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ETHICS ADVISORY OPINION NO. 25-031-E

September 5, 2025

Question Presented: May an alderman serve as an uncompensated member of the board of directors of a nonprofit corporation that receives funding from the city?

Brief Answer: Yes. If the alderman serves as an uncompensated director and receives no monetary benefit from the nonprofit, no violation of Section 109, Miss. Const. of 1890 or Section 25-4-105(2), Miss. Code of 1972, should occur under these facts, and the alderman's recusal should prevent a violation of 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.

(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 the attorney for the City [...]. A new city alderman is a member of the board of directors of a local nonprofit corporation that provides Christian social and community service programs. As allowed by Section 21-19-65 of the Mississippi Code of 1972, the City [...] acting through its Mayor and Board of Alderman, has been making annual monetary donations to support the corporation. I anticipate the City will desire to do so again in its next fiscal year and for the foreseeable future.

May the aforesaid alderman continue to serve on the board of directors of the corporation and the City continue to make the donations? Will the alderman's recusal on the discussion and vote on the donation allow the City to continue to donate and protect the alderman?

In response to a question from the commission's staff, the city attorney reported that the new alderman does not receive any compensation whatsoever from the nonprofit corporation.

III. ANALYSIS

Section 109, Miss. Const. of 1890, and Section 25-4-105(2), Miss. Code of 1972, both prohibit a member of a public board from having any direct or indirect interest in a contract which is 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). In this context "authorized" means more than just the obvious act of approving a contract. It also means appropriating money. An appropriation of public money which ultimately funds a contract is an action which authorizes that contract. See Frazier at 693, citing Cassibry v. State, 404 So. 2d 1360, 1366-67 (Miss. 1981).

The proposed payment of public funds to the nonprofit may constitute a contract, although it is unclear whether the donation in issue here will constitute a contract or not. Nevertheless, because the alderman does not receive any compensation from the nonprofit, the alderman will not have a prohibited interest in any payment authorized by the board of aldermen to the nonprofit, and no violation of Section 109 or Section 25-4-105(2) will arise from such a payment.

Even though the alderman does not receive money from the nonprofit, he or she is prohibited from participating in any board action which would result in a monetary benefit to the

nonprofit. Section 25-4-105(1) prohibits a public servant from using his or her official position in government to obtain or attempt to obtain a pecuniary benefit for a “business with which he [or she] is associated.” That term is defined in part as “any business of which a public servant or his relative is an officer, director, owner, partner, [or] employee.” Section 25-4-103(d).

Furthermore, the statutory definition of the term “business” includes “a nonprofit corporation or other such entity, association or organization receiving public funds.” Section 25-4-103(c). Thus, the nonprofit will certainly be a “business with which [the alderman] is associated” simply because it will receive public funds, and the alderman is a director of the nonprofit corporation. Therefore, the alderman must recuse himself or herself from any action taken by the board which would result in a pecuniary benefit to the nonprofit, even though such action will not benefit the alderman.

A total and complete recusal requires that the alderman 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 staff or any other board member or city official or employee. 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 recusing member left the room before the matter came before the public body and did not return until after the vote

MISSISSIPPI ETHICS COMMISSION

BY:

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