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ETHICS ADVISORY OPINION NO. 24-005-E

March 1, 2024

Question Presented: May the county jail administrator hire the sheriff's daughter to be a jailer?

Brief Answer: No. Even if the sheriff delegated his authority to his jail administrator to hire the sheriff's daughter, a violation of Section 25-4-105(1), Miss. Code of 1972, would occur, and the sheriff's daughter may not be hired to work at the county jail.

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.

I am the Board Attorney for [...] County, Mississippi. I am writing to you to request an advisory opinion on behalf of the sheriff.

Pursuant to McWilliams, AG Opinion, 97-0714, the sheriff is permitted to delegate authority for hiring and firing of jail employees to a jail administrator.

The sheriff would like to know if he delegated his authority to his jail administrator and recused himself over jail personnel, could the jail administrator hire the sheriff's daughter to be a jailer?

III. ANALYSIS

Pursuant to Section 25-4-105(1), Miss. Code of 1972, no public servant may use his position to obtain or attempt to obtain any pecuniary benefit for his or her relative, including the sheriff's child. The sheriff is the primary law enforcement officer of the county and has broad authority over his office. See Section 19-25-1, *et seq.*, and Section 45-3-21(2). The sheriff is also responsible for the jail and its prisoners. See Section 19-25-69, *et seq.* He is the "jailer of his county" and "shall employ a jailer or jailers to have charge of the prisoners in the jail." Section 19-25-71(1). That statutory authority cannot be abdicated by the sheriff. The sheriff is required to present an annual budget for approval by the board of supervisors. See Section 29-25-13. Moreover, the sheriff is responsible for employment of sheriff's office staff, including deputy sheriffs. See Section 19-25-19. See also Advisory Opinions No. 17-035-E and 16-037 (explaining that sheriff's relatives should not be employed by the sheriff's department).

The Attorney General's opinion cited by the requestor, No. 97-0714, also states, "it is our opinion that jail employees are considered to be employees of the sheriff and not of the board of supervisors." Therefore, even if the sheriff delegated his authority to his jail administrator to hire the sheriff's daughter, a violation of Section 25-4-105(1) would occur, and the sheriff's daughter may not be hired to work at the county jail.

The idea that a subordinate employee could exercise independent discretion in such an action is also offensive to the public policy codified in Section 25-4-101, which admonishes all public servants to pursue a course of conduct that does not cause the public to suspect the public trust is being violated. Hiring the sheriff's child could also violate the general statute prohibiting nepotism, Section 25-1-53, and the requestor can seek advice from the Office of the Attorney General on that question.

MISSISSIPPI ETHICS COMMISSION

BY:

Tom Hood, Executive Director and
Chief Counsel