaratory Opinions Will Not Be Issued

301 The Commission may, for good cause, refuse to issue a declaratory opinion. Without limiting the generality of the foregoing, the circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

1. the matter is outside the primary jurisdiction of the Commission;
2. lack of clarity concerning the question presented;
3. there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
4. the statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
5. the facts presented in the request are not sufficient to answer the question

presented;

6. the request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
7. the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the rule, statute or order on which a declaratory opinion is sought;
8. no controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute, rule, or order;
9. the question presented by the request concerns the legal validity of a statute, rule or order;
10. the request is not based upon facts calculated to aid in the planning of future conduct, but is, instead, based on past conduct in an effort to establish the effect of that conduct;
11. no clear answer is determinable;
12. the question presented by the request involves the application of a criminal statute or sets forth facts which may constitute a crime;
13. the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
14. the question is currently the subject of an Attorney General's opinion request; or,
15. the question has been answered by an Attorney General's opinion.

302 A declaratory opinion will not be issued where a similar request is pending before this agency, or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law.

303 A declaratory opinion will not be issued if it may adversely affect the interests of the State, the Commission, or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise.

304 Where a request for a declaratory opinion involves a question of law, the Commission may refer the matter to the State Attorney General.

305 A declaratory opinion will not be issued where the question involves eligibility for a license, permit, certificate or other approval by the Commission or some other agency and there is a statutory or regulatory application process by which eligibility for said license, permit, or certificate or other approval may be determined.

Form of the Request for a Declaratory Opinion

401 Written Requests Required. Each request must be typewritten. Each request must be submitted on standard business letter size paper (8 1/2" by 11"). Requests may

be in the form of a letter addressed to the Commission or in the form of a pleading as might be addressed to a court.

402 Where to Send Requests. All requests must be mailed or delivered to the Commission. The request and its envelope shall clearly state that it is a request for a declaratory opinion. Oral and telephone requests are unacceptable.

403 Name, Address and Signature of Requestor. Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request. The signing party shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any agency, administrative or judicial tribunal.

404 Single transaction. A request must be limited to a single transaction or occurrence.

405 Question Presented. Each request must contain the following:

1. a clear identification of the statute or rule at issue;
2. the question for the declaratory opinion;
3. a clear and concise statement of all facts relevant to the question presented;
4. the identity of all other known persons involved in or impacted by the factual situation causing the request including their relationship to the facts, name, mailing address and telephone number;
5. a statement sufficient to show that the person seeking relief has a substantial interest in the subject matter.

406 The terms of the proposed opinion suggested by the requestor may be submitted with the request or may be requested by the agency;

407 Memorandum of Authorities. A request may contain an argument by the requestor in support of the terms of the proposed opinion suggested by the requestor. The argument may be submitted in the form of a memorandum of authorities, containing a full discussion of the reasons and any legal authorities, in support of such position of the requestor. The agency may request that the argument and memorandum of authorities be submitted by any interested party.

Time for Agency's Response

501 Agency's Response. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Commission shall, in writing:

1. issue an opinion declaring the applicability of the specified statute, rule, or

order to the specified circumstances;

2. decline to issue a declaratory opinion, stating the reasons for its action; or
3. agree to issue a declaratory opinion or a written statement declining to issue a declaratory opinion, by a specified time but no later than ninety (90) days after receipt of the written request.

502. When Period Begins. The forty-five (45) day period shall begin on the first State of Mississippi business day that the request is received by the Commission.

503 Opinion Not Final for Sixty Days. A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Commission may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

Procedure After Request for Declaratory Opinion Received

601 Notice by Agency. The Commission may give notice to any person that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from persons other than the requestor.

602 Notice by Requestor. The requestor, or his attorney, shall append to the request for a declaratory opinion a listing of all persons, with addresses, known to the requestor who may have an interest in the declaratory opinion sought to be issued, and shall mail a copy of the request to all such persons. The requestor or his attorney shall certify that a copy of the request was mailed to all such persons together with this statement: "Should you wish to participate in the proceedings of this request, or receive notice of such proceedings or the declaratory opinion issued as a result of this request, you should contact the Commission within twenty days of the date of this request."

Hearings at the Discretion of the Agency

701 Provision for Hearing. If the Commission in its sole discretion deems a hearing necessary or helpful in determining any issue concerning a request for a declaratory opinion, the Commission may schedule such a hearing. Notice of the hearing shall be given to all interested parties unless waived. Notice mailed by first class mail 7 calendar days prior to the hearing shall be deemed appropriate.

702 Proceedings at the Hearing. The procedure for conducting a hearing, including but not limited to the manner of presentation, the time for presentation, and whether and how evidence may be taken, shall be within the discretion of the Commission.

703 Persons Appearing at the Hearing. The Commission shall allow the requestor to participate in any hearing. The Commission may allow any other persons or entities to participate in the hearing.

Public Availability of Requests and Declaratory Opinions.

801 Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying at the expense of the viewer during normal business hours. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

Effective from and after April 15, 2009.