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ETHICS ADVISORY OPINION NO. 24-013-E

June 7, 2024

Question Presented: May a full-time public servant of a state agency which funds charter schools also serve as the executive director of a charter school?

Brief Answer: Due to the limited scope of the public servant's job duties with the state agency, no violation of Section 25-4-105, Miss. Code of 1972, is likely to arise. However, the public servant and the state agency should seriously consider whether both positions can be reconciled with the public policy codified in 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.

(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.

(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.

(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 reaching out to gain a formal opinion regarding a potential conflict of interest. I am a Mississippi educator with over 23 years of experience in the public and private sectors of K12 learning including over 15 years in building leadership positions. Currently, I am engaged with two separate but somewhat related entities that could be viewed as a conflict of interest. The two positions are outlined below:

- [Position with a state agency]. This is a contractual position in which I serve three public schools by mentoring and providing support to the building level principal. The schools are [in different parts of the state]. I have applied to continue this work in a full-time capacity which would expand my role to include a total of six schools.

- [Private entity]. Through this agreement, I am in the process of writing an application for a charter school through the Mississippi Charter School Authorizer Board. My school, if approved, will be located in [another part of the state] and open in August of 2025. The school will employ a hybrid approach to learning with some online days, and therefore I expect it to be an attractive model for families all across the ... region. My contract ... concludes in October 2024 at which point, if approved, I will become the Executive Director of the school. The work as Executive Director will be conducted in the evenings and on weekends until the school launches in August of 2025. Upon launching, I plan to hire two lead administrators who will manage the daily operations of the school.

It is my opinion that these two roles do not constitute a conflict of interest for the following reasons.

- Charter schools are public schools and therefore there should be no competition between the entities. Both approaches are free to the public and seek to serve the interest of Mississippi communities.
- The charter school could enroll students from surrounding districts rated C, D, or F. However, the model has been designed to attract teachers from higher performing districts, considering the limited travel requirements, to an area with a teacher shortage problem.
- I am not, nor will I, actively recruit students or teachers/administrators under contract with the schools I am serving.
- By disclosing this information to the [state agency] I will request to be assigned to schools outside the targeted area of my charter school.

III. ANALYSIS

The requestor is correct that charter schools are public schools and are entities of local government. See [Advisory Opinion No. 20-028-E](#) at page 7. It is also correct to state that no violation of Section 25-4-105(3)(a), Miss. Code of 1972, necessarily occurs when a public servant of a state agency also works for a separate governmental entity, like a public school district. However, it is not entirely correct to assert that there is no competition between charter schools and traditional public schools since they compete for students and the public funds that accompany them. See Section 37-28-55.

On the contrary, the Ethics Commission has previously opined that, because of the competing interests between charter public schools and any local non-charter public school district in which the charter school is located, simultaneous service on the boards of both schools is inadvisable and inconsistent with Section 25-4-101, which admonishes all public servants to avoid conduct which could raise suspicion among the public that they are violating the public trust. See [Advisory Opinion No. 20-028-E](#) at page 8.

The requestor is employed by a state agency which has various types of licensure, regulatory, oversight and funding authority over both charter and non-charter public schools and their employees. The requestor is not in a position to influence funding provided to the charter

school. Compare [Advisory Opinion No. 22-018-E](#). By not working for the state agency in traditional, non-charter public schools which overlap the service area of the charter school, the requestor will likely avoid the most egregious types of conflicts, analogous to serving on both school boards, but even this limitation does not completely resolve all concerns.

While a violation of Section 25-4-105 is not likely to result under these particular circumstances, owing to the limited scope of the requestor's job duties and geographical assignment within the state agency, it still concerns the commission that one individual could be working full-time for this particular state agency while holding such an important leadership position with a charter school. This concern arises from the state agency's responsibilities with regard to charter schools. The state agency should consider, as a personnel matter, whether a full-time public servant of the agency would have the time to be so directly engaged in a charter school or the ability to keep any competing loyalties fully separated.

MISSISSIPPI ETHICS COMMISSION

BY:

Tom Hood, Executive Director and
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