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## MISSISSIPPI ETHICS COMMISSION

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### ADVISORY OPINION NO. 12-032-E

March 2, 2012

**Question Presented:** May the city board make appointments to the board of the municipal school district when two city board members have relatives who are employed by the district?

**Brief Answer:** Yes. However, the city board members whose relatives are employed with the school district should fully recuse themselves from all matters involving the municipal separate school district in order to fully comply with Section 25-4-101, Miss. Code of 1972, and should vote on appointments to the school board *only* when their recusal would result in the loss of a quorum.

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.

(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.

(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.

## II. FACTS

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

The spouse of a member of the City's Board that will make an appointment to fill a vacancy on the District's Board of Trustees is employed as a teacher by the School District. The sister-in-law of another City Board member is also employed by the District as a teacher.

We are aware of the Ethics Commission's Opinion No. 10-100-E that opined that a City's Board of Aldermen could vote to make appointments to the City School Board of Trustees even though the spouses of two (2) Aldermen were employed by the District. However, the Commission further opined that the Aldermen with spouses employed by the School District should totally and completely recuse themselves from all matters involving the School District. Finally, the Commission opined that only when the participation of these two (2) Aldermen was necessary to avoid a loss or a quorum should these Aldermen participate in City decisions pertaining to the School District.

In our factual scenario, the recusal of the two (2) city board members, if necessary, would not cause the loss of a quorum, assuming all members of the Board are present at the meeting in question.

In light of these facts, we would appreciate an opinion as to 1) whether the city board members in question are required to recuse themselves from the upcoming vote to fill a vacancy on the District's Board of Trustees; 2) whether participation by these city board members is ever appropriate when the Board is dealing with matters related to the District, especially in the absence of a quorum otherwise and as to the appointment of District Board of Trustee members and 3) whether, if required, recusal by the two city board members in question would cure all potential violations of the Mississippi Ethics in Government laws.

## III. ANALYSIS

A member of the municipal governing authorities (city board) who votes on an appointment to the municipal separate school district board will violate Section 25-4-105(1), Miss. Code of 1972, quoted above, if he or she enters into an agreement which results in a monetary benefit for himself, his relative or his business. See also Section 25-4-103(q) and (d), above. For instance, if a city board member agrees to support the appointment of an individual to the school board in exchange for a pay raise or promotion for his or her relative, a school employee, that city board member violates Section 25-4-105(1).

The commission has advised city board members and other public servants similarly situated to recuse themselves from voting on appointments to the school board to avoid any appearance of impropriety which might arise from the potential for a violation. See Op. Miss. Ethics Commn. No. 10-100-E, 09-037-E and 04-022-E. Pursuant to Section 25-4-101, Miss. Code of 1972, quoted above, public servants should 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.

The commission has also ruled that city board members whose relatives are employed by the municipal separate school district should vote on appointments to the school board *only* when their recusal would result in the loss of a quorum. See Op. Miss. Ethics Commn. No. 10-100-E, 08-008-E and 07-071-E. In this situation, recusal by two city board members will not prevent the city board from making appointments to the school board. Therefore, while the city board members are not absolutely required by law to recuse themselves in this situation, the Commission advises the two city board members to fully recuse themselves from appointments to the school board when their recusal will not result in the loss of a quorum. A full recusal will prevent any violation of Section 25-4-105(1), which is the only portion of the Ethics in Government Laws in issue here. Recusal is not necessarily warranted on all other matters, such as approval of the tax levy for the school district which is not a discretionary act.

A total and complete recusal requires the two city board members leave the meeting room before the matter comes up for discussion and remain absent until the vote is concluded. The two city board members must not only avoid debating, discussing or taking action on the subject matter during official meetings or deliberations but must also avoid discussing the subject matter with anyone in municipal government. This restriction includes casual comments, as well as detailed discussions, made in person, by telephone or by any other means. An abstention is considered a vote with the majority and is *not* a recusal. Furthermore, any minutes or other record of the meeting should state the recusing city board members left the room before the matter came before the board and did not return until after the vote.

MISSISSIPPI ETHICS COMMISSION

BY: \_\_\_\_\_  
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