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## MISSISSIPPI ETHICS COMMISSION

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### ETHICS ADVISORY OPINION NO. 25-011-E

June 6, 2025

**Question Presented:** May a county board of supervisors do business with the brother of a board member when they have common ownership of real property but do not have any common debt?

**Brief Answer:** Yes. Under these particular facts, the joint ownership alone will not give the supervisor a prohibited interest in any contract the brother may have with the county and will not violate Section 109, Miss. Const. of 1890, or Section 25-4-105(2), Miss. Code of 1972. Yet the supervisor must fully recuse from any board action which results in a monetary benefit to the brother, in compliance with Section 25-4-105(1).

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.

(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.

(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.

As you know. I am a [county supervisor]. I represent Beat One, [...]. From time-to-time my brother has opportunities to do business with the County. While I know I certainly could not vote on any situations that he had any interest in, I would like

to know if there were any prohibitions for the County doing business with my brother if we owned property jointly but no joint debt.

For example. i.e. if we owned a piece of property with three (3) other individuals, we would each have an undivided one-fifth (1/5) interest. If one partner died we would be in a position to buy that partner's interest from his estate. If three (3) of the partners financed their funds to purchase from the deceased's partner's estate with their undivided 75% collateral, could my brother borrow money on his undivided 25% interest as collateral? Even though it would be one piece of land, the two separate loans would be collateralized by isolated interest.

I would appreciate you giving me an opinion on the above so that any action taken would be in good legal posture. I appreciate your attention.

### III. ANALYSIS

Section 109, Miss. Const. of 1890, and its statutory parallel, Section 25-4-105(2), Miss. Code of 1972, both quoted above, prohibit a member of a public board from having any direct or indirect interest in a contract with the government 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). If the board member is totally, financially independent from the other person, here, his brother, then the board member would not have a prohibited interest in the brother's possible transactions with the county under Section 109 and Section 25-4-105(2).

If the board member has a common financial interest with his brother, then the board member may have a prohibited interest in the brother's transactions with the county. See Waller v. Moore ex rel. Quitman County School Dist., 604 So.2d 265, 266-67 (Miss. 1992). 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 Smith v. Dorsey, 530 So.2d 5, 9 (Miss. 1988).

Examples of common financial interests precluding total financial independence include, but are not limited to, the board member living with the brother, leasing or renting property from the brother, owing money to the brother, living on property owned by the brother, sharing liquid assets with the brother or co-owning a business with the brother. If the board member and the brother are financially independent, then no violation of Section 109 or Section 25-4-105(2) should occur if the county does business with the brother.

The essence of financial independence is that the board member will not realize any financial benefit or loss if the other person realizes a financial benefit or loss. Likewise, indebtedness shared by the board member and the other person can also preclude financial independence since one may be obligated to pay the entire debt if the other cannot.

Yet, common ownership of real property in the absence of common debt does not preclude financial independence. See [Advisory Opinion No. 21-029-D](#). Here, the brother may borrow money to purchase an available interest in the subject property, but the debt will be secured only by his own interest and not by the ownership interest of the supervisor. Therefore, the indebtedness

will not be shared by the board member and the brother and will not affect their financial independence from each other. Consequently, no violation of Section 109 or Section 25-4-105(2) will result.

However, as the supervisor recognizes, Section 25-4-105(1) prohibits him from using his official position to obtain or attempt to obtain any monetary benefit for his brother, who is defined as a “relative” in Section 25-4-103(q). The supervisor must fully recuse himself from any matter that would result in a monetary benefit to his brother or a business owned by his brother, including paying claims to his brother or his business. See also Section 25-4-103(d).

A total and complete recusal requires that the supervisor not only avoid debating, discussing or taking action on the subject matter during official meetings or deliberations, but also avoid discussing the subject matter with other county officials or employees. This restriction includes casual comments, as well as detailed discussions, made in person, by telephone or by any other means. An abstention is considered a vote with the majority and is not a recusal. Furthermore, the minutes of the meeting should state the supervisor left the room before the matter came before the board and did not return until after the vote.

MISSISSIPPI ETHICS COMMISSION

BY:

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Tom Hood, Executive Director and  
Chief Counsel