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## MISSISSIPPI ETHICS COMMISSION

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### ADVISORY OPINION NO. 10-044-E

June 11, 2010

**Question Presented:** May the child of an alderwoman accept employment with the city attorney's law firm?

**Brief Answer:** Yes. If the alderwoman and her child are totally, financially independent, 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 alderwoman'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.

(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.

(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 have served as a City Attorney and Prosecutor for the City for many years. Recently an individual passed the Mississippi Bar. I would like to make him a job offer. This individual is the son of an Alderwomen who also serves as Mayor Pro Tem. Is there an ethical prohibition against his working for me, given that I am City Attorney and Prosecutor?

## 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). Since the law firm in question has a contract with the city which is authorized or funded by the board, the alderwoman in question cannot have an interest in that contract. If the alderwoman and her child are totally, financially independent from one another, no violation of Section 109 or Section 25-4-105(2) should arise from these circumstances.

If the alderwoman has a common financial interest with her child, then the alderwoman may have a prohibited interest in the child's employment with the firm. See Waller v. Moore ex rel. Quitman County School Dist., 604 So.2d 265, 266-67 (Miss. 1992). A 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 parent claiming the child as a dependent for tax purposes, the child living with the parent, leasing or renting property from the parent, owing money to the parent, living on property owned by the parent, sharing liquid assets with the parent or co-owning a business with the parent. If the alderwoman and her son are financially independent from each other, then no violation of

Section 109, Miss. Const. of 1890, or Section 25-4-105(2), Miss. Code of 1972, should occur if the child is employed by the city attorney's firm.

Under Section 25-4-105(1), the alderwoman is prohibited from taking any action in her official position which creates a monetary benefit for her son or a "business with which [she] is associated." The term "business with which [she] is associated" includes the law firm that will employ the alderwoman's child. See Section 25-4-103(d), Miss. Code of 1972. To prevent a violation of Section 25-4-105(1), the alderwoman must recuse herself from any action by the board which would create a pecuniary benefit for her child or the law firm. Conversely, if the board's action will not result in a monetary benefit to the law firm or the son, then the alderwoman may participate fully.

A total and complete recusal requires that the alderwoman 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 city officials or employees. This 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 alderwoman left the room before the matter came before the board and did not return until after the vote.

MISSISSIPPI ETHICS COMMISSION

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