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TOM HOOD
Executive Director and Chief Counsel

ETHICS ADVISORY OPINION NO. 20-020-E

June 5, 2020

Question Presented: May a city purchase a vehicle from a business owned by the uncle of the mayor?

Brief Answer: Yes. As long as the mayor and uncle are financially independent from each other, then no violation of Section 109, Miss. Const. of 1890, or Sections 25-4-105(1) and 25-4-105(2), Miss. Code of 1972, will occur.

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

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.

(c) “Business” means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, holding company, self-employed individual, joint stock company, receivership, trust or other legal entity or undertaking organized for economic gain, a nonprofit corporation or other such entity, association or organization receiving public funds.

(d) “Business with which he is associated” means any business of which a public servant or his relative is an officer, director, owner, partner, employee or is a holder of more than ten percent (10%) of the fair market value or from which he or his relative derives more than Two Thousand Five Hundred Dollars (\$2,500.00) in annual income or over which such public servant or his relative exercises control.

(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.

(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.

This letter is written in my capacity as the city attorney for the [City], Mississippi Board of Aldermen. This letter requests your opinion whether the City's purchase of a bucket truck, for proper municipal purposes, from a motor vehicle dealership owned by the Mayor's uncle would violate Miss. Code Ann. §25-4-105, any ethics in government laws, and/or be a prohibited conflict of interest?

This question involves is an adult nephew-adult uncle relationship. It does not appear that the uncle is a "relative" as defined by Miss. Code Ann. § 25-4-103. The uncle does not appear to be a "relative" as determined by the Mississippi Supreme Court in *Mississippi Ethics Commission v. Grisham*, 957 So.2d 997 (Miss. 2007).

The question before the Grisham Court was whether the definition of "relative" provided by Miss Code Ann. § 25-4-103 included "step-children". The Grisham Court affirmed the Circuit Court of Tippah County. It found the definition of "relative" provided by Miss. Code Ann. § 25-4-103 to be plain and unambiguous, and does not include step-children.

Affirming the trial Court, the Grisham Court noted that the Circuit Court opined, there are numerous relationships potentially closer than "spouse, child or parent," including "step-children, in-laws, ex-spouses, step-parents, brothers, sisters, aunts, uncles, cousins, and half-siblings. *Id.*

Here, the question assumes the governing authority is in compliance with purchase laws pursuant to Miss. Code Ann. § 31-7-13. It further assumes the governing authority has otherwise determined that Mayor's uncle has submitted the lowest and best bid. Last, the Mayor has no direct or indirect pecuniary interest in his uncle's motor vehicle dealership.

Out of an abundance of caution. I would request an ethics opinion, considering the familial relationship between the Mayor and owner of the motor vehicle dealership.

Does this purchase violate any Mississippi ethics in government laws? Is this transaction barred by any conflict of interest.

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 an 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). The mayor is a member of the municipal governing authorities and is subject to these provisions. A common financial interest shared by a mayor and another person, in this case, the mayor's uncle, may give the mayor a prohibited interest in the other person's income. 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 uncle leasing or renting property from the mayor(nephew), owing money to the mayor (nephew), living on property owned by the mayor (nephew), sharing liquid assets with the mayor (nephew) or co-owning a business with the Mayor (nephew). If the mayor and uncle are indeed financially independent from each other, then the uncle may do business with the municipality, and no violation of Section 109 or Section 25-4-105(2) will result.

Section 25-4-105(1) prohibits a mayor using his or her position to obtain or attempt to obtain any pecuniary benefit for a "relative." However, that term does not include uncles, aunts, nieces or nephews, as defined in Section 25-4-103(q). Therefore, no violation will arise if the city chooses to purchase a vehicle from the business owned by the mayor's uncle.

MISSISSIPPI ETHICS COMMISSION

BY: _____
Tom Hood, Executive Director and
Chief Counsel