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### ETHICS ADVISORY OPINION NO. 25-039-E

November 7, 2025

**Question Presented:** May the financially independent sibling of the mayor continue to be employed as municipal clerk?

**Brief Answer:** When an employee works under the direct supervision of his or her relative, a violation of Section 25-4-105(1), Miss. Code of 1972, is virtually inevitable. Due to the potential for a violation of Section 25-4-105(1) and the public policy codified in Section 25-4-101, either the mayor or the clerk should resign their position.

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 25-4-101, 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.

(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.

I am writing to you in my capacity as the attorney for the Town [...]. I need for your office to provide me with an official written opinion concerning whether or not the following described scenario is in violation of 25-4-101, et seq., MS Code Ann. (1972, as amended).

The Mayor of the Town [...] and the Town Clerk for the Town [...] are [siblings]. They are completely financially independent of one another. The Clerk was employed by the Town in that capacity prior to the Mayor's election in June which may be neither here nor there.

Considering the above facts, please provide me with an official opinion as to whether or not the Mayor and/or Clerk are prohibited from simultaneously serving the Town [...] in either of their respective capacities or if there are actions that should be taken by the Mayor when discussion of the Clerk is before the Board.

Please let me know if you need any additional information from me in order to act on this request. Thank you in advance for your assistance with this matter.

This municipality uses the code-charter, mayor-alderman form of government authorized in Section 21-3-1, Miss. Code of 1972, *et seq.*

### 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 the municipal governing authorities from having an interest in a contract authorized by the governing authorities during his or her term or for one year thereafter. Frazier v. State, ex rel. Pittman, 504 So.2d 675, 693 (Miss. 1987). A common financial interest shared by a mayor and a municipal employee, in this case the mayor's sibling, may give the mayor a prohibited interest in the employee'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 relative leasing or renting property from the mayor, owing money to the mayor, living on property owned by the mayor, sharing liquid assets with the mayor, co-owning a business with the mayor or either of them being eligible to be claimed as a dependent on the other's tax return. If the mayor is financially independent from the relative, then no violation of Section 109 or Section 25-4-105(2) should arise. A recusal will not prevent or ameliorate a violation of Section 109 and Section 25-4-105(2), as those sections do not require any affirmative act by an individual public official but merely action by the board. Towner v. Moore ex rel. Quitman County School Dist., 604 So.2d 1093, 1100 (Miss. 1992), and Waller at 266-267.

As set forth in Section 25-4-105(1), Miss. Code of 1972, no public servant may use his position to obtain or attempt to obtain a monetary benefit for his or her "relative," including his or her sibling. See definitions in Section 25-4-103(l) and (q). The Ethics Commission has previously opined "when an employee works under the direct supervision of his or her relative, a violation of Section 25-4-105(1) is virtually inevitable." See Advisory Opinions No. 17-037-E, 17-035-E, 16-037-E, 12-114-E, 11-040-E, 10-029-E, 09-116-E, 09-112-E, 09-102-E and 08-063-E.

In a code charter municipality, the mayor has the authority and duty to supervise all city employees and has a particular responsibility to directly supervise all "appointive officers" of the municipality appointed by the board of mayor and aldermen, including the city clerk. "The executive power of the municipality shall be exercised by the mayor, and the mayor shall have the superintending control of all the officers and affairs of the municipality, and shall take care that the laws and ordinances are executed." Section 21-3-15(1). See also Sections 21-3-3 and 21-3-5.

A public servant who directly supervises his or her relative may be expected to approve time sheets, process payroll or periodically review the job performance of the relative. Any of

those actions would result in a violation of Section 25-4-105(1). Typically, a public servant can avoid violating Section 25-4-105(1) by recusing himself or herself from the matter in issue. This may be possible when the public servant does not *directly* supervise the relative. See Advisory Opinions No. 16-029-E (dispatcher), 13-093-E (fireman), 09-014-E (police officer), 06-053-E (water operator). Yet under the facts presented in this particular opinion, the mayor would be directly supervising his or her own relative, which creates an unadvisable and untenable situation.

Even reassigning the city clerk to another position will not fully remedy the problem. Any time one relative is at the top of the organizational chart with supervisory control over the entire organization, the other relative should not be employed anywhere within that organization. Such a situation presents the distinct potential for a violation of Section 25-4-105(1) since the person directly supervising the employee is subject to the authority of that employee's relative.

Moreover, 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. Section 25-4-101. Public suspicion can certainly be aroused if the mayor's relative is employed by the municipality. Due to the potential for a violation of Section 25-4-105(1) and the policy codified in Section 25-4-101, the commission advises that the mayor or the city clerk should resign their position with this city.

The Ethics in Government Law should not be confused with the general statute prohibiting nepotism, codified at Section 25-1-53. That statute may allow situations which are prohibited by the Ethics in Government Law. The laws prohibiting nepotism are separate from the Ethics in Government Law, and the Ethics Commission does not have authority to interpret those laws or the municipal statutes cited herein. The Office of the Attorney General interprets those statutes.

MISSISSIPPI ETHICS COMMISSION

BY: \_\_\_\_\_  
Tom Hood, Executive Director and  
Chief Counsel