

APPENDIX 2

MUNICIPAL GOVERNMENT AND MISSISSIPPI'S ETHICS LAW

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To avoid violations of the state conflict of interest laws and possible civil liability, municipal mayors, board members, officers and employees must have a basic understanding of both the functions of the Mississippi Ethics Commission and the prohibitions imposed by the state conflict of interest laws. The following information is intended to provide that basic understanding. However, all municipal mayors, board members, officers and employees are strongly advised to personally contact the Mississippi Ethics Commission regarding specific instances that could involve the state conflict of interest laws.

THE MISSISSIPPI ETHICS COMMISSION

The Mississippi Ethics Commission is governed by an eight (8) member commission. The commissioners are appointed to serve four (4) year terms.

The Mississippi Ethics Commission's three (3) primary duties are as follows:

- ▶ Provide forms for the filing of financial disclosures by public officials and candidates and make the completed forms available for public inspection upon request.
- ▶ Receive sworn complaints and subsequently investigate alleged violations of the law by public servants.
- ▶ Issue written advisory opinions to public officials with regard to any standards of conduct set forth in the conflict of interest laws.

The Mississippi Ethics Commission employs a full-time staff supervised by an executive director who serves at the Commission's will and pleasure.

THE STATEMENT OF ECONOMIC INTEREST (Financial Disclosure Form)

§ 25-4-25(a), *1972 Mississippi Code Annotated* (amended), requires persons elected by popular vote, excluding United States Senators and United States Representatives, to any office, whether it be legislative, executive or judicial, and whether it be statewide, district, county, municipal or any other political subdivision, with the exception of members of boards of levee commissioners and election commissioners to annually file a statement of economic interest with the Mississippi Ethics Commission.

§ 25-4-25(c), *1972 Mississippi Code Annotated* (amended), requires all persons who are candidates for public office or who are appointed to fill a vacancy in an office who, if elected, would be required to file under item (a) of this section a statement of economic interest with the Mississippi Ethics Commission.

§ 25-4-29, *1972 Mississippi Code Annotated* (amended), sets May 1 as the annual filing deadline except for candidates who must file within 15 days of becoming a candidate for public office.

§ 25-4-31(3), *1972 Mississippi Code Annotated* (amended), states, “Any person who willfully and knowingly fails to file a financial disclosure required by law, or, through filing, willfully and knowingly fails to disclose information required by law, is guilty of a misdemeanor, and if convicted may be punished by a fine of not more than \$5,000.”

THE COMPLAINT PROCEDURE

§§ 25-4-19, 21 and 23, *1972 Mississippi Code Annotated* (amended), set forth the complaint procedure to be followed by the Mississippi Ethics Commission.

The complaint procedure requires:

- ▶ Investigations conducted upon receipt of complaints signed under oath by any person.
- ▶ Copy of complaint to public servant, executive head, appropriate committee or commission.
- ▶ The persons or entities receiving the sworn complaint have 30 days to respond to the complaint.
- ▶ Investigative proceedings and records are confidential except not to interfere with the Commission’s statutory authority.
- ▶ May administer oaths and serve subpoenas upon witnesses or for production of documents before the Commission.
- ▶ If an investigation indicates probable cause that a violation has occurred, the Commission refers the case to the Attorney General and the appropriate District Attorney.
- ▶ The Commission is to seek restitution or other legal remedies in civil law to recover public funds or property unlawfully taken.

A circuit court of competent jurisdiction upon a finding of clear and convincing evidence may:

- ▶ Censure or remove elected public servants or impose a civil fine of not more than \$5,000 or both.
- ▶ Censure, remove, suspend, or order a reduction in pay or demotion of non-elected public servants or impose a civil fine of not more than \$5,000 or both.

THE ADVISORY OPINION PROCEDURE

§ 25-4-17(i), *1972 Mississippi Code Annotated* (amended), provides that the Mississippi Ethics Commission, in its discretion, may issue advisory opinions with regard to the state conflict of interest laws.

The advisory opinion procedure involves the following:

- ▶ A public official (public servant) must make the request for an advisory opinion in writing stating all the facts to govern the opinion.
- ▶ The request for an advisory opinion is confidential as to the identity of the individual making the request.
- ▶ All advisory opinions, absent identifying data, are to be made public and are to be issued within 90 days of the receipt of the written request.
- ▶ No civil or criminal liability is to accrue to a requestor, who in good faith, follows the advisory opinion unless a court of competent jurisdiction, after a full hearing, shall declare the opinion to be manifestly wrong and without substantial support.

The Mississippi Ethics Commission's web site, located at www.ethics.state.ms.us, contains the full text of all advisory opinions issued by the Commission since May 1995. In addition, the Commission's web site contains a synopsis of every advisory opinion issued by the Commission since January 1987.

The Mississippi Ethics Commission also issues a quarterly mail-out containing a synopsis of every advisory opinion issued in the previous three (3) months. This quarterly opinion outline is mailed to over 600 governmental entities, including Mississippi's municipalities.

CONFLICT OF INTEREST PROHIBITIONS AND IMPROPER USE OF OFFICE

The State conflict of interest laws apply to all municipal mayors, board members, officers and employees. However, certain sections of the conflict of interest laws do not apply to all municipal public servants in the same manner. As an example, § 109 of the *Mississippi Constitution of 1890* and § 25-4-105(2), *1972 Mississippi Code Annotated* (amended), only apply to municipal mayors and board members. Therefore, these sections' prohibitions apply to mayors and board members but not to other city administrators, such as, city clerks or chiefs of police.

The primary laws concerning conflicts of interest are:

- ▶ Article 4, Section 109 of the *Mississippi Constitution of 1890*.
- ▶ Title 25, Chapter 4, *1972 Mississippi Code Annotated* (amended), *Article 3: Conflict of Interest; Improper use of Office*. **[NOTE: Specific attention is given in the following text to Code**

§ 25-4-101, the Legislature’s Declaration Public Policy; Code § 25-4-103, the definitions section; and, Code § 25-4-105(1) (2) (3)(a)(b) (5), the section containing the pertinent prohibitions. However, the remaining prohibitions set forth in Code § 25-4-105 should not be overlooked or ignored by public servants.]

- ▶ Article 4, Section 109 of the *Mississippi Constitution of 1890*.

Persons covered by Constitutional Section 109:

- ▶ Constitutional Section 109 speaks to “public officers” which are those persons holding elective or appointive positions at the state and local levels of government.
- ▶ The Mississippi Supreme Court addressed “public officer” in the case of *Glover v. City of Columbus*, 197 Miss. 467, 19 So. 2d 756 (1944). In *Glover* the Court said: “A public officer, broadly speaking, is a person appointed or elected to perform a designated duty concerning the public. The duty which a municipal policeman is called on to discharge, of course, concerns the public; consequently, broadly speaking, he may be referred to as a public officer. But the fact that his duties concern the public does not, without more, bring him within the provisions of Sections 20 and 175 of the *Constitution*. In order to come within the meaning of these two sections of the *Constitution*, the officer’s duty must be continuing, be ‘defined by rules prescribed by law’ (*Shelby v. Alcorn*, 36 Miss. 273, 72 Am. Dec. 169) to be discharged by him in his own right, and not by permission and under the supervision and control of another. *State ex rel Brown v. Christmas*, 126 Miss. 358, 88 So. 881; *McClure v. Whitney*, 120 Miss. 350, 82 So. 259. Applying this definition to the provisions of the appellee’s charter hereinbefore set forth, it will appear that members of the appellee’s police force are not public officers within the meaning of either Section 20 or 175 of the *Constitution*; for they serve only by permission of appellee’s mayor and city council, who not only prescribe their duties but supervise and control the performance thereof.”

The necessary elements for applying Constitutional Section 109:

- ▶ Is there a governmental contract (with the state, county, municipality or district)?
- ▶ Does the public officer have an interest (direct or indirect) in the contract?
- ▶ Is the contract authorized by a law passed or order made by a board or public body of which the public officer is a member?
- ▶ An appropriation bill funding programs that allow payments under contracts in which legislators are interested are “laws authorizing the contracts.” See *Frazier v. State*, 504 So. 2d 675 (1987) and *Cassibry v. State*, 404 So. 2d 1360 (1981).
- ▶ Was the “authorizing” law or order passed or made during the public officer’s term or within one year after the expiration (or termination) of such term?

- ▶ Should the above questions be answered in the affirmative, then the public officer is in violation of Constitutional Section 109.

Observations about Constitutional Section 109:

- ▶ In *Noxubee County Hardware Company v. City of Macon*, 90 Miss. 636, 43 So. 304, 305 (1910), the Mississippi Supreme Court stated, “. . . It is utterly immaterial, where the great paramount public policy of the state is involved in the effective administration of the constitutional provision (Section 109) whether Holberg sold goods cheaper than Horton, or whether either or both were attempting to get a monopoly of the town’s trade, or whether either or both acted in good faith in whatever sales they did make, or whether either or both sold the goods at a reasonable and fair price while they were aldermen of the said town, or whether both were guilty of fraud and in pari delicto. As for example, in this very case, we are to not be understood as holding that either Holberg or Horton is guilty of any other wrong than the violation of the *Constitution*, Section 109. These questions are all utterly immaterial and wholly out of place when the effort is here to have enforced a wise and salutary policy of protection for all the people by the *Constitution* in Section 109. Private interests sink utterly out of sight. The public interest is supreme in controversies like this. These principles are so well settled that a short restatement of them is surely all that can be call for.

The town of Macon will come by its proper rights when both these gentlemen resign as aldermen and resume their business as merchants, which, in view of the provision of Section 109 of the Constitution, we have no doubt they will promptly do. It may be that they have acted in actual ignorance of the true construction of this section. They will be without that excuse in the future. In this day of almost universal trouble in municipalities all over these United States in respect to an absolutely fair, clean, and impartial administration of municipal affairs, it is of the very last importance that a constitutional provision like the one here involved shall receive at the hands of this court a construction that will make impossible any maladministration along this line in city affairs. If Holberg and Horton desire to sell their wares to the town of Macon the way is plain. Let them both resign and resume their business, and then their mutually patriotic desire that their home town shall be protected from monopolistic extortion will be gratified, and the good town of Macon get, what it ought to have, the fair sales and just prices which can only be obtained where open competition exists. The contention that the ratification of a contract is not within Section 109 of the *Constitution* is far too technical. It would destroy the purpose of the section.”
[Emphasis added to underlined text.]

- ▶ In *Frazier v. State of Mississippi*, 504 So. 2d 675 (1987), the Mississippi Supreme Court stated, “First, it is clear this section is to protect the government. It is not a provision to protect individual rights. It is not concerned with whether some individual or class of individuals may suffer from its enforcement. As noted in *Noxubee County Hardware Co.*, supra, the transgression test is intended to be mechanistic and objective, and motives and intentions of persons who violate it are immaterial. Its purpose is to remove any temptation to invade its proscription.

It is also a self-executing section, and more specific than many, perhaps most, constitutional sections. See, e.g., *Bucklew v. State*, 192 So. 2d 275 (Miss. 1966) (175 held self-executing); *In re Initiative Petition No. 281 v. Rogers*, 434 P.2d 941 (Okla. 1967). It prohibits an individual having an interest in a contract when he as a public officer served on the official body which enabled the contract to come into being. It is that simple. Being self-executing, its provisions cannot be modified or encroached upon by the Legislature.”

- ▶ In *Waller v. Attorney General Mike Moore, ex rel. Quitman County School District and Mississippi Ethics Commission*, the Mississippi Supreme Court stated, “Waller argues that his negative vote on hiring his wife insulated him from the violation and liabilities as Miss. Code Ann. 19-13-39 (1972), does a member of the Board of Supervisors. There is no such provision exempting him from the prohibition of Section 109 and 25-4-105(2). It is his interest in his wife’s contract, not his vote, that is prohibited.”
- ▶ A public officer not acting on a matter before his governing body or who does not vote or votes against a law or order authorized by his governing body, does not avoid a violation of Constitutional Section 109.

Violations of Constitutional Section 109:

- ▶ A school district’s teaching contracts with its school board members’ spouses violates Constitutional Section 109. See *Smith v. Dorsey*, 530 So. 2d 5 (1988); *Waller v. Moore*, 604 So. 2d 265 (1992); and, *Towner v. Moore*, 604 So. 2d 1093 (1992).
- ▶ A member of the Mississippi House of Representatives under contract as a guest lecturer at a state supported university violates Constitutional Section 109. See *Frazier v. State*, 504 So. 2d 675 (1987).
- ▶ A member of the Mississippi Senate under contract as a professor at a state supported university violates Constitutional Section 109. See *Frazier*, supra.
- ▶ A member of the Mississippi House of Representatives under contract as a teacher at a local public school district violates Constitutional Section 109. See *Frazier*, supra.
- ▶ A member of a county board of supervisors who is an officer, director and stockholder of a bank serving as a designated depository of that particular county violates Constitutional Section 109. See *Frazier*, supra.
- ▶ A member of the Mississippi Senate selling insurance to a state agency. [Note: Decision in the First Judicial District of Hinds County Chancery Court (Civil Action No. 128,919) proceeding the Supreme Court’s decision in *Frazier*. The Senator did not appeal the Chancellor’s decision.]

- ▶ Actions of board of trustees of county hospital in allowing claims for purchase of eggs and beef on sales made by members of the board of trustees violates Constitutional Section 109. See *Golding, State Auditor v. Salter*, 234 Miss. 567 (1958).
- ▶ Aldermen’s businesses selling commodities and supplies to their municipality violates Constitutional Section 109. See *Noxubee County Hardware Company v. City of Macon*, 90 Miss. 636, 43 So. 304 (1910).

Title 25, Chapter 4, *1972 Mississippi Code Annotated* (amended), *Article 3: Conflict of Interest; Improper use of Office*.

- ▶ Governments and governmental entities covered by *Code* §§ 25-4-101, *et seq.*
- ▶ “Government” as defined in *Code* § 25-4-103(g)(i)(ii)(iii)(iv)(v):
 - (i) Counties.
 - (ii) Municipalities.
 - (iii) All school districts.
 - (iv) All courts.
 - (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.
- ▶ “Governmental entity” as defined in *Code* § 25-4-103(h):

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.
- ▶ Persons covered by *Code* §§ 25-4-101, *et seq.*
- ▶ “Public Servant” as defined in *Code* § 25-4-103(p)(i)(ii)(iii):
 - (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.

- (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.

Code § 25-4-101. Declaration of public policy.

“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.”

Code § 25-4-105. Certain actions, activities and business relationships prohibited or authorized; contracts in violation of section voidable.

The following are the primary subsections of *Code* § 25-4-105 that are most often involved in the Mississippi Ethics Commission’s advisory opinions to public servants.

- ▶ *Code* § 25-4-105(1) states, “No public servant shall use his official position to obtain pecuniary benefit for himself other than that compensation provided for by law, or to obtain pecuniary benefit for any relative or any business with which he is associated.”

In Hinds Community College District and the Mississippi Ethics Commission, By and Through Mississippi Attorney General Mike Moore v. Muse, 725 So. 2d 207 (1998), the Mississippi Supreme Court ruled that the State was not required to prove damages in prosecuting conflict of interest complaint against community college president for recommending and contracting with wife for teaching position at college; in such cases, injury is loss of public trust, and damages are benefits wrongfully gained. Quoting the Court’s opinion at ¶18: . . . “monetary damages” . . . “are not necessary in order to show damages under § 25-4-105(1).” “We shall continue to follow our *Waller* interpretation of § 25-4-105(2) and hold that good faith and value received are irrelevant when a public servant violates § 25-4-105(1).”

- ▶ *Code* § 25-4-105(2) states, “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.”
- ▶ *Code* § 25-4-105(2) primarily tracts the language in Constitutional Section 109, except, *Code* § 25-4-105(2) is not limited to public officers but applies to all public servants as defined in *Code* § 25-4-103(p)(i)(ii)(ii).

In Towner v. Moore, 604 So. 2d 1093 (1992), the Mississippi Supreme Court said, “[the school teacher spouse] argues the Circuit Court erroneously held he violated Section 25-4-105(2). He misreads the ruling. The Court held the contract between [the school teacher

spouse] and the County School Board violated Section 25-4-105(2) as well as Section 109 of the *Mississippi Constitution*. The Court ordered restitution of and from the [school teacher spouse], as the recipient of the funds under the illegal contract. The Court correctly joined [the school board member spouse] in the judgment of restitution by reason of her “interest” in her husband’s contract.”

- ▶ *Code* § 25-4-105(3)(a) states, “No public servant shall: Be a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent, other than in his contract of employment, or have a material financial interest in any business which is a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent.”
- ▶ *Code* § 25-4-105(3)(b) states, “No public servant shall: Be a purchaser, direct or indirect, at any sale made by him in his official capacity or by the governmental entity of which he is an officer or employee, except in respect of the sale of goods or services when provided as public utilities or offered to the general public on a uniform price schedule.”
- ▶ *Code* § 25-4-105(5) states, “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.”

SYNOPSIS OF SELECTED ADVISORY OPINIONS CONCERNING MUNICIPAL MAYORS, BOARD MEMBERS, OFFICERS OR EMPLOYEES

[NOTE: The following advisory opinion synopses are solely intended to provide the reader with reference material. The reader must obtain an entire copy of the advisory opinion to fully understand the requestor’s facts and the Commission’s findings.]

Mississippi Ethics Commission Advisory Opinion Outline

I. Municipal Office or Employment

A. Mayor

1. Advisory Opinion No. 01-103-E: A mayor voting to break the tie to give himself a raise to take affect during his current term of office is contrary to the Legislature’s declaration of the state’s public policy set forth in *Code* § 25-4-101 and therefore clearly violates the public trust as the raise the mayor will receive is a natural consequence of his own action as mayor to vote to break the tie vote on the authorization of the raise.
2. Advisory Opinion No. 01-010-E: An individual would not as such be prohibited from continuing to serve as mayor should he be employed by the county sheriff’s department when there are no contracts existing between the municipality and the county as the municipality and the county are separate governmental entities as defined in the above

cited *Code* § 25-4-103(g)(h). Cautioned regarding *Const.* § 109 and *Code* § 25-4-105(1) and (2) and *Code* § 25-4-101.

3. Advisory Opinion No. 95-006-E: *Const.* § 109 and *Code* § 25-4-105(2) prohibit a municipality operating under a code charter form of government from approving additional compensation at an hourly rate for its salaried mayor for assisting with the duties of and the training of a new city clerk.

B. Municipal Board Member

1. Advisory Opinion No. 01-037-E: It is not as such a violation of the conflict of interest laws for a bailiff with the county sheriff's department to simultaneously serve as an alderman with a city located within the county employing the bailiff as the city and the county are separate governmental entities as defined in the §25-4-103(g)(h). Cautioned regarding *Const.* § 109, *Code* § 25-4-105(1) and (2), and *Code* § 25-4-101.
2. Advisory Opinion No. 00-094-E: *Const.* § 109 and *Code* § 25-4-105(2) will prohibit a deputy sheriff from serving as an alderman if and when the city during his term or within one year thereafter enters into an interlocal agreement with the county in which he would have a personal pecuniary interest such as the county sheriff's department providing police protection or jail services to the city. Cautioned regarding *Code* § 25-4-105(1) and *Code* § 25-4-101.
3. Advisory Opinion No. 95-081-E: Members of the county board of supervisors and municipal governing boards may compose the board of a nonprofit corporation acting as an economic development foundation when their public entities are funding the foundation if they are not compensated as foundation board members nor have personal pecuniary interests in contracts with the foundation.
4. Advisory Opinion No. 94-024-E: *Const.* § 109 and *Code* § 25-4-105(2) prohibit a council member from being hired to drive a bus by the city the council member serves.

C. Other Municipal Officers or Employees

1. Advisory Opinion No. 99-041-E: *Code* § 25-4-105(1) absolutely prohibits a municipal police officer from using any municipal equipment, facilities, information or authority, especially the police officer's sworn law enforcement authority, in performing his private process serving work. The State's Public Policy mandate set forth in §25-4-101 precludes a municipal police officer from acting as a private process server in any Cause of Action before the Municipal Court of the municipality employing him as a police officer. Cautioned regarding *Code* § 25-4-105(3)(a) and (5).
2. Advisory Opinion No. 96-014-E: An employee of a municipality's airport authority may simultaneously serve as the chairperson of the municipality's planning committee

because the airport authority is a separate authority of the municipality. See the exception in *Code* § 25-4-105(4)(h). Cautioned regarding *Code* § 25-4-105(1) and (5).

3. Advisory Opinion No. 95-079-E: One attorney may not simultaneously serve as municipal board attorney and as municipal judge for the same municipality since such dual service violates *Code* § 25-4-105(3)(a).

D. Mayor's Relatives

1. Advisory Opinion No. 01-073-E: A mayor and a city clerk of a code-chartered municipality being parent and child is contrary to the public policy mandate set forth in *Code* § 25-4-101 and therefore a town board should not reappoint/re-employ as the city clerk the child of the new mayor. Also, other serious conflict of interest concerns exist when a mayor and a city clerk of a code-chartered municipality are parent and child due to the prohibitions imposed by *Const.* § 109 and *Code* § 25-4-105(1) and (2).
2. Advisory Opinion No. 01-039-E: *Const.* § 109 and *Code* § 25-4-105(2) will absolutely prohibit an individual's spouse from continuing to contract with the city should the individual be elected mayor if the spouse's contract is authorized by the city's newly elected governing authority or if the funding to pay for the requestor's spouse's contract is approved by the city's newly elected governing authority. Also, *Code* § 25-4-105(3)(a) will prohibit an individual's spouse, as a self-employed individual or in any other business form as defined in *Code* § 25-4-103(c), from continuing as a contractor, subcontractor or vendor with the city by way of any existing contract with the city or from becoming a contractor, subcontractor or vendor by way of any future contract with the city for as long as the individual serves as the city's mayor. Cautioned regarding *Code* § 25-4-101.
3. Advisory Opinion No. 95-093-E: The spouse of a mayor may be employed by the municipality's housing authority without violating *Const.* § 109 and *Code* § 25-4-105(2) since the housing authority is a separate governmental authority from the mayor and board of aldermen.
4. Advisory Opinion No. 93-139-E: *Const.* § 109 and *Code* § 25-4-105(2) prohibit the spouse of a mayor from being employed by a regional library system in a library partially supported by the town the mayor serves.
5. Advisory Opinion No. 89-89-E: *Const.* § 109 and *Code* § 25-4-105(2) prohibit the spouse of a mayor in a council-manager form of government from being employed by the city the mayor serves.

E. Municipal Board Member's Relatives

1. Advisory Opinion No. 00-078-E: *Const.* § 109 and *Code* § 25-4-105(2) would prohibit a newly elected alderman's spouse from remaining employed by the city as a police

officer as the spouse's contract will be authorized by the board of which the alderman is a member once the new board of aldermen rehires the city's employees and/or approves their compensation by way of approving the budget.

2. Advisory Opinion No. 96-020-E: A municipality may employ the son of one of its aldermen if the son is totally and completely financially independent from the alderman. Cautioned regarding *Const.* § 109 and *Code* § 25-4-105(1) and (2).

F. Other Municipal Officers or Employees' Relatives

1. Advisory Opinion No. 01-083-E: Should a department head employee recommend his stepchild for employment and the city council act affirmatively upon the department head employee's recommendation, then the department head employee will have violated *Code* § 25-4-105(1). In a supervisor/subordinate relationship, the department head employee would also violate *Code* § 25-4-105(1) in taking any actions that resulted in the stepchild retaining and/or receiving a pecuniary benefit as a city employee. Cautioned regarding *Code* § 25-4-101.
2. Advisory Opinion No. 94-124-E: A municipality acting under a Mayor-Council form of government may not employ the municipality's maintenance manager's son in the municipality's maintenance department if the maintenance manager is a department head under *Code* § 21-8-23 as it violates *Code* § 25-4-105(1).
3. Advisory Opinion No. 94-053-E: A town may simultaneously employ one spouse as its city clerk and the other spouse as its water department superintendent.

G. After Termination or End of Term

1. Advisory Opinion No. 00-137-E: A former alderman may within one year of the expiration of his term on the board of aldermen accept a nomination to a position on the board of trustees of the city and county districts' community hospital without being in violation of *Const.* § 109 and *Code* § 25-4-105(2) as a community hospital trustee is a public officer and does not hold said position by contract.
2. Advisory Opinion No. 97-003-E: The conflict of interest laws do not prohibit a city council member from resigning his position on the city council and immediately accepting the position of city municipal judge as the municipal judge position is a "public office" and therefore not held by contract.
3. Advisory Opinion No. 94-096-E: *Const.* § 109 and *Code* § 25-4-105(2) absolutely prohibit an alderman from resigning and becoming employed as a town police officer within one year of his resignation.

II. Business Interest Contracting with the Municipality

A. Mayor

1. Advisory Opinion No. 00-119-E: *Const.* § 109 and *Code* § 25-4-105(2) will prohibit a mayor from being employed and compensated by an engineering firm employed by the city he serves as mayor for as long as the engineering firm remains the city's engineering firm. Cautioned regarding *Code* § 25-4-105(3)(a) and *Code* § 25-4-101.
2. Advisory Opinion No. 96-156-E: *Const.* § 109 and *Code* § 25-4-105(2) absolutely prohibit a city's purchasing of plaques and trophies from a company owned by the mayor and his children and operated by one of the mayor's children.

B. Municipal Board Member

1. Advisory Opinion No. 01-023-E: *Const.* § 109 and *Code* § 25-4-105(2) prohibit a bank from contracting to serve as a city's depository and from otherwise contracting with the city after a member of the bank's advisory board becomes the city's alderman unless his interest in the bank as an advisory board member and stockholder is determined to be "*de minimis non curat lex*" by a court of competent jurisdiction. Cautioned regarding *Code* § 25-4-101 and *Code* § 25-4-105(1) and (3)(a).
2. Advisory Opinion No. 00-041-E: *Const.* § 109 and *Code* § 25-4-105(2) will prohibit an incorporated restaurant in which an individual is part of the management team and a minority owner from doing business with casinos that have contracts with the city, such as lease contracts, if the individual becomes a member of the city council when the casinos' contracts with the city are authorized by the city council during the individual's term or within one year thereafter. Cautioned regarding *Code* § 25-4-101 and *Code* § 25-4-105(1).
3. Advisory Opinion No. 96-154-E: *Const.* § 109 and *Code* § 25-4-105(2) absolutely prohibit an alderman from accepting an employment position with a bank if the alderman's municipal board has authorized a contract with the bank, including a depository contract.
4. Advisory Opinion No. 96-134-E: *Const.* § 109 and *Code* § 25-4-105(2) and (3)(a) prohibit a hardware store managed by an alderman and owned by the alderman's father from doing business with the alderman's city.
5. Advisory Opinion No. 96-001-E: An alderman may vote on the issuance of building permits and the amount to be charged for building permits when the alderman and/or his professional association has builders and developers as clients. Cautioned regarding *Code* § 25-4-101 and *Code* § 25-4-105(1).

C. Other Municipal Officers or Employees

1. Advisory Opinion No. 01-086-E: (1.) A municipal firefighter is not as such prohibited by the state conflict of interest laws from engaging in a sideline business on his off duty and private time which are totally and completely unrelated to the municipal firefighters public duties. Cautioned regarding *Code* § 25-4-105(3)(a). (2.) A firefighter employed by a municipality may not engage in the sales and service of fire fighting equipment, such as fire extinguishers and fire suppression systems, in a sideline business on his off duty and private time within the municipality the firefighter is employed to serve when the duties assigned the firefighter require the firefighter to inspect such fire fighting equipment within the municipality to enforce the municipality's fire code as such a circumstance is prohibited by *Code* § 25-4-105(1) and is contrary to the public policy mandate set forth in *Code* § 25-4-101. (3.) A firefighter employed by a municipality who is engaged in the sales and service of fire fighting equipment, such as fire extinguishers and fire suppression systems, in a sideline business on his off duty and private time within the municipality the firefighter is employed to serve when the duties assigned the firefighter do not require the firefighter to inspect such fire fighting equipment within the municipality to enforce the municipality's fire code must still remain keenly aware of the prohibition imposed by *Code* § 25-4-105(1) and the public policy mandate set forth in *Code* § 25-4-101.
2. Advisory Opinion No. 01-059-E: *Code* § 25-4-105(3)(a) prohibits a police officer's wrecker service from providing towing services to and/or being paid for those services by the municipality employing the police officer. Also, *Code* § 25-4-105(1) prohibits a police officer from contacting his wrecker service when he is the police officer working an accident and prohibits a police officer from recommending his wrecker service to a disabled vehicle's owner when he is the police officer working the accident. Cautioned regarding *Code* § 25-4-101.
3. Advisory Opinion No. 91-079-E: A city may not contract with a company that is the employer of one of the city's compensated firefighters as the contract would violate *Code* § 25-4-105(3)(a). Cautioned regarding *Code* § 25-4-105(1).

D. Mayor's Relatives

1. Advisory Opinion No. 97-005-E: *Const.* § 109 and *Code* § 25-4-105(2) absolutely prohibit a municipality's authorization of a contract with a bank to serve as its depository, or for other purposes, when its mayor, or one of its aldermen, has a spouse employed by that bank.
2. Advisory Opinion No. 93-122-E: A city may contract with a corporation owned solely by two sons, their wives, and children, of its mayor who is not an officer, employee, or director of the corporation, receives no remuneration from the corporation, and who has no financial dealings with his sons, provided the mayor properly recuses himself to avoid

a violation of *Code* § 25-4-105(1). Cautioned regarding *Code* § 25-4-101 and *Code* § 25-4-105(5).

E. Municipal Board Member's Relatives

1. Advisory Opinion No. 01-079-E: *Const.* § 109 and *Code* § 25-4-105(2) do not prohibit an alderman's son-in-law's hardware store from contracting to sell to the city if the alderman is not directly or indirectly interested in the son-in-law's hardware's contracts and if the son-in-law and daughter are totally and completely financially independent from the alderman. The alderman must totally and completely recuse himself to avoid a violation of *Code* § 25-4-105(1). Cautioned regarding *Code* § 25-4-105(1) and *Code* § 25-4-101.
2. Advisory Opinion No. 01-016-E: *Const.* § 109 and *Code* § 25-4-105(2) prohibit a city's authorization of a contract with a bank to serve as its depository, or for other purposes, when an alderman serving the city has a spouse that the bank employs. The prohibition applies during the alderman's term and for one year thereafter. Cautioned regarding *Code* §§ 25-4-109, 111 and 113.
3. Advisory Opinion No. 99-006-E: If a parent/municipal board member and a daughter/bank employee are totally and completely financially independent of each other and the parent/municipal board member does not have an interest, direct or indirect, in the daughter/bank employee's employment contract, then it would not be a violation of *Const.* § 109 and *Code* § 25-4-105(2) for the city to continue to select the bank as the municipality's depository or otherwise contract with the bank. Cautioned regarding *Code* § 25-4-101 and *Code* § 25-4-105(1).
4. Advisory Opinion No. 88-151-E: A city may accept a low bid from an insurance agency owned by the emancipated son of an alderman. Cautioned regarding *Code* § 25-4-105(1) and *Code* § 25-4-105(4) [Note: *Code* § 25-4-105(4) is now codified as *Code* § 25-4-105(5)]

F. Other Municipal Officers or Employees' Relatives

1. Advisory Opinion No. 00-052-E: Because a city employee's father is employed at the auto parts company, a city department in which the city employee is in charge of purchasing may not purchase from the auto parts company as such would result in the city employee using his or her official position to obtain a pecuniary benefit for a relative and/or a business in which he or she is associated in violation of *Code* § 25-4-105(1).
2. Advisory Opinion No. 98-029-E: *Code* § 25-4-105(3)(a) prohibits an office supply store from being a vendor with a municipality when the office supply store's owner's spouse is employed by the municipality as a utilities clerk. *Code* § 25-4-103(k)(iv) provides an exception to this prohibition if it can be shown that the utilities clerk exercises no

control, direct or indirect, over the contracts between the spouse's office supply store and the municipality. Cautioned regarding *Code* § 25-4-105(1) and *Code* § 25-4-101.

3. Advisory Opinion No. 95-144-E: The spouse of a municipal law enforcement officer can write bail bonds in the officer's municipality as a bail bond agent for a company the spouse does not own or does not serve as an officer. The spouse cannot write bail bonds in the officer's municipality if the officer or the spouse owns the bail bond company since it violates *Code* § 25-4-105(3)(a). Cautioned regarding *Code* § 25-4-105(1).
4. Advisory Opinion No. 95-009-E: A municipality operating under a code charter form of government may not contract with a printing company owned by the spouse of the municipality's city clerk if the city clerk has any control, direct or indirect, in the municipality's purchasing process as it violates *Code* § 25-4-105(3)(a). Cautioned regarding *Code* § 25-4-105(1) and *Code* § 25-4-101.

G. After Termination or End of Term

1. Advisory Opinion No. 98-106-E: A computer business which is partly owned by a city's former employee may contract with the city as long as the transaction does not result in the former employee being compensated by the computer business, or any other person or business, in relation to any case, decision, proceeding or application with respect to which he was directly concerned or in which he personally participated during the period of his employment with the city as prohibited by *Code* § 25-4-105(3)(e).
2. Advisory Opinion No. 93-128-E: A city may not do business with: (1) a merchant who bought a business from the mayor of the city whose last day in office was July 6, 1993, or (2) a merchant which had employed or which employs the former mayor, until one (1) year after the mayor's term of office expires or until the former mayor's interest is removed since it would violate *Const.* § 109 and *Code* § 25-4-105(2).

III. Individual Contracts with the Municipality

A. Mayor

1. Advisory Opinion No. 96-114-E: (1.) The conflict of interest laws do not as such prohibit a sporting goods store that leases a building partly owned by the city's mayor from selling to the city separate school district. (2.) *Const.* § 109 and *Code* § 25-4-105(2) prohibit a sporting goods store that leases a building partly owned by the city's mayor from selling to the city's recreation department. Cautioned regarding *Code* § 25-4-105(1) and *Code* § 25-4-101.
2. Advisory Opinion No. 96-043-E: A municipality's mayor's wrecker service may respond to request from the municipality to provide wrecker services when all wrecker charges are paid by the vehicle owner and not the municipality. Cautioned regarding *Code* § 25-4-101 and *Code* § 25-4-105(1) and (5).

B. Municipal Board Member

1. Advisory Opinion No. 00-067-E: *Code* § 25-4-105(3)(a) will prohibit a city council member, who is also a bail bondsman, from writing bail bonds for the release of defendants arrested and held in the custody of the law enforcement entity of the city the council member is elected to serve. Cautioned regarding *Code* § 25-4-101.
2. Advisory Opinion No. 99-085-E: Grant money may not be used to purchase property owned by a company controlled by a city council member and his family when the city council has to approve using the grant money for the project as such a purchase would absolutely violate *Const.* § 109 and *Code* § 25-4-105(2). This prohibition will remain in effect for a year from the date the city council member resigns from the city council should he decide to do so.
3. Advisory Opinion No. 96-022-E: An alderman may not use his personal dump truck to haul materials for a contractor with the alderman's municipality as it would violate *Const.* § 109 and *Code* § 25-4-105(2) and (3)(a).
4. Advisory Opinion No. 96-008-E: A legal secretary for the municipal board attorney may not remain in that employment position if she is elected to the board of aldermen because there would be a violation of *Const.* § 109 and *Code* § 25-4-105(2) and (3)(a).

C. Other Municipal Officers or Employees

1. Advisory Opinion No. 01-052-E: *Code* § 25-4-105(3)(a) prohibits a city's part-time employee who is also a licensed electrician and air-conditioning specialist from being paid by the city for selling parts and equipment and perform repair service on the city's air conditioning unit.
2. Advisory Opinion No. 01-005-E: *Code* § 25-4-105(3)(a) will prohibit a police officer from contracting with his city employer to perform a service for compensation in addition to the police officer's normal salary including an off-duty police officer serving "failure to appear" and "old fines" warrants for the city court.
3. Advisory Opinion No. 00-121-E: *Code* § 25-4-105(3)(b) will prohibit an individual contracting with the city as its broker/agent by way of an exclusive right-to-sell listing contract from purchasing from the city the property which the exclusive right-to-sell listing contract gives the broker/agent the exclusive right to sell for an on behalf of the city.
4. Advisory Opinion No. 97-038-E: *Code* § 25-4-105(3)(b) prohibits an officer or an employee of a political subdivision of the state, including a municipality, from being a purchaser, direct or indirect, at any sale, including an advertised sale of surplus property, made by his governmental entity.

5. Advisory Opinion No. 96-044-E: *Code* § 25-4-105(3)(a) prohibits a municipality from contracting with its employee, either as an independent contractor or in another distinct employment position, but the municipality may assign employees appropriate duties of their employment position for any department of the municipality.

D. Mayor's Relatives

1. Advisory Opinion No. 90-042-E: A city may lease a city building to the emancipated son-in-law of its mayor. Cautioned regarding *Code* § 25-4-101 and *Code* § 25-4-105(1).

E. Municipal Board Member's Relatives

1. Advisory Opinion No. 96-126-E: A brother of an alderman may perform contract work for the city where his brother serves as an alderman. Cautioned regarding *Code* § 25-4-101.
2. Advisory Opinion No. 94-045-E: The spouse of an alderman may not be a successful bidder as to a parcel of land declared surplus by a town and thereafter placed for sale to the highest and best bidder as such a sale would violate *Const.* § 109 and *Code* § 25-4-105(2).
3. Advisory Opinion No. 94-009-E: A city may purchase land from the father of one of its aldermen, provided the son/alderman recuses himself from all deliberations concerning the purchase of the father's land. Cautioned regarding *Code* § 25-4-105(1).

F. Other Municipal Officers or Employees' Relatives

1. Advisory Opinion No. 96-084-E: A police officer's father's wrecker service contracting with the police officer's municipality is prohibited if the police officer uses his position to obtain the municipality's business for his father's wrecker service and/or has a material financial interest in the wrecker service as it violates *Code* § 25-4-105(1) and (3)(a). Cautioned regarding *Code* § 25-4-101.

G. After Termination or End of Term

1. Advisory Opinion No. 99-085-E: Grant money may not be used to purchase property owned by a company controlled by a city council member and his family when the city council has to approve using the grant money for the project as such a purchase would absolutely violate *Const.* § 109 and *Code* § 25-4-105(2). This prohibition will remain in effect for a year from the date the city council member resigns from the city council should he decide to do so.
2. Advisory Opinion No. 98-125-E: *Const.* § 109 and *Code* § 25-4-105(2) prohibit an architect and former city planning commissioner from contracting with the city to provide architecture services to the city when the city zoning commission will be

required to grant a special exception for the building site within one year of the architect's resignation from the commission.

3. Advisory Opinion No. 97-006-E: A municipality's former purchasing manager may own and operate a train ride that is located at the municipal zoo under a ten-year contract between the train ride's current owner and the municipality. Cautioned regarding *Code* § 25-4-105(3)(e).
4. Advisory Opinion No. 87-57-ER: A former alderman may not contract with the board of which he was a member until one (1) year from the date that the alderman leaves office. There is no exception, and the time may not be shortened. Such employment violates *Const.* § 109 and *Code* § 25-4-105(2)(f). [Note: *Code* § 25-4-105(2)(f) is now codified as *Code* § 25-4-105(2)].

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