



BEN H. STONE, Chairman
Gulfport

SAMUEL C. KELLY
Madison

STEPHEN W. BURROW,
Vice Chairman, Pascagoula

MISSISSIPPI ETHICS COMMISSION

CHRISTOPHER T. GRAHAM
Clinton

MAXWELL J. LUTER, Secretary
Tylertown

Post Office Box 22746
Jackson, Mississippi 39225-2746

KRIS. K. DAVIS
Columbus

ERIN P. LANE
Ridgeland

Telephone: 601-359-1285
www.ethics.ms.gov

ANDY TAGGART
Ocean Springs

TOM HOOD
Executive Director and Chief Counsel

ETHICS ADVISORY OPINION NO. 26-004-E

March 6, 2026

Question Presented: May a former city council member serve without compensation on the city planning commission within one year of leaving office on the city council?

Brief Answer: Yes. Because the former city council member will receive no compensation for serving on the city planning commission, no contract will exist, and no violation of Section 109, Miss. Const. of 1890, or Section 25-4-105(2), Miss. Code of 1972, will result, even within one year of leaving office on the city council.

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.

(e) “Compensation” means money or thing of value received, or to be received, from any person for services rendered.

(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.

(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.

Section 25-4-105, Miss. Code of 1972.

(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.

Introduction and Summary Question:

As you know, I am general counsel to the City [...]. In that capacity I have been requested by [a] Council Member ... to write for an official opinion from the Ethics Commission. The question is whether a former City Council member may, within one year after completing his term of office, be appointed to serve on a Board or Commission of the City that is required by statute to be uncompensated for that service. We ask this question to ensure that neither the Mayor and City Council nor the former council member violates either Section 109 of the Mississippi Constitution or Section 25-4-105(2) of the Mississippi Code both of which prohibit public servants from being interested, directly or indirectly, during his or her term of office, or within one year thereafter, in any contract with the city, authorized by any order made by the board of which he was a member.

Factual Background:

Planning Commission: The City has an opening on its Planning Commission (" the Commission"). The Commission recommends adoption of a comprehensive plan of the City, has the power to commission studies and to recommend zoning plans and changes to zoning as well as to recommend regulations related to development of subdivisions and the cohesive development of the City. According to the City's Ordinances establishing the Commission, its members, including any ex officio members, may not receive compensation for their services on the Commission. See §23-23 of the Code of Ordinances of the City....

Term of Office of Former Council Member: As you are probably aware, the City's last general election was in 2025. The presently serving Mayor and City Council were sworn in on July 1, 2025 at 12:01 AM and the term of office of the outgoing Council was June 30, 2025 at midnight. Thus, it has not yet been one year since the prior City Council's administration ended. [A certain individual] was the Council Member for Ward ... of the City Council but was defeated in the general election, and his term ended on June 30, 2025.

Applicant for Commission: [That former city council member] has applied to serve on the Commission. As stated, [the former city council member] left office at midnight on June 30, 2025. The appointment is up for consideration [very soon]. Obviously, if the Council were favorably inclined toward appointing [the former city council member], they would like to have a prompt answer. My advice if the

majority of the Council is inclined toward appointing him would be to condition his appointment upon an advance favorable Commission Opinion and that he wait for same before taking his oath of office and serving.

Question Presented: The question therefore concisely stated is as follows: Does either Section 109 or Section 25-4-105 prohibit [the former city council member] from service on the Planning Commission during the 12 months that follow his exit from office at midnight on June 30, 2025? Of course, we ask for an Official Commission Opinion pursuant to Section 25-4-17. Please feel free to contact me should you require additional information.

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 any direct or indirect interest in a contract funded or otherwise 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). Every public employee has a contract of employment, many of which are oral, at-will contracts rather than written contracts. Any employment contract which violates Section 109 or Section 25-4-105(2) is null and void, and the employee can be liable to repay all money he receives. 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). Consequently, a former city council member cannot be an employee or contractor of the city within one year of leaving office.

With regard to a “public office,” there is no contract. Johnston v. Reeves & Co., 72 So. 925, 927 (Miss. 1916). Yet the Ethics Commission has previously found that members of municipal planning commissions “do not exercise any sovereign power of the state and do not hold a public office.” See Advisory Opinion No. 09-073-E. Moreover, if the former alderman were to serve without compensation for one year after leaving office with the understanding or expectation that such employment would thereafter continue with compensation, then the board would still be authorizing a future contract with a former member in violation of Section 109 and Section 25-4-105(2). See Advisory Opinions No. 25-035-E, 16-044-E and 09-059-E.

Municipalities are authorized by statute to compensate their planning commission members with a per diem not to exceed “\$120.00 in the aggregate per month.” Section 17-1-11. Compensation could entail a contract between the municipality and the planning commission member, which would violate Section 109 and Section 25-4-105(2) where the commission member was on the city council less than one year prior. However, this city’s ordinance prohibits members of the city planning commission from receiving any compensation. Because the former city council member will receive no compensation for serving on the city planning commission, no contract will exist, and no violation of Section 109 or Section 25-4-105(2) will result, even within one year of leaving office on the city council.

MISSISSIPPI ETHICS COMMISSION

BY: _____
Tom Hood, Executive Director and
Chief Counsel