



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

March 14, 2024

The Honorable Willie March  
Sheriff, Holmes County  
Post Office Box 120  
Lexington, Mississippi 39095

Re: Hiring Brother as Deputy

Dear Sheriff March:

The Office of the Attorney General has received your request for an official opinion.

### **Background**

According to your request, your brother is the chief deputy sheriff and would like to retire and return to work after 90 days.

### **Questions Presented**

1. May I rehire my brother as my chief deputy?
2. May the board of supervisors hire my brother back as a county patrol officer?
3. May the board of supervisors hire my brother and assign him to the sheriff's department and then I make him chief deputy?

### **Brief Response**

1. The nepotism statute prohibits a sheriff from hiring his brother as a chief deputy sheriff.
2. Mississippi Code Annotated Section 7-5-25 authorizes the Attorney General to issue official opinions to various public officials "upon any question of law relating to their respective offices." Official opinions are not issued to advise one public officer about another public officer's authority and responsibilities. Thus, we cannot issue an opinion to you regarding the board of supervisors' authority to hire a county patrol officer.

3. See response 2. The sheriff has the authority to hire employees for the sheriff's department. There is no authority for you, as sheriff, to seek to have the board of supervisors hire your brother and assign him to the sheriff's department.

### **Applicable Law and Discussion**

Mississippi's general nepotism statute provides, in relevant part:

It shall be unlawful for any person elected, appointed or selected in any manner whatsoever to any state, county, district or municipal office, or for any board of trustees of any state institution, to appoint or employ, as an officer, clerk, stenographer, deputy or assistant who is to be paid out of the public funds, any person related by blood or marriage within the third degree, computed by the rule of the civil law, to the person or any member of the board of trustees having the authority to make such appointment or contract such employment as employer. This section shall not apply to any employee who shall have been in said department or institution prior to the time his or her kinsman, within the third degree, became the head of said department or institution . . . .

Miss. Code Ann. § 25-1-53. We use a three-part analysis to determine whether an employment relationship violates the nepotism statute. "First, are the parties related within the third degree? Second, is the relative who is a public official the 'appointing authority'? Third, is the job included in the list of prohibited positions? If the answer to any of these three questions is 'no', there is no violation of the statute." MS AG Op., *Nowak* at \*1 (June 5, 2020) (citing MS AG Op., *Harrington* (May 30, 1991)).

With respect to the first part of the nepotism analysis, brothers are related within the third degree of kinship. MS AG Op., *Ponthieux* at \*1 (Apr. 11, 2003). As to the second part, the sheriff is the hiring authority for the sheriff's department. Miss. Code Ann. § 19-25-19 ("Every sheriff shall have power to appoint one or more deputies to assist him in carrying out the duties of his office, every such appointment to be in writing, to remove them at pleasure, and to fix their compensation, subject to the budget for the sheriff's office approved by the county board of supervisors."). As to the third part, a sheriff's deputy is within one of the five prohibited positions listed in the nepotism statute. See MS AG Ops., *Carnathan* at \*1 (Aug. 13, 2010) and *Chamberlin* at \*1 (Jan. 6, 2004). Thus, in response to your first question, the sheriff is prohibited by the nepotism statute from hiring his brother as a deputy sheriff. See MS AG Op., *Griffin* at \*1 (May 13, 2020). Notably, the exception allowing an employee who was in the department prior to the relative becoming head of the department to remain employed would not apply to reemployment after retirement because this would require the rehiring of the employee and would, thus, be prohibited.

With respect to your third question, the sheriff is the hiring authority for the sheriff's department. Miss. Code Ann. § 19-25-19; see MS AG Op., *Simmons* at \*1 (Aug. 8, 2005) (opining that the board of supervisors does not have the authority to hire or fire employees for the sheriff's department). There is no recusal or step-aside provision in the nepotism statute. MS AG Op., *Turnage* at \*3 (Oct. 28, 2021). Thus, there is no authority for you, as sheriff, to have the board of

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supervisors hire your brother and assign him to the sheriff's department as suggested in your third question.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Beebe Garrard*

Beebe Garrard  
Special Assistant Attorney General

OFFICIAL OPINION