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ETHICS ADVISORY OPINION NO. 22-034-E

January 6, 2023

Question Presented: May the spouse of the executive director of the Mississippi Community College Board be an employee of a community college?

Brief Answer: Yes. While the board does have broad oversight of colleges, personnel decisions at the colleges, such as hiring and compensation of the administrators and other employees, are within the authority of the local boards of trustees for each community college. Therefore, no violation of Section 25-4-105(1), Miss. Code of 1972, is likely to occur.

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.

(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.

I presently serve as [an employee] at the Mississippi Community College Board (MCCB). I have served [in this capacity] for over seven (7) years. My [spouse], previously served [in a leadership role] at [a state] Community College for a period spanning the same period of time for nearly 10 years. [My spouse] presently serves [in a leadership role] at [another state] Community College.

The Mississippi Community College Board has statutory authority as a coordinating board over the fifteen (15) Mississippi community colleges.

The MCCB is presently conducting a search for its next Executive Director. I am a candidate for the Executive Director position. As the facts are presented, I am requesting a written response to the following question: is there a conflict of interest, ethical violation or violation of any state law for me to serve as the Executive Director for the MCCB while my [spouse] is employed at any Mississippi community college?

III. ANALYSIS

No public servant of state or local government may use his or her position in government to obtain or attempt to obtain any monetary benefit for his or her relative, including a spouse, as prohibited by Section 25-4-105(1), Miss. Code of 1972. For example, the husband who is employed with the Mississippi Community College Board may not use his position there to obtain or attempt to obtain any monetary benefit for his wife whether she remains vice president or moves to some other employment position at the current college or another college within the system.

The Mississippi Community College Board has broad oversight for the funding, programs and curriculum of the state's community and junior colleges. See Section 37-4-3, Miss. Code of 1972. The board disburses state and federal funds to the colleges, approves changes to vocational programs and approves new facilities and campuses. *Id.* However, personnel decisions at the colleges, such as hiring and compensation of the administrators and other employees, are within the authority of the local boards of trustees for each community college. See Section 37-29-61 and 37-29-71.

Based upon the facts provided above and the statutes cited herein, it is unlikely that the Executive Director of the Mississippi Community College Board would have an opportunity to obtain a monetary benefit for an employee of a community college. See definition of "pecuniary benefit" in Section 25-4-103(1).

However, in the event that the husband is confronted with any such situation, he must fully recuse himself from any action which would result in a monetary benefit to his wife. This restriction includes casual comments, as well as detailed discussions, made in person, by telephone

or by any other means. If he fully recuses himself as described above, then no violation of Section 25-4-105(1) should occur if his wife remains in her current position with the current community college or moves to another position at the current college or another college within the system.

In addition, Section 25-4-101 admonishes public servants to avoid conduct which can raise suspicion among the public that they are violating the public trust. Public suspicion could be raised if the husband employed at the Mississippi Community College Board were, in an oversight or accountability role, dealing directly with the college which employs his wife. To avoid any appearance of impropriety, the commission advises the husband to avoid personal involvement in any such oversight activities involving any college which employs his wife, whether he remains in his current position or becomes the executive director.

MISSISSIPPI ETHICS COMMISSION

BY: _____

Tom Hood, Executive Director and
Chief Counsel