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## MISSISSIPPI ETHICS COMMISSION

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### ETHICS ADVISORY OPINION NO. 23-025-E

January 12, 2024

**Question Presented:** May a nonprofit organization which employs a member of the governing board of a charter school award a grant to that charter school?

**Brief Answer:** Yes. The charter school board member is not prohibited from participating in an action which benefits the charter school, as long as the employer does not become a contractor to the charter school, as outlined in Section 25-4-105(1) and 25-4-105(3)(a), Miss. Code of 1972.

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 25-4-103, Miss. Code of 1972.

(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.

(f) “Contract” means:

(i) Any agreement to which the government is a party; or

(ii) Any agreement on behalf of the government which involves the payment of public funds.

(g) “Government” means the state and all political entities thereof, both collectively and separately, including but not limited to:

(i) Counties;

(ii) Municipalities;

(iii) All school districts;

(iv) All courts; and

(v) Any department, agency, board, commission, institution, instrumentality, or legislative or administrative body of the state, counties or municipalities created by statute, ordinance or executive order including all units that expend public funds.

(h) “Governmental entity” means the state, a county, a municipality or any other separate political subdivision authorized by law to exercise a part of the sovereign power of the state.

(i) “Income” means money or thing of value received, or to be received, from any source derived, including but not limited to, any salary, wage, advance, payment, dividend, interest, rent, forgiveness of debt, fee, royalty, commission or any combination thereof.

(k) “Material financial interest” means a personal and pecuniary interest, direct or indirect, accruing to a public servant or spouse, either individually or in combination with each other. Notwithstanding the foregoing, the following shall not be deemed to be a material financial interest with respect to a business with which a public servant may be associated:

(i) Ownership of any interest of less than ten percent (10%) in a business where the aggregate annual net income to the public servant therefrom is less than One Thousand Dollars (\$1,000.00);

(ii) Ownership of any interest of less than two percent (2%) in a business where the aggregate annual net income to the public servant therefrom is less than Five Thousand Dollars (\$5,000.00);

(iii) The income as an employee of a relative if neither the public servant or relative is an officer, director or partner in the business and any ownership interest would not be deemed material pursuant to subparagraph (i) or (ii) herein; or

(iv) The income of the spouse of a public servant when such spouse is a contractor, subcontractor or vendor with the governmental entity that employs the public servant and the public servant exercises no control, direct or indirect, over the contract between the spouse and such governmental entity.

(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.

(3) No public servant shall:

(a) Be a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent, other than in his contract of employment, or have a material financial interest in any business which is a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent.

## 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 [employed by] an education policy non-profit that advocates for various issues such as charter schools, teacher and leader quality, and early care and education.

I focus on early care and education, but I sit on the governing board of ... a charter management organization that operates four schools in Mississippi. This may create a potential conflict of interest because as part of our work on charter schools, [my employer] received a Charter Schools Program grant in 2022. The Charter Schools Program grant is a national, competitive grant in which 90% of the funds are subgranted to eligible charter school applicants to open new charter schools and/or expand high-quality charter schools.

I need some guidance on what I should do in the event that [the charter school operator] decides to apply for a grant. I expect to recuse myself from any votes to accept or manage those grants, but any additional information about how to conduct myself would be greatly appreciated!

I am providing additional facts about this case after reading Advisory Opinions No. 20-039-E, 20-016-E, and 18-059-E.

[The nonprofit] has the following business with [the charter school] as part of several grants we have received to advance charter school work in Mississippi.

[program details redacted]

For clarity, [the nonprofit] is subgranting this money to [the charter school]. We are not receiving funds from them for services.

## III. ANALYSIS

As a member of the governing board of a charter school in Mississippi, the requestor is a public servant, as defined in Section 25-4-103(p) and is subject to all provisions of the Ethics in Government Law. See [Advisory Opinion No. 20-028-E](#). In particular, Section 25-4-105(1) prohibits the requestor from using his or her position on the charter school governing board to obtain or attempt to obtain any monetary benefit for his or her employer, the education policy nonprofit. See Section 25-4-103(c), (d) and (l). However, the requestor's concern is that the nonprofit may be in a position to benefit the charter school by providing it with a grant. That

possibility will not violate the Ethics in Government Law. No violation of Section 25-4-105(1) will result if the requestor's employer awards a grant to the charter school.

Additionally, the nonprofit cannot serve as a contractor, subcontractor or vendor to the charter school, pursuant to Section 25-4-105(3)(a). See Section 25-4-103(h) and (k). While a grant may constitute a contract, a contractor must be providing services to the government. Moore, ex rel. City of Aberdeen v. Byars, 757 So.2d 243, 248 (Miss. 2000). If the nonprofit does award a grant or subgrant to the charter school but does not provide services to the charter school, then the nonprofit will not be a contractor to the charter school, and no violation of Section 25-4-105(3)(a) will occur.

MISSISSIPPI ETHICS COMMISSION

BY: \_\_\_\_\_  
Tom Hood, Executive Director and  
Chief Counsel