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## MISSISSIPPI ETHICS COMMISSION

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### ADVISORY OPINION NO. 09-109-E

December 11, 2009

**Question Presented:** May the city hire the brother of an alderman's wife for a paid position as part-time law enforcement officer?

**Brief Answer:** Yes. The brother of an alderman's wife is not a "relative" under the Ethics in Government laws. However, the alderman should consider recusal to avoid any appearance of impropriety in light of Section 25-4-101, Miss. Code of 1972.

The Mississippi Ethics Commission issued this opinion on the date shown above in accordance with Section 25-4-17(i), Mississippi Code of 1972, as reflected upon its minutes of even date. The Commission is empowered to interpret and opine only upon Article IV, Section 109, Mississippi Constitution of 1890, and Article 3, Chapter 4, Title 25, Mississippi Code of 1972. This opinion does not interpret or offer protection from liability for any other laws, rules or regulations. The Commission based this opinion solely on the facts and circumstances provided by the requestor as restated herein. The protection from liability provided under Section 25-4-17(i) is limited to the individual who requested this opinion and to the accuracy and completeness of these facts.

#### I. LAW

The pertinent Ethics in Government Laws to be considered here are as follows:

Section 25-4-101, Miss. Code of 1972.

The legislature declares that elective and public office and employment is a public trust and any effort to realize personal gain through official conduct, other than as provided by law, or as a natural consequence of the employment or position, is a violation of that trust. Therefore, public servants shall endeavor to pursue a course of conduct which will not raise suspicion among the public that they are likely to be engaged in acts that are in violation of this trust and which will not reflect unfavorably upon the state and local governments.

Section 25-4-103, Miss. Code of 1972.

(l) "Pecuniary benefit" means benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain. Expenses associated with social occasions afforded public servants shall not be deemed a pecuniary benefit.

(p) "Public servant" means:

(i) Any elected or appointed official of the government;

(ii) Any officer, director, commissioner, supervisor, chief, head, agent or employee of the government or any agency thereof, or of any public entity created by or under the laws of the state of Mississippi or created by an agency or governmental entity thereof, any of which is funded by public funds or which expends, authorizes or recommends the use of public funds; or

(iii) Any individual who receives a salary, per diem or expenses paid in whole or in part out of funds authorized to be expended by the government.

(q) "Relative" means:

(i) The spouse of the public servant;

(ii) The child of the public servant;

(iii) The parent of the public servant;

(iv) The sibling of the public servant; and

(v) The spouse of any of the relatives of the public servant specified in subparagraphs (ii) through (iv).

Section 25-4-105, Miss. Code of 1972.

(1) No public servant shall use his official position to obtain, or attempt to obtain, pecuniary benefit for himself other than that compensation provided for by law, or to obtain, or attempt to obtain, pecuniary benefit for any relative or any business with which he is associated.

## II. FACTS

Facts provided by the requestor are set forth below, with identifying information redacted, and are considered a part of this opinion.

The Mayor and Board of Aldermen of the Town request opinions on the following issues:

- 1) The Board desires to fill a position for a part-time law enforcement officer who would work one (1) day a week and attend court one (1) day a month. He would work approximately 40 hours per month. The issue at hand is can this position be filled by a brother-in-law of an alderman without violating State law since this is a paid position.
- 2) If the hiring of such an officer did violate any statutes, could he serve as an auxiliary officer on a voluntary basis without conflicts with any State statute?

Supplemental information was requested from the city attorney regarding the exact relationship of the applicant to the alderman. Information was provided that indicates the applicant is the brother of the alderman's wife.

### III. ANALYSIS

Section 25-4-105(1), Miss. Code of 1972, prohibits the alderman from taking any action in his official position which would create a monetary benefit for his relative. The term "relative" includes the spouse of the alderman's sibling but not the sibling of the alderman's spouse. See Section 25-4-103(q)(v), above. Thus, the brother-in-law in this situation is not a "relative" of the alderman under the Ethics in Government laws.

Nevertheless, the alderman should pay close attention to the guidelines set forth in Section 25-4-101, quoted above. Public servants should conduct themselves in a manner which enhances the public trust in government and avoid actions which may tend to create public suspicion regarding the honesty and integrity of those in government. Public suspicion could result from the alderman voting to hire his brother-in-law for a position with the city. Consequently, the alderman may wish to recuse himself to avoid the appearance of impropriety.

A total and complete recusal requires the alderman leave the meeting room before the matter comes up for discussion and remain absent until the vote is concluded. The alderman must not only avoid debating, discussing or taking action on the subject matter during official meetings or deliberations but must also avoid discussing the subject matter with other town officials or employees. This includes casual comments, as well as detailed discussions, made in person, by telephone or by any other means. An abstention is considered a vote with the majority and is *not* a recusal. Furthermore, any minutes or other record of the meeting or other proceeding should state the recusing alderman left the room before the matter came before the board and did not return until after the vote.

The alderman should consider recusing himself from actions such as the promotion of his brother-in-law or adjustments to his salary, benefits or other compensation, and any other action which is a necessary predicate to the brother-in-law's compensation, such as approval of the budget from which he is paid, specifically the police department budget. The alderman may freely participate in matters involving the police department which do not result in a monetary benefit to his brother-in-law, such as hiring, promotion, pay changes and termination of other employees.

MISSISSIPPI ETHICS COMMISSION

BY: \_\_\_\_\_  
Tom Hood, Executive Director and  
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