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## MISSISSIPPI ETHICS COMMISSION

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TOM HOOD  
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### ADVISORY OPINION NO. 13-070-E

August 9, 2013

**Question Presented:** May the city employ the spouse of an alderman's step-child where the alderman and the step-child's spouse are financially independent?

**Brief Answer:** Yes. When an alderman and the city employee are financially independent, no violation of Section 109, Miss. Const. of 1890, or Section 25-4-105(2), Miss. Code of 1972, will occur. Additionally, the spouse of the alderman's step-child is not a "relative" for purposes of Section 25-4-105(1), Miss. Code of 1972, and the alderman is not prohibited from voting on matters affecting the spouse of the step-child.

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 109, Miss. Const. of 1890.

No public officer or member of the legislature shall be interested, directly or indirectly, in any contract with the state, or any district, county, city, or town thereof, authorized by any law passed or order made by any board of which he may be or

may have been a member, during the term for which he shall have been chosen, or within one year after the expiration of such term.

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

(f) "Contract" means:

- (i) Any agreement to which the government is a party; or
- (ii) Any agreement on behalf of the government which involves the payment of public funds.

(g) "Government" means the state and all political entities thereof, both collectively and separately, including but not limited to:

- (i) Counties;
- (ii) Municipalities;
- (iii) All school districts;
- (iv) All courts; and
- (v) Any department, agency, board, commission, institution, instrumentality, or legislative or administrative body of the state, counties or municipalities created by statute, ordinance or executive order including all units that expend public funds.

(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.

(o) "Public funds" means money belonging to the government.

(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.

(2) No public servant shall be interested, directly or indirectly, during the term for which he shall have been chosen, or within one (1) year after the expiration of such term, in any contract with the state, or any district, county, city or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member.

## II. FACTS

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

We are requesting an official opinion on the following situation.

1. A gentleman is an Alderman for the City
2. An individual has applied for a position of Part Time Police Officer
3. The individual is married to the Alderman's step-child.
4. They are financially independent of each other.
5. They do not reside in the same household.

Is there any reason to prevent the hiring of the individual as a part time police officer presently, or possibly as a full time officer in the future?

## III. ANALYSIS

Section 109, Miss. Const. of 1890, and its statutory parallel, Section 25-4-105(2), Miss. Code of 1972, prohibit a member of a public board from having any direct or indirect interest in a contract which is funded or otherwise authorized by that board during his or her term or for one year

thereafter. Frazier v. State, ex rel. Pittman, 504 So.2d 675, 693 (Miss. 1987). Furthermore, a member of a public board has an indirect interest in his or her spouse's income. Smith v. Dorsey, 530 So.2d 5, 7 (Miss. 1988). If the alderman and the alderman's spouse are totally, financially independent from the step-child and the step-child's spouse, then the alderman will not have a prohibited interest in the employment contract between the city and the step-child's spouse under Section 109 and Section 25-4-105(2).

However, if the alderman or the alderman's spouse has a common financial interest with the step-child or the step-child's spouse, the alderman may have a prohibited interest in the employment contract with the city. See Waller v. Moore ex rel. Quitman County School Dist., 604 So.2d 265, 266-67 (Miss. 1992). Examples of common financial interests precluding total financial independence include, but are not limited to the step-child or the spouse leasing or renting property from the alderman or the alderman's spouse, owing money to the alderman or the alderman's spouse, living on property owned by the alderman or the alderman's spouse, sharing liquid assets with the alderman or the alderman's spouse, co-owning a business with the alderman or the alderman's spouse, employing the alderman or the alderman's spouse or being employed by the alderman or the alderman's spouse.

A recusal will *not* prevent or ameliorate a violation of Section 109 and Section 25-4-105(2), as they do *not* require any affirmative act by an individual member but merely action by the board. A contract which violates Section 109 and Section 25-4-105(2) is null and void. Towner v. Moore ex rel. Quitman County School Dist., 604 So.2d 1093, 1100 (Miss. 1992).

Additionally, Section 25-4-105(1), Miss. Code of 1972, prohibits a public servant, here an alderman, from taking any action in his or her official position which would create a monetary benefit for the public servant or a relative of the public servant. The term "relative" is defined in Section 25-4-103(q), Miss. Code of 1972, to include the spouse of the public servant's "child." However, in Mississippi Ethics Comm'n v. Grisham, 957 So.2d 997, 1003 (Miss. 2007), the Mississippi Supreme Court held that a step-child is not a "relative" under the ethics in government laws. Accordingly, the spouse of a step-child is not a "relative" for purposes of Section 25-4-105(1), and the alderman may fully participate in matters concerning his or her step-child's spouse.

However, other statutes prohibiting nepotism may apply and are outside the jurisdiction of the Ethics Commission. The municipality should consult the city attorney and/or the Office of the Attorney General regarding those statutes.

MISSISSIPPI ETHICS COMMISSION

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