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ADVISORY OPINION NO. 16-071-E

December 2, 2016

Question Presented: If he or she is elected alderman, may an employee of a municipal utilities commission vote on appointments to the municipal utilities commission or other matters coming before the board of aldermen?

Brief Answer: No. Due to the restrictions in Section 25-4-105(1), Miss. Code of 1972, and public policy concerns which could arise under Section 25-4-101, the Ethics Commission advises the requestor to recuse himself or herself from all matters coming before the board of aldermen concerning the municipal utilities commission.

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.

- (a) “Authority” means any component unit of a governmental entity.
- (b) “Benefit” means any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.
- (e) “Compensation” means money or thing of value received, or to be received, from any person for services rendered.
- (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.
- (h) “Governmental entity” means the state, a county, a municipality or any other separate political subdivision authorized by law to exercise a part of the sovereign power of the state.
- (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.

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.

I am a citizen of [a city within Mississippi]. I have a question that I want to be sure is not an ethics issue. On next year, the City will have its city-wide election for Mayor and Aldermen. I would like to run for Alderman. I work in the waste water department as a labor worker [for the municipal utilities commission]. The Board of Aldermen [for the city] appoints the [municipal utilities commission] board members. I would like to know if that would be an ethics issue if I ran for alderman and keep my day job with [the city utility facility].

The municipal utilities commission was established pursuant to Section 21-27-13, Miss. Code of 1972.

III. ANALYSIS

If the utilities employee is elected alderman, Section 25-4-105(1), Miss. Code of 1972, will prohibit him from using his position as alderman to obtain, or attempt to obtain, any monetary benefit for himself. A municipal utilities commission established pursuant to Section 21-27-13 is similar to a municipal school district or a municipal housing authority. See Advisory Opinion No. 14-017-E. The Ethics Commission routinely advises members of municipal governing authorities to recuse themselves from matters involving a housing authority, school district, or utilities commission where the municipal board member has an economic connection with one of those entities. See Advisory Opinion Nos. 14-017-E and 07-079-E.

An alderman who votes on an appointment to another board will violate Section 25-4-105(1), if he or she enters into an agreement which results in a monetary benefit for himself or herself. For instance, if an alderman agrees to support the appointment of an individual to the utilities commission in exchange for a pay raise or promotion for himself or herself, then that alderman violates Section 25-4-105(1).

Pursuant to Section 25-4-101, 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. Due to the restrictions in Section 25-4-105(1) and public policy concerns which could arise under Section 25-4-101, the Ethics Commission advises the requestor to recuse himself or herself from all matters coming before the board of aldermen concerning the municipal utilities commission if he or she is elected as an alderman.

MISSISSIPPI ETHICS COMMISSION

BY: _____
Tom Hood, Executive Director and
Chief Counsel