

SOME PROHIBITED CONTRACT CLAUSES AND PROVISIONS

February 2014

The following information is provided to notify those who desire to enter contracts with MVSU that certain contract clauses and provisions are prohibited by law in contracts with MVSU. It is not a complete listing of prohibitions regarding contractual provisions or issues, but it does identify some of the most common issues that third parties seem to misunderstand.

Any party desiring to contract with MVSU should be aware that under law it is the obligation of the third party desiring to conduct business with a public entity, such as MVSU, to independently verify all aspects of the facts and the laws that pertain to such contracts.

The information is provided as a courtesy only and is not presented as legal advice to you or anyone else. ***You must contact your own legal counsel if you have questions regarding the information and then rely solely on your own legal counsel for legal advice regarding the information presented.*** If your legal counsel has a question, or desires to discuss the matter addressed in the information, please ask them to forward their concerns in writing to the Office of Business and Finance at Mississippi Valley State University, MVSU #7265 14000 Hwy 82-W Itta Bena, MS. 38941 The Office of Business and Finance can get in contact with the IHL Legal Counsel.

EXAMPLES OF PROHIBITED LANGUAGE

1. Provisions for MVSU to “Hold Harmless” or “Indemnify” the other party –Op.Atty.Gen., 1982 WL 44517; Op, Atty,Gen.NO.99-0042, Pittman, Feb.12,1999; Op.Atty.Gen.,2002-0606, Bolton, Oct. 18, 2002.
2. “Warranties” by MVSU-Op.Atty.Gen. No. 96-0613, Rand, Oct.11, 1996;MS CONST, Section 258.
3. Provisions that attempt to obtain agreement to a factual description of the current interpretation of the law.–Op.Atty.Gen.No.99-0042, Pittman, Feb.12,1999.
4. Provisions that MVSU assign its interest in penalties such as liquidated damages to the non-MVSU party. Op.Atty.Gen. No. 99-0042, Pittman, Feb. 12,1999.
5. Provisions that allow “limitations on liability” of non-MVSU party for negligence of intentional or reckless torts–Op.Atty.Gen., 1992 WL 614201; Op.Atty.Gen.,1993 WL 669150; MS CONST, Section 100; Restatement of the Law of Contracts, 2nd , Section 195.
6. Clauses that “limit the liability” of the non MVSU party to the amount of the contract or to any “certain amount” . Op.Atty.Gen., 1993 WL 669150; Op.Atty.Gen.No.99-0042, Pittman, Feb.12, 1999; Op.Atty.Gen. NO. 99-0042, Pittman Feb. 12, 1999; Op.Atty.Gen.,2002-0606, Bolton , Oct. 18, 2002.
7. Clauses that exclude the non-MVSU party’s “warranties of merchantability and fitness for a particular use”. –Op.Atty.Gen., 1993 WL 669150; §75-22719(4), Mississippi Code of 1972;

Op.Atty.Gen. No.99-0042, Pittman, Feb. 12, 1999;Op.Atty.Gen.No., 2002-0606, Bolton, Oct. 18,2002.

8. Provisions for MVSU to waive consequential or special damages, punitive damages or any other type of damages –Op.Atty.Gen., 1993 WL 669150;MS CONST, Section100; Op. Atty. Gen.No. 99-0042, Pittman, Feb. 12,1999; Op.Atty.Gen., No.99-0042, Pittman, Feb. 12,1999; Op.Atty.Gen., 2002-0606, Bolton, Oct. 18, 2002.

9. Provisions for MVSU to agree that another party may prosecute or defend legal actions in the name of MVSU.–Op.Atty.Gen.No.99-0042,Pittman, Feb.12,1999.

10. Provisions for MVSU to agree to pay extra compensation, fees, or allowances after service rendered or contract made, or for any payment not authorized by law.-MS CONST Section 96.

11. Any provision wherein the credit of the State of Mississippi (i.e.,MVSU) is pledged or loaned in aid of any person, association, or corporation.–MS CONST Section 258.

12. Clauses that “limit the time frame for MVSU to pursue legal actions”–Op.Atty.Gen., 1993 WL 669150;MS CONST, Section 104; §§15-1-5 and 15-1-151, Mississippi Code of 1972; Op.Atty.Gen.No.99-0042, Pittman, Feb. 12, 1999; Op.Atty.Gen., 2002-0606, Bolton, Oct. 18, 2002

13. Clauses limiting the non MVSU party’s liability for loss of profits, lost electric revenue or power sales, costs of equipment down time, substitute equipment, facilities, or services. Cost of operation, financing costs, cost of fuel, costs of rental equipment or delay.–Op.Atty. Gen., 1993 WL 669150.

14. Clauses requiring or allowing MVSU to agree to “binding arbitration”. Op. AttyGenNo.99-0042, Pittman, Feb. 12,1999; Op.Atty.Gen.,2002-0606, Bolton, Oct. 18, 2002.

15. Clauses that limit any “common law warranty” to which MVSU is entitled. Op. Atty.Gen.No.99-0042, Pittman, Feb.12,1999; Op.Atty.Gen., 2002-0606, Bolton, Oct. 18,2002