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ADVISORY OPINION NO. 16-040-E

July 8, 2016

Question Presented: May the mayor's spouse who is a member of a law firm represent private parties who appear in municipal court?

Brief Answer: Yes. Section 25-4-105(1), Miss. Code of 1972, prohibits the mayor from using his or her official position to obtain, or attempt to obtain, a pecuniary benefit for the mayor's spouse and the law firm. However, a mayor will have little opportunity to violate that provision since the spouse will not be paid by the city.

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.

(b) "Benefit" means any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.

(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.

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

(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.

(m) “Person” means any individual, firm, business, corporation, association, partnership, union or other legal entity, and where appropriate a governmental entity.

(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.

(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.

I currently serve as an Alderman in a [City]. I am considering running for Mayor of the City in 2017. My husband is a partner with a law firm in the [City] where he primarily practices in the areas of criminal defense and personal injury work. [My husband] has cases in city court weekly.

As an Alderman, along with the Board, I review the budget of our City Court department. Although we have no involvement in day-to-day operations of this department, we do approve hiring of personnel along with expenses of the City Court department. I have never used my role as an Alderman to obtain or attempt to obtain any business for my husband or his firm.

We are a Board strong governing authority. If elected Mayor, I would be even more removed from the process as I would not have a vote. It would appear that the opinion already provided as 15-047-E would address this issue but since I am considering running for Mayor I would like to know if this changes anything. If I were serving as Mayor, would there be any conflict with my husband practicing in City Court and should I recuse myself on matters that involve the City Court department due to my husband's practice of law involving cases before our City Court.

The requestor previously confirmed the requestor's husband receives no payments of any kind from the city and provides no services to the municipal court. The husband represents clients who are defendants, or otherwise involved in municipal court cases.

III. ANALYSIS

As set forth in Section 25-4-105(1), Miss. Code of 1972, an alderman cannot use his or her position in municipal government to obtain, or attempt to obtain, any pecuniary benefit for himself or herself, a relative or a "business with which he [or she] is associated." The alderman's spouse is a relative and the spouse's law firm is a business with which the alderman is associated. See definitions in Section 25-4-103(q) & (d). Thus, the alderman may not use her position in municipal government to obtain, or attempt to obtain, a pecuniary benefit for her husband or his law firm. As the commission previously advised the requestor, she must never make any threat or inducement to any city official or employee, including court officials, in an attempt to secure a favorable result in a municipal court case in which her husband represents a defendant or other party. Moreover, if the requestor obtains non-public information as a result of her position as mayor which could benefit a client of her husband's firm, she would be strictly prohibited from disclosing such information to her husband or his client. See Section 25-4-105(5).

MISSISSIPPI ETHICS COMMISSION

BY: _____
Tom Hood, Executive Director and
Chief Counsel