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ADVISORY OPINION NO. 12-115-E

January 4, 2013

Question Presented: May a community college employee serve as an elected member of a school board within the community college district when the appointed superintendent of education is a member of the community college board of trustees?

Brief Answer: Yes. However, the community college employee and the superintendent should fully recuse themselves from all matters coming before the boards on which they serve involving the employment of the other in order to avoid a violation of Section 25-4-105(1), Miss. Code of 1972, and to fully comply with Section 25-4-101.

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.

(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.

(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.

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.

I am writing to request a suggested advisory opinion. I have researched advisory opinion no. 10-094-E which states that a community college employee may serve as an elected member of a county school board. I am an employee of a Community College but work and live in the County as an off-site Career Center Coordinator. After being approached by many community members I am considering running for the upcoming school board elections in the County.

The advisory opinion stated above also states that the County Superintendent of Education is automatically appointed as a member of the Community College Board of Trustees. It was verified that this is not an issue because the County Superintendent of Education is indeed elected and not appointed by the school board. I have checked with the County school officials and our board appoints the Superintendent instead of electing this individual. Is there a conflict or ethics violation with this situation? If so then what is the advisory opinion of the Mississippi Ethics Commission? Any information or assistance that could be provided to me would be greatly appreciated.

In Advisory Op. No. 10-094-E and in the current opinion which is the subject of this request, the superintendent of education served on the community college board, and the community college employee proposed to serve on the school board if elected.

III. ANALYSIS

In the scenario presented by the requestor, the community college employee would serve on the school board. The school board is responsible for appointing the superintendent for the school district. The superintendent serves on the community college board. The community college board is required to vote on recommendations for employment made by the president of the community college. In other words, the community college employee and the superintendent would each serve on the board responsible for hiring the other. This scenario presents the risk of potential violations by both the superintendent and the community college employee because each serves on a board which has oversight of the other.

Section 25-4-105(1), Miss. Code of 1972, prohibits a public servant from using his or her official position to obtain or attempt to obtain a pecuniary benefit for himself or herself, relatives, or businesses with which the public servant is associated. Any type of *quid pro quo* agreement between the superintendent and the community college employee which results in a monetary benefit for either would violate Section 25-4-105(1). For example, if the community college employee agrees to support the superintendent's continued employment by the school board in exchange for the superintendent's vote of approval of the community college employee's continued employment, a

violation of Section 25-4-105(1) would result. The Commission has advised public servants similarly situated to recuse themselves from voting on matters that involve such potential violations because their impartiality could be questioned.

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. Therefore, the community college employee should recuse himself or herself from any matter coming before the school board concerning the employment of the superintendent. Likewise, the superintendent should recuse himself or herself from any matter coming before the community college board concerning the employment of the community college employee.

A total and complete recusal requires the board member leave the meeting room before the matter comes up for discussion and remain absent until the vote is concluded. The board member 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 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 member left the room before the matter came before the board and did not return until after the vote.

MISSISSIPPI ETHICS COMMISSION

BY: _____
Tom Hood, Executive Director and
Chief Counsel