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## MISSISSIPPI ETHICS COMMISSION

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### ADVISORY OPINION NO. 14-060-E

October 3, 2014

**Question Presented:** May an alderman or the spouse of an alderman purchase stock in a bank which serves as the municipality's depository where the board of aldermen approved the depository contracts between the municipality and the bank?

**Brief Answer:** No. If the alderman or the alderman's spouse becomes a stockholder in the bank selected by the board of aldermen during the alderman's term or within one year thereafter, then the alderman will have a prohibited interest in the depository contracts between the bank and the municipality, pursuant to Section 109, Miss. Const. of 1890, and Section 25-4-105(2), Miss. Code of 1972, as applied in Frazier v. State, ex rel. Pittman, 504 So.2d 675 (Miss. 1987).

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.

(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.

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

(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.

I am the Attorney for the Town. I am requesting an opinion from your office for the Board of Alderman for the following:

Can an Alderman or the spouse of an Alderman purchase stock in a bank or financial institution in which the Town holds its operating and other accounts?

The municipality maintains five depository accounts with the bank. The alderman was in office when the board of aldermen approved the bank as the municipality's depository. The requestor chose not to provide specific information concerning the proposed stock purchase by the alderman.

## 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 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). A public servant has an indirect interest in his or her spouse's contracts and income for purposes of Section 109 and Section 25-4-105(2). Smith v. Dorsey, 530 So.2d 5, 7 (Miss. 1988).

The board of aldermen authorized the current depository contracts between the municipality and the bank while the alderman at issue served on the board. If the alderman or the alderman's spouse purchases stock in the bank, then the alderman will have a prohibited interest in the depository contracts pursuant to Section 109 and Section 25-4-105(2). The Mississippi Supreme Court applied Section 109 to a situation factually analogous to the situation presented by the requestor herein. See Frazier at 704. Similar to the Frazier case, the requestor has not attempted to provide facts to establish the alderman has a *de minimis* interest in the depository contracts. Id. See also Advisory Opinion No. [13-071-E](#).

Any contract which violates Section 109 or Section 25-4-105(2) is null and void. Towner v. Moore, ex rel. Quitman County School District, 604 So.2d 1093, 1096 (Miss. 1992), quoting Dorsey, at 9. Therefore, under these facts, the alderman and alderman's spouse should refrain from purchasing stock in the municipality's depository bank to ensure no violation of Section 109 or Section 25-4-105(2) occurs.

MISSISSIPPI ETHICS COMMISSION

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