

USM's Foundations and the Open Records Act

A Hattiesburg American news story, "[USM eyeing contracts](#)," reported about potential "sweetheart deals" and "'sloppy' university contracts." It reported that

"Southern Miss denied a Hattiesburg American public records request for the contract [involving Noetics] on the grounds that it is technically not with the university, but rather with its 501(c)(3) nonprofit research foundation."

"Southern Miss' marketing and commercialization arm, manages the school's intellectual property by commercializing (i.e. taking to the marketplace) research done by faculty and staff."

"It is my understanding that Noetic Technologies has a contract with the University of Southern Mississippi Research Foundation, which is not subject to the Mississippi Public Records Act," explained university lawyer Rick Lambert.

This exception to the Mississippi Open Records law is a fraud upon the public. We made that point and published it in 2005 (The Meridian Star, "USM Foundation: public or private). In part, here's what I said. It's just as valid today as it was then:

"...USM and the USM Foundation are not private property. Why not have a transparent reporting process so that taxpayers, contributors and news organizations know how much money the USM Foundation has and how it is being spent?"

The law provides an opportunity for citizens to see what's going on in state institutions. It's called the Mississippi Public Records Act of 1983. The act says that "... all public records are public property, and any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of a public body...." (Personnel records, tests and a few other things are not subject to disclosure.)

USM is, by anyone's reckoning, a "public body." However, USM administrators fight to keep the USM Foundation a secret institution. USM administrators refuse requests for information about the USM Foundation, claiming that it is a separate entity not under the control of USM and therefore not subject to the Public Records Act. Compare this with what the director of development for the USM Foundation said under oath in a recent deposition.

"Who is your employer?"

"The state of Mississippi through the University of Southern Mississippi."

"To whom do you report? "To the president of the university."

The organizational chart of the university shows the president of the university as the immediate reporting authority for the USM Foundation. In fact, according to the director of development for the USM Foundation, "All employees, full-time of the University of

Southern Mississippi, are state employees and are hired through the University of Southern Mississippi.” When asked if any resources of the foundation go to other than USM, the director of development said, “To my knowledge, no.”

The two attorneys who represented the director at the deposition were USM employees. USM administrators also hired a private law firm to prevent citizens from learning how much money the USM Foundation has and how that money is used. Furthermore, since the two USM attorneys at the deposition were already on the state’s payroll, the private law firm is the only legal cost reported through the Institutions of Higher Learning. Their legal fees are approximately \$20,000 and growing.

USM administrators - state employees - are spending thousands of dollars of taxpayers’ money on attorneys to argue that the USM Foundation is not a part of or controlled by USM...”.

So, USM’s Foundations are housed on the USM campus, all USM Foundation employees are state employees, participate in PERS, and the director of the USM Foundation reports to USM’s President. Any representation that USM’s various Foundations are independent of USM is a fraud. Furthermore, Noetics and other businesses which may be involved in questionable relationships with USM and its administrators should not be allowed to be hidden behind legal gimmicks.

Look at it a slightly different way, if the University and its Foundations have nothing to hide, they could simply provide the information. However, the University sets up companies and foundations through which to route state and student money in order to avoid the open records laws.

If Dr. Saunders, or any other president of the University, wanted “squeaky clean” operations, they should open foundations to public view, not set up foundations and corporations by which to conceal University operations.