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ADVISORY OPINION NO. 16-010-E

February 12, 2016

Question Presented: May a county supervisor maintain a private law practice and appear before courts located in the county?

Brief Answer: Yes. The Ethics in Government Laws do not prohibit a practicing attorney from serving as county supervisor. Nonetheless, the supervisor should fully and completely recuse himself or herself from certain matters concerning law enforcement agencies, prosecutors, and the courts in the county to ensure no violation of Section 25-4-105(1), Miss. Code 1972, occurs and to fully comply with the public policy set forth in Section 25-4-101. Pursuant to Section 25-4-105(5), the supervisor is also from sharing non-public information that would result in a monetary benefit to a client.

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 25-4-101, 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.

(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.

(i) "Income" means money or thing of value received, or to be received, from any source derived, including but not limited to, any salary, wage, advance, payment, dividend, interest, rent, forgiveness of debt, fee, royalty, commission or any combination thereof.

(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.

(5) No person may intentionally use or disclose information gained in the course of or by reason of his official position or employment as a public servant in any way that could result in pecuniary benefit for himself, any relative, or any other person, if the information has not been communicated to the public or is not public information.

II. FACTS

Facts provided by the requestor are set forth below, with identifying information redacted, and are considered a part of this opinion.

As the attorney for the County Board of Supervisors, I’ve been asked to seek a formal opinion from the Ethics Commission regarding the potential conflicts and ethical considerations, if any, arising out of the private employment activities of a current Board of Supervisors member who is also a practicing attorney. In particular, the question has been raised as to whether a current board member and practicing attorney may practice before the County Justice Court, Circuit Court, Youth Court and/or Chancery Court given the ethical constraints imposed under the Mississippi Ethics in Government Act (Miss. Code Ann. Section 25-4-101 et seq.). Members of the local community have expressed concern given the individual’s recent election as a member of the Board of Supervisors and, in that capacity, would be involved in deciding budgetary and administrative support for certain related court and prosecutorial operations, including the Drug Court program affiliated with the local Circuit Court and Narcotics Unit, which is a

local inter-governmental entity (jointly operated by the County Sheriff's Department, the City Police Department and the local University's Police Department, with funding provided by the County and City governments and the University) charged with investigating and pursuing the prosecution of local drug crimes.

Accordingly, we seek a formal opinion as to whether and to what extent the Supervisor may deliberate and vote on matters relating to local court operations, including budgetary and administrative support, in the event the Supervisor actively engages in the practice of law before the courts, and, in particular, involving matters falling within the jurisdiction of the Drug Court program and Narcotics Unit.

III. ANALYSIS

Pursuant to Section 25-4-105(1), Miss. Code of 1972, a county supervisor is prohibited from using his position to obtain or attempt to obtain any pecuniary benefit for himself, his relative or a business with which he is associated. See Section 25-4-103(q), (c) and (d). Some of the clients of a practicing attorney could be the attorney's relatives and/or businesses with which the attorney is associated. If so, then the attorney would be prohibited from using his position as a county supervisor to obtain any pecuniary benefit for such a client. Certainly, the supervisor would be prohibited from making any threat or offering any inducement related to funding or oversight of a judicial or law enforcement position in an effort to obtain pecuniary benefit for such a client. The supervisor must refrain from any such conduct to avoid violating Section 25-4-105(1). See Advisory Opinion Nos. [15-066-E](#) & [15-047-E](#). There is no prohibition in the Ethics in Government Law which precludes a county supervisor from practicing law, nonetheless, the Ethics Commission recommends the requestor recuse himself from matters related to the local courts or law enforcement agencies for the reasons described below.

Pursuant to Section 25-4-101, Miss. Code of 1972, public servants must 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. Under these facts, the supervisor's participation in the matters outlined above could lead to suspicion among the public because and create an appearance of impropriety. To alleviate these concerns, the supervisor should recuse himself from deciding budgetary and administrative support for court and prosecutorial operations, including the Drug Court program and the Narcotics Unit, if he actively engages in the practice of law before those courts in cases involving those programs and units. The supervisor should also recuse himself from making appointments to fill vacancies in the offices associated with those courts and programs.

A total and complete recusal requires that the supervisor 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 county officials or employees. This restriction includes casual comments, as well as detailed discussions, made in person, by telephone or by any other means. An abstention may be 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.

County supervisors are also prohibited from intentionally using or disclosing non-public information gained through their position if it could result in pecuniary benefit to anyone. See Section 25-4-105(5). If the supervisor gains some non-public information about a judicial or law enforcement official which could benefit the supervisor's client, the supervisor could be prohibited from sharing that information with the client. For instance, the supervisor could learn such information through a personnel matter which, at the time, is not public. The supervisor must be careful to avoid such information when it could benefit his client. It is conceivable that the supervisor could be forced to withdraw as counsel for a client to avoid violating either Section 25-4-105(5) or the Rules of Professional Conduct for attorneys. If such a situation arises, the supervisor should request another opinion from the Ethics Commission for more specific advice.

MISSISSIPPI ETHICS COMMISSION

BY: _____
Tom Hood, Executive Director and
Chief Counsel