

APPENDIX 2
COUNTY GOVERNMENT AND MISSISSIPPI'S ETHICS LAW

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MISSISSIPPI ETHICS COMMISSION

Established: November 15, 1979.

Composition: Eight (8) members.

Term: Members are appointed to serve a four (4) year term and upon expiration of that term a member may be reappointed to serve.

Method of Selection: Two (2) members of the Commission shall be appointed by each of the following officers: Governor, Lieutenant Governor, Speaker of the House of Representatives, and Chief Justice of the State Supreme Court.

Qualifications: The member must be a qualified elector of the State of Mississippi of good moral character and integrity. Not more than one (1) person appointed by each appointing authority shall be an elected official.

Responsibility: To see that the legislative purpose is satisfied by exercising all duties and powers contained in the enabling legislation.

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

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The Commission's three primary duties are as follows:

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

MISSISSIPPI ETHICS LAWS

Section 109, *Mississippi Constitution of 1890*.

Title 25, Chapter 4, *Mississippi Code Annotated of 1972*. **ETHICS IN GOVERNMENT**: Article 1, Mississippi Ethics Commission and Article 3, Conflict of Interest; Improper Use of Office.

Legislative Purpose

Section 25-4-1. The legislature hereby declares it essential to the proper operation of a democratic government that public officials and employees be independent and impartial; that government decisions and policy be made in the proper channels of the government structure; that there be public confidence in the integrity of government; and that public officials be assisted in determinations of conflicts of interest.

Declaration of Public Policy

Section 25-4-101. 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.

THE STATEMENT OF ECONOMIC INTEREST

Persons Required to File

- # 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;
- # Members of local school boards that administer public funds, regardless of whether such members are elected or appointed;
- # 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 a statement of economic interest;
- # Executive directors or heads of state agencies, by whatever name they are designated, who are paid in part or in whole, directly or indirectly, from funds appropriated or authorized to be expended by the Legislature, and the presidents and trustees of all state-supported colleges, universities, and junior colleges; and
- # Members of any state board, commission, or agency, including the Mississippi Ethics Commission, charged with the administration or expenditure of public funds, with the exception of advisory boards or commissions; provided, however, in order to fulfill the legislative purposes of the chapter, the commission may require, upon a majority vote, the filing of a statement of economic interest by members of an advisory board or commission.

Filing Dates

- # Incumbent office holders must file on or before May 1 of each year.

- # Candidates for office in primary, special, or general elections must file within 15 days after qualifying.
- # Appointees to offices required to file must submit a disclosure form within 30 days of their appointment.

Contents

The disclosure is oriented to the source of an individual's income, and not to specific amounts.

The document must be signed under oath attesting to its completeness and accuracy.

The disclosure information is for the previous calendar year and, in some areas, includes the current year through the date of filing.

Specific disclosure information includes that of the spouse, if the official is married.

Required Filings

No person by reason of successful candidacy or assuming additional offices shall be required to file more than one disclosure form in any calendar year, except such official shall notify the commission of such additional offices previously not reported.

THE COMPLAINT PROCEDURE

The scope of the Commission's authority to conduct investigations is limited to:

- # Violations of the laws by public officials, including persons elected, appointed or employed by the State of Mississippi and its political subdivisions; and
- # Failure to file, or failure to file completely and accurately, all financial disclosure information required by law.

Before the Commission can make an investigation, a sworn complaint must be filed with the Commission alleging a violation of law by a public official or public employee.

The law provides that the individual against whom a complaint is filed and his immediate supervisory authority receive a copy of the complaint. The supervisor shall have 30 days in which to respond to the allegation. In cases where there is no supervisory authority, the individual is provided the 30 days to respond.

After 30 days, or upon receipt of the response, the Commission may terminate the matter or proceed with a formal investigation.

All Commission proceedings and records relating to any investigation shall be confidential.

The Investigation Proceedings

The Commission is empowered to:

- # Hold hearings;
- # Administer oaths; and

Issue and serve subpoenas as witnesses or for the production of records.

The Commission in the course of investigations may request the assistance of:

The Attorney General;

The Performance Evaluation and Expenditure Review (PEER) Committee;

The Department of Audit; or

Any other agency of State government whose resources are required.

Resolution of Founded Complaints

The Commission is charged with reporting the facts as determined by the investigation to the Attorney General and appropriate district attorney.

The Commission may employ an attorney, or attorneys, to:

Serve as special prosecutor to assist the Attorney General or district attorney; or

File actions to seek restitution or other civil remedies to recover funds on behalf of the State.

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; and

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.

FINES AND PENALTIES

Any person who violates the confidentiality of the Commission proceedings is guilty of a misdemeanor and if convicted may be punished by a fine of not more than \$1,000, or imprisoned for not more than one (1) year, or both.

Any person who willfully and knowingly files a false complaint with the Commission, or who willfully and knowingly affirms, reports, or swears falsely in regard to any material matter before the Commission is guilty of a felony and if convicted may be punished by a fine of not less than \$1,000 or more than \$5,000, or imprisoned for not more than five (5) years, or both.

Any person who willfully and knowingly fails to file a financial disclosure required by law, or, though 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.

PUBLIC AVAILABILITY OF RECORDS

Financial disclosures by public officials are available for inspection during normal working hours. Copies will be provided upon request for a minimum charge of 25 cents (\$.25) per page.

Financial disclosures are required to be kept for seven (7) years from the date of receipt.

Commission meetings, excluding executive sessions, are open to the public.

The administrative records of the Commission are considered public records and may be viewed by prior arrangement.

CONFIDENTIAL RECORDS

The Ethics Law provides that “all commission proceedings relating to any investigation shall be kept confidential.” The complaint and investigation records are strictly confidential.

All advisory opinions are public except that the request for an advisory opinion shall be confidential as to the identity of the individual making the request. The Commission, before making an advisory opinion public, must make such deletions and changes thereto as may be necessary to ensure the anonymity of the public official and any other person named in the opinion.

COUNTY OFFICERS AND EMPLOYEES

The State conflict of interest laws apply to all county officers and employees. However, certain sections of the conflict of interest laws do not apply to all county public servants or do not apply to all county public servants in the same manner. For example, *Const.* § 109 and *Code*, § 25-4-105(2) only apply to members of governmental bodies. Therefore, these sections’ prohibitions apply to county supervisors but do not apply to the chancery clerk or county administrator.

Prior advisory opinions issued by the Mississippi Ethics Commission are effective in assisting county officers and employees in understanding how the State conflict of interest laws will apply to them in certain situations.

A synopsis of each of the prior advisory opinions issued by the Mississippi Ethics Commission since 1987 is available on the Commission’s Web Site at <http://www.ethics.state.ms.us>. Also, the Commission’s Web Site has the full text of the Commission’s prior advisory opinions issued since May 1995. The Commission also mails a quarterly advisory opinion outline to more than 600 governmental entities containing a synopsis of each advisory opinion issued in the previous three (3) months.

The Ethics Commission’s authority to issue advisory opinions is set forth in *Code*, § 25-4-17(i). *Code*, § 25-4-17(i) provides a public official limited protection from civil and criminal liability only if the governing facts are presented in writing to the Mississippi Ethics Commission by the public official, the Commission provides a written opinion to the public official referencing those particular facts, and the public official in good faith follows the Commission’s direction given in the written opinion.

The following pages contain an outline of synopses of prior advisory opinions issued by the Mississippi Ethics Commission to various county officers and employees. These synopses should give the reader an idea of how the State conflict of interest laws apply to county officers and employees in varying situations.

The following outline’s sole purpose is 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 SYNOPSES

1. County or Related Governmental Employment

a. County Supervisor

- i. It is not as such a violation of the conflict of interest laws for a city's buildings and grounds director to simultaneously serve as a county supervisor when the employing city is located within the county he will serve as supervisor since a city and a county are separate governmental entities as defined in §25-4-103(g)(h). Cautioned regarding Constitutional Section 109, §25-4-105(2), §25-4-105(1) and §25-4-101. **Advisory Opinion No.03-009-E**
- ii. A public school teacher is not prohibited from serving as a county supervisor, unless, contracts between the school district and the county cause the public servant to have an inherent interest and/or a private pecuniary benefit in the contracts in violation of Constitutional Section 109 and §25-4-105(2). Cautioned regarding §25-4-101 and §25-4-105(1). **Advisory Opinion No. 03-018-E**
- iii. Constitutional Section 109 and §25-4-105(2) prohibit a board of supervisors from authorizing an employment contract with a member of the board of supervisors for the position of compensated or uncompensated emergency management director as authorized in §33-15-17(a). **Advisory Opinion No. 02-019-E**
- iv. A county supervisor may be employed by the community college his or her county funds through a tax levy only if the current funding of the particular community college by the county board of supervisors is a maximum mandatory amount set by statute and said levy cannot be reduced from the previous year, thereby removing the funding discretion from the county board of supervisors. Constitutional Section 109 and §25-4-105(2) would prohibit a county supervisor from being employed by the community college if the county board of supervisors provided discretionary funding to the community college during his term or one year thereafter. Cautioned regarding §25-4-101 and §25-4-105(1) and (3)(a). **Advisory Opinion No. 02-072-E**

b. Other County Officers or Employees [*Including the County Board Attorney employed under §19-3-47*]

- i. §25-4-105(3)(a) will prohibit a member of a statutorily created county planning commission from simultaneous employment with the county sheriff's department as a part-time deputy sheriff since a county planning commission and a county sheriff's department are within the same authority of county government. **Advisory Opinion No. 03-020-E**
- ii. The conflict of interest laws do not as such prohibit a municipal court judge from also serving as the county youth court prosecutor when the municipality is located within the county the youth court prosecutor serves. The Commission bases this finding on the fact the municipality and county are separate governmental entities under the above cited §25-4-103(g)(i)(ii) and

- (h). Cautioned regarding §25-4-105(1) and §25-4-101. **Advisory Opinion No. 03-028-E**
- iii. §25-4-105(3)(a) will not prohibit an individual from simultaneously serving as a county constable and as the interim executive director of a county tourism and recreation board as the exception set forth in §25-4-105(4)(j) is applicable. Cautioned regarding §25-4-105(1). **Advisory Opinion No. 02-035-E**
- iv. As the employing and/or appointing entities are separate authorities for purposes of the conflict of interest laws, an individual may simultaneously hold the positions of public defender and justice court judge without violating §25-4-105(3)(a) as the exception set forth in §25-4-105(4)(h) is applicable. Cautioned regarding §25-4-105(1) and advised to present this matter to the Commission on Judicial Performance, concerning the Code of Judicial Conduct, and Attorney General's Office, concerning the Separation of Powers Doctrine. **Advisory Opinion No. 02-097-E**
- v. §25-4-105(3)(a) prohibits a county employee from holding and being compensated for two separate jobs with the same governmental authority within the county unless specifically authorized by statute. However, the conflict of interest laws do not prohibit the board of supervisors from assigning additional job duties and responsibilities to the county comptroller, including maintaining the records for the county's fire commission, and setting the comptroller's overall compensation at an amount that properly remunerates the comptroller for the required duties. **Advisory Opinion No. 02-098-E**
- c. County Supervisor's Relatives
- i. §25-4-105(1) will prohibit an individual elected county supervisor from continuing his father's employment as the road construction manager in the beat the individual will serve if elected as a supervisor due to a supervisor's authority over the road employees in a county beat system. Cautioned regarding §25-4-101. **Advisory Opinion No. 03-003-E**
- ii. Constitutional Section 109 and §25-4-105(2) prohibit a soil and water commission employee from remaining in her current employment position with the county soil and water conservation commission if her spouse is elected to the county board of supervisors when the county board of supervisors funds a portion of her salary through a contract to fund and furnish a local soil and water conservation commission office. **Advisory Opinion No.99-058-E**
- d. Other County Officers or Employees' Relatives
- i. The conflict of interest laws do not as such prohibit a board of supervisors appointing an individual to a jury commission when the individual's spouse serves the **Advisory Opinion No. 03-026-E**
- ii. The conflict of interest laws will not as such prohibit a county from hiring the county tax assessor/collector's spouse as a road foreman, as the county tax assessor/collector does not have administrative or supervisory responsibility

for the county road department. Cautioned regarding §25-4-105(1) and §25-4-101. *Advisory Opinion No. 03-042-E*

e. After Termination or End of Term

- i. It is not as such a violation of the conflict of interest laws for the county board of supervisors to appoint the spouse of a county coroner to complete the unexpired term of the coroner. The candidate coroner would be unable to re-employ or compensate her spouse as a deputy if appointed to the coroner position as it would violate §25-4-105(1) by providing a pecuniary benefit to a relative through the use of her official position. Cautioned concerning § 25-4-101. *Advisory Opinion No. 02-044-E*
- ii. It is a violation of Constitutional Section 109 and §25-4-105(2)(f) for a former supervisor to be employed by the county sheriff's department prior to the expiration of one year after he left office. *Advisory Opinion No. 88-176-E*

2. Business Interest Contracting with the County

a. County Supervisor

- i. Constitutional Section 109 and §25-4-105(2) prohibit a board of supervisors from authorizing a contract for the purchase of meals and supplies, or for other purposes, when the store that sells the meals and supplies is owned by one of the county supervisor's spouses. The board of supervisors authorizes the meal and supply purchase contract either by approving a contract itself for meal and supply purchases or by approving the purchases on the claims docket each month. A violation of the conflict of interest laws would occur regardless of the source of the funds, if the board of supervisors controls the funds and approves the expenditures paid with the funds. *Advisory Opinion No. 02-025-E*

b. Other County Officers or Employees [*Including the County Board Attorney employed under §19-3-47*]

- i. Code Section 25-4-105(1) prohibits a public servant, including a deputy coroner, from using his official position to obtain a pecuniary benefit for a business with which he is associated. 25-4-105(3)(a) prohibits the county employee from having a material financial interest in a business that is a contractor, subcontractor or vendor with the county employing the deputy coroner. The funeral home employing the deputy coroner would be prohibited from contracting with the county to transport bodies, perform autopsies or bury paupers as long as the deputy coroner is employed by the funeral home. *Advisory Opinion No. 02-009-E*
- ii. §25-4-105(3)(a), would prohibit a business of a constable and deputy sheriff from being a contractor with a regional housing authority, as it is an authority of the county they serve, unless the security services contract is let to their business as the lowest and best bidder as provided for in §25-4-105(4)(b). The prohibition set forth in §25-4-105(3)(a) does not apply to a security business owned by a city police officer and a city housing authority employee since these individuals work for governmental entities totally

separate from the governmental entities which established the regional housing authority. Cautioned regarding §25-4-105(1) and §25-4-101. **Advisory Opinion No. 02-038-E**

- iii. An attorney for the board of supervisors serving simultaneously as a member of the advisory board of the county's depository is prohibited by §25-4-105(3)(a) when the county board attorney has a material financial interest in the county's depository as defined in §25-4-103(k)(i)(ii). Therefore, §25-4-105(3)(a) prohibits a county contracting with a bank to serve as its depository or contracting with a bank for any other reason when the board attorney for the county is a member of the bank's advisory board and has a material financial interest in the bank. Cautioned regarding §25-4-105(1) and §25-4-101 even if the attorney does not have a material financial interest in the bank. **Advisory Opinion No. 02-055-E**

- c. County Supervisor's Relatives
 - i. Constitutional section 109 and §25-4-105(2) prohibit a board of supervisors from authorizing a contract in which the public official's spouse has a direct interest, in this instance the spouse being employed by the bank. **Advisory Opinion No. 02-010-E**
 - ii. A county may have as its depository a bank employing a supervisor-elect's son as long as they are financially independent from each other and the supervisor-elect properly recuses himself. **Advisory Opinion No. 95-149-E**

- d. Other County Officers' or Employees' Relatives
 - i. The conflict of interest laws do not prohibit the brother of a deputy sheriff from writing bail bonds for defendants housed by the county sheriff's department employing the deputy sheriff/ brother. There are circumstances where the spouse, parent or child of a law enforcement official will be prohibited by the conflict of interest laws from serving as a bail agent for a public servant's relative's governmental entity. However, these circumstances are limited to the spouse, parent or child of the public servant as they are the only kinship included in the definition of "relative" set forth in §25-4-103(q). Cautioned regarding 25-4-101. **Advisory Opinion No. 02-028-E**
 - ii. §25-4-105(3)(a) prohibits a company from being a contractor, subcontractor or vendor with a county when the company employs the spouse of a county employee. §25-4-103(k)(iv) provides an exception to this prohibition if it can be shown that the county employee exercises no control, direct or indirect, over the contracts between the county and the company employing the spouse of the county employee. Cautioned regarding §25-4-105(1) and §25-4-101. **Advisory Opinion No. 98-039-E**

- e. After Termination or End of Term
 - i. A county may contract with a business owned by its former chancery or circuit clerk. **Advisory Opinion No. 92-159-E**

3. Individual Contracts with County

a. County Supervisor

- i. Constitutional Section 109 and §25-4-105(2) prohibit a board of supervisors from authorizing a contract with a supervisor to provide auctioneer services for the sale of the county's surplus property, regardless of whether the supervisor is compensated or uncompensated. Cautioned regarding §25-4-101. **Advisory Opinion No. 02-022-E**

b. Other County Officers or Employees [*Including the County Board Attorney employed under §19-3-47*]

- i. §25-4-105(3)(a) will prohibit a deputy sheriff from contracting with the county to perform security services for the county arena and exposition center as the sheriff's department and county arena and exposition center are considered to be within the same county authority for purposes of the conflict of interest laws. **Advisory Opinion No. 02-053-E**
- ii. A law firm that serves as the regular attorneys for the county board of supervisors may serve as bond counsel if provided for in their contract as the regular attorneys but may not have a separate contract to provide bond counsel services as it would violate §25-4-105(3)(a). **Advisory Opinion No. 96-055-E**

c. County Supervisor's Relatives

- i. An indirect interest of a supervisor/renter in a contract between the county and a third party renter may be removed by a sale of the rented premises to a non-dependent relative of the supervisor other than the spouse. The supervisor must recuse himself from any action on the renting of the premises after the transfer to avoid violating §25-4-105(1). **Advisory Opinion No. 89-16-E**

d. Other County Officers or Employees' Relatives

- i. It is a violation of §25-4-105(3)(b) for an economic development authority to sell property to the spouse of its assistant director. **Advisory Opinion No. 95-060-E**
- ii. A county coroner may contract with the coroner's father-in-law to transport bodies. **Advisory Opinion No. 95-150-E**

e. After Termination or End of Term

- i. §25-4-105(3)(e) would prohibit a former deputy sheriff from receiving compensation from any person or business related to any case, decision, proceeding or application to which he was directly concerned while employed by the county. Otherwise, the conflict of interest laws do not as such prohibit a former deputy sheriff of a county, upon his termination, from contracting with the county nor do the conflict of interest laws impose a set waiting period. **Advisory Opinion No. 02-085-E**

Author's Note: The above set forth material is intended as an overview of the Ethics in Government law and the Commission that administers that law. It is not intended to be read as a substitute for the statute itself. Should an individual have potential direct involvement with the Commission, appropriate instructions, documents, or forms will be provided upon request. Also, the advisory opinion synopses are intended as reference material. The reader must obtain a copy of the full opinion in order to fully understand the requestor's facts and the Commission's findings. Code Section 25-4-17(i) provides a public official limited protection from civil and criminal liability only if the governing facts are presented in writing to the Commission by the public official; the Commission provides an opinion to the public official referencing those particular facts; and the public official in good faith follows the Commission's direction given in the opinion.