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### ETHICS ADVISORY OPINION NO. 24-035-E

December 6, 2024

**Question Presented:** May a public school board of trustees approve the sale of real property to a nonprofit organization when a school board trustee is also an uncompensated director of the nonprofit organization?

**Brief Answer:** Yes. The school board trustee will not have a prohibited interest in the transaction since he or she is uncompensated, and no violation of Section 109, Miss. Const. of 1890, or Section 25-4-105(2), Miss. Code of 1972, will occur. Nevertheless, the trustee should recuse from any action by the school board related to the sale of property to this nonprofit organization to comply with Section 25-4-105(1).

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 109, Miss. Const. of 1890.

No public officer or member of the legislature shall be interested, directly or indirectly, in any contract with the state, or any district, county, city, or town thereof, authorized by any law passed or order made by any board of which he may

be or may have been a member, during the term for which he shall have been chosen, or within one year after the expiration of such term.

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.

(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.

(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.

(n) "Property" means all real or personal property.

(o) "Public funds" means money belonging to the government.

(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.

(2) No public servant shall be interested, directly or indirectly, during the term for which he shall have been chosen, or within one (1) year after the expiration of such term, in any contract with the state, or any district, county, city or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member.

## 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 the board attorney for the [...] School District (the "District"). As part of [a local initiative], the District closed multiple schools. In an effort to thoughtfully repurpose the closed schools for the good of the community, the District issued a request for proposals for the sale, lease, or other conveyance of the schools. The District was seeking proposals from organizations that will focus on ensuring they contribute to and sustain community development.

One of the statutory requirements for the conveyance of the closed schools, as set out in Miss. Code Section 37-7-473, is that the entity to which a school is conveyed

must use it either (1) as a charter school facility, (2) as a civic, community, recreational or youth center, (3) for the activities of a county or district fair association, (4) for church purposes, (5) as a library or other public building, (6) as a factory or otherwise in connection with an industrial enterprise, (7) as part of a residential, mixed-use or other development activity to stimulate economic development activities within the District, (8) to enhance property values within the District, or (9) for any similar or related purpose or activity.

Another statutory requirement, as set out in Miss. Code Section 37-7-477, is that the instrument conveying or leasing a closed school must provide that title to it shall automatically revert to the District if the school ceases to be used for the purpose for which it was conveyed by the District. Additionally, the conveyance instrument must also contain the condition that the purchaser/lessee will keep and maintain the school in a good state of repair and will keep it insured in a reasonable amount against loss by fire, windstorm and other hazards. Upon breach of any of those conditions, the District's board of trustees shall have the right of reentry upon the school as for condition broken and shall have the power and authority to bring and maintain such actions as shall be necessary and appropriate for such purpose in its own name.

A proposal for the purchase of one of the closed schools, [...], was submitted by [a nonprofit organization]. [The nonprofit organization] is a Mississippi-based, 501(c)(3) nonprofit organization focused on civic engagement and leadership development. It is governed by a volunteer board of directors.

[The nonprofit organization] proposes to transform [the former school] into a [facility with a different purpose]. It will be a mixed-use facility that will house (1) a temporary shelter for families and individuals displaced by emergencies, (2) a workforce development center, (3) a healthcare facility providing physical and mental health services, (4) co-working spaces for local nonprofits, startups and small businesses, and (5) outdoor spaces including an urban garden, recreational spaces, event venues, and a community kitchen to foster healthy living and interaction. The president of the District's board of trustees is also the president of the board of directors of [the nonprofit organization]. As a volunteer, the board member is not compensated for [his/her] board service with [the nonprofit organization]. [The nonprofit organization]'s proposal for the purchase of [the former school] has not been submitted to the District's board for discussion or action.

With that, I pose two questions for your consideration:

(1) Does it create a conflict of interest for the District's board member if the District sells [the former school] to [the nonprofit organization]?

(2) If any conflict exists, can it be avoided if the District's board member recuses [himself/herself] from any discussion, deliberation or vote on the transaction between the District and [the nonprofit organization]?

Thank you for your assistance.

### III. ANALYSIS

Pursuant to Section 109, Miss. Const. of 1890, and Section 25-4-105(2), Miss. Code of 1972, a member of a public board, such as a school trustee, may not have a direct or indirect interest in a contract authorized by the board during his or her term of office or for one year thereafter. Receiving income from an entity which transacts business with the school district can give a trustee a prohibited interest in those transactions. Yet here, the school board member receives no income from the nonprofit organization which proposes to purchase the facility. Moreover, the nonprofit organization will be paying money to the school district, not receiving money from the district. For these reasons, the school board trustee does not have a prohibited interest in the proposed transaction, which will not violate Section 109 or Section 25-4-105(2).

Nevertheless, the board member is prohibited from using his or her position on the school board to obtain or attempt to obtain any "pecuniary benefit" for a "business with which he [or she] is associated," as set forth in Section 25-4-105(1). See definitions in Section 25-4-103(l) and (d). Assuming the nonprofit organization is a "business," then it is definitely a business with which the school board trustee is associated since he or she is a director. Section 25-4-103(c) and (d). To avoid any violation of Section 25-4-105(1), the trustee should recuse from any action by the school board related to the sale of property to this nonprofit organization.

A total and complete recusal requires the school board trustee leave the meeting room before the matter comes up for discussion and remain absent until the vote is concluded. The trustee must refrain from debating, discussing or taking action on the subject matter during official meetings or deliberations and must also avoid discussing the subject matter with any other board members or employees. This restriction includes casual comments, as well as detailed discussions, made in person, by telephone or by any other means. Furthermore, any minutes of the meeting should state the 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