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ADVISORY OPINION NO. 10-092-E

September 10, 2010

Question Presented: May an employee of the sheriff's office marry the sheriff and continue to be employed there?

Brief Answer: No. 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.

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 25-4-103, 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.

Enclosed you will find an Attorney General's opinion relative to the issue of our Sheriff marrying one of the Deputies. As you can see from the AG's opinion, it does not violate the nepotism law since both were employed prior to the marriage, but I need an Ethics opinion as to whether or not their marriage would violate any Ethics in Government Laws.

III. ANALYSIS

Pursuant to Section 25-4-105(1), Miss. Code of 1972, no public servant may use his or her position to obtain or attempt to obtain any monetary benefit for his or her "relative." That term is defined in Section 25-4-103(q), quoted above, and includes a spouse. When an employee works under the direct supervision of his or her relative, a violation of Section 25-4-105(1) is virtually inevitable.

The sheriff may be obligated to approve time sheets, on-call pay or reimbursement for his wife, in addition to periodically reviewing her job performance. He may be responsible for approving her work schedules and could possibly show preference to his wife in these day-to-day actions required by his position. 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. However, recusal under these facts is impractical if not impossible in light of the sheriff's daily supervisory responsibilities over his deputies. Therefore, the deputy must resign her position before she marries the sheriff.

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 interpret those laws. Legal opinions on statutes prohibiting nepotism are issued by the Office of the Attorney General, which the sheriff has already consulted.

MISSISSIPPI ETHICS COMMISSION

BY: _____

Tom Hood, Executive Director and
Chief Counsel



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Executive Director and Chief Counsel

ADVISORY OPINION NO. 11-076-E

January 6, 2012

Question Presented: May a sheriff hire his brother?

Brief Answer: No. Pursuant to Section 25-4-105(1), Miss. Code of 1972, no public servant may use his or her position to obtain or attempt to obtain any monetary benefit for his or her relative, including a brother.

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 25-4-103, 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.

Please consider this correspondence a formal request for an opinion on compliance with Standards of Conduct in the following matter.

I am the recent Sheriff-Elect for the County. Upon taking office I wish to employ my brother in the Fiscal Division of the Sheriff's Office. In this position I would not be his direct supervisor and pursuant to M.C.A. §25-1-53 his title would not include officer, clerk, stenographer, deputy or assistant. I would like to request an opinion on whether this hire would meet the criteria of the current Standards of Conduct enforced by this commission.

III. ANALYSIS

Pursuant to Section 25-4-105(1), Miss. Code of 1972, no public servant may use his or her position to obtain or attempt to obtain any monetary benefit for his or her "relative." That term is defined in Section 25-4-103(q), quoted above, and includes the public servant's siblings such as a brother. Therefore, a sheriff is prohibited from hiring his brother.

Moreover, when an employee works under the direct supervision of his or her relative, a violation of Section 25-4-105(1) is virtually inevitable. The sheriff may be obligated to approve time sheets, pay adjustments or reimbursement for his brother, in addition to periodically reviewing his job performance. The sheriff may be responsible for approving the brother's work schedules and could possibly show preference to his brother in these day-to-day actions required by his position. 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. However, recusal under these facts is impractical if not impossible in light of the sheriff's daily supervisory responsibilities over his employees.

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 interpret those laws. Legal opinions on statutes prohibiting nepotism are issued by the Office of the Attorney General.

MISSISSIPPI ETHICS COMMISSION

BY: _____

Tom Hood, Executive Director and
Chief Counsel

OFFICIAL ADVISORY OPINION NO. 03-121-E

November 7, 2003

This Advisory Opinion concerns the following issue as formulated from facts and/or circumstances furnished by a requestor. The Commission approved this opinion on November 7, 2003, basing its approval solely on the facts and circumstances stated herein.

May the spouse of a supervisor-elect for county supervisor remain employed by the county's tax assessor/collector's office?

State law restricts the Mississippi Ethics Commission to interpreting and issuing opinions on Sections 25-4-101 through 25-4-119, 1972 Mississippi Code Annotated and Article IV, Section 109, Mississippi Constitution of 1890. Therefore, this opinion does not address the Mississippi laws outside the Commission's jurisdiction nor the governmental entity's internal rules and regulations.

The pertinent conflict of interest laws to be considered here are:

Constitutional Section 109 states:

ANo 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.@

Code Section 25-4-101 states:

AThe 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.®

Code Section 25-4-103(f)(i)(ii), (g)(i), (h), (p)(i)(ii)(iii) and (q) states:

A(f) >Contract~~z~~ 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~~z~~ means the state and all political entities thereof, both collectively and separately, including but not limited to:

- (i) Counties.

(h) >Governmental entity~~z~~ means the state, a county, a municipality or any other separate political subdivision authorized by law to exercise a part of the sovereign power of the state.

(p) >Public servant~~z~~ 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.

3. It is my understanding, according to the Attorney General's opinions, that the Tax Collector has full discretion as to the number of employees whom he hires and the amount of their salary. Please find enclosed a copy of the following Attorney General's opinions in support of this proposition.

Attorney General's opinion dated November 1, 1989 to Charles Hicks, Tax Collector/Assessor

Attorney General's opinion dated September 24, 1984 to Evan Doss, Jr., Tax Assessor/Collector

4. It is my understanding that the County Board of Supervisors is required by statute to fund the Tax Collector's office and, further, it is my understanding that the County Board of Supervisors is required to appropriately fund those offices.
5. It appears that the only involvement the County Board of Supervisors has regarding hires and terminations in the Tax Collector's office is the approval of the budget submitted by the Tax Collector.
6. Obviously, the Tax Collector is an elected official.
7. My has served as an employee of the County Tax Collector's Office since, March, 1999.

The issue I present to the commission is as follows:

If the spouse of a Supervisor-elect has worked as an employee of the Tax Collector for 2 years prior to the election of said Supervisor, may she continue as an employee of the Tax Collector's office after the Supervisor takes office?

I do understand that my wife being allowed to maintain her employment would require me to recuse myself from any matters which would involve the budget of the Tax Collector's office.

The Commission formally adopts Advisory Opinion No. 03-084-E in response to this request and by attachment incorporates it into this opinion.

Based solely on the facts and circumstances presented by the requestor, the Commission's opinion

is as follows.

Upon review of ¶27-1-1, et seq., 1972 Mississippi Code Annotated (amended), the continued employment of a newly elected county supervisor's spouse with the county tax assessor/collector's office will ultimately result in a violation of the state conflict of interest laws. This is true because of the board of supervisors' authority to give approval to the tax assessor/collector's appointment of deputies and the board of supervisors' authority to set the funding for the tax assessor/collector's office and to approve the budget for the tax assessor/collector's office.¹

Constitutional Section 109 and Code Section 25-4-105(2), both cited above, prohibit a county supervisor from having an interest, direct or indirect, in any contract authority by the county board of supervisor during his term or within one year.²

Also, in Smith v. Dorsey, 530 So. 2d 5 (1988), the Mississippi Supreme Court held a public official has an indirect prohibited interest in a contract in which the public official's spouse has a direct interest for purposes of Constitutional Section 109 and Code Section 25-4-105(2).

Therefore, Constitutional Section 109 and Code Section 25-4-105(2) absolutely prohibit a county supervisor's spouse from being employed by the county tax assessor/collector's office during the county supervisor's term of office and for one year thereafter.

The violation would occur at the point in time that the board of supervisors of which the requestor is a member approves the spouse/deputy tax assessor/collector's employment contract either by approving the newly elected tax assessor/collector's deputies or approving the county's appropriation of funding of the deputies' salaries by way of the tax assessor/collector's budget.

¹See ¶ 27-1-3, ¶ 27-1-7 and ¶ 27-1-9(a), 1972 Mississippi Code Annotated (amended).

²The Mississippi Supreme Court, in Frazier v. State, 504 So. 2d 675 (1987), held that an order of a public official's board that appropriates funds that directly or indirectly benefit the public official through a governmental contract is part of the contract authorization process

Advisory Opinion No. 03-121-E

November 7, 2003

Page 6

The requestor advised that a recusal or an abstention will not prevent a violation of Constitutional Section 109 or Code Section 25-4-105(2). Even without a county supervisor's vote, the authorization by the county board of supervisors, nonetheless, results in a contract in which the county supervisor has a prohibited interest.

The issue presented by the requestor also must be viewed as it relates to Code Section 25-4-101, set forth above. This code section sets the tone for the conflict of interest laws as it is the Legislature's Declaration of Public Policy. This public policy can be summarized as any circumstance having the potential of creating suspicion among the public and reflecting unfavorably upon the state or local government should be closely reviewed by public servants with the intent to reduce or eliminate any suspicion on the part of the public which detracts from the public's trust in state or local government.

Clearly, the employment of a county supervisor's spouse by the county tax assessor/collector's office has the potential of creating suspicion among the public and reflecting unfavorably upon the county. Therefore, such a circumstance should be avoided in order to fully comply with the state's public policy mandate set forth in Code Section 25-4-101.

The requestor cites Code Section 25-1-53, the statutory prohibition against nepotism. While the statute does provide a Grandfather clause, that exception does not affect the absolute prohibition codified in Constitutional Section 109 and Code Section 25-4-105(2), cited above. The requestor also cites a number of Attorney General's Opinions, but those opinions do not interpret the Ethics in Government Act or its attendant authorities. Consequently, both Section 25-1-53 and the Attorney General's Opinions are unrelated to application of Constitutional Section 109 and Code Section 25-4-105(2).

Scott Rankin
Executive Director