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### ETHICS ADVISORY OPINION NO. 25-001-E

February 7, 2025

**Question Presented:** May the spouse of a newly elected school board trustee remain employed by another school district in a joint program which will be approved by the spouse's school board?

**Brief Answer:** No. The school board will authorize the spouse's employment with the other district if it approves a new participation agreement for the program in which the spouse is employed, and a violation of Section 109, Miss. Const. of 1890, and Section 25-4-105(2), Miss. Code of 1972, would 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 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.

(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.

(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.

(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.

The Superintendent of [a] School District asked me as board attorney to present a question to the Ethics Commission to ensure that a conflict of interest does not exist. A short background is in order.

The Mississippi Legislature appropriated funds for a statewide Pre-K Early Learning Initiative. These funds are distributed through the Mississippi Department of Education to school districts or educational entities that oversee the implementation of the Pre-K Initiative.

[Another] School District serves as the lead collaborative for the three school districts in [the] County. It receives these state funds which are then utilized by [the lead] School District to implement the Initiative in [all three districts]. The funding covers the costs incurred by the [lead district,] and no financial contribution is required of either [of the other two school districts]. The school board of each school district must approve an agreement to participate in the Early Learning Initiative. Agreements to participate during the 2024-25 school year have already been approved by the respective school boards.

[A] newly elected board member of [the district I represent, which is not the lead district], will take office in January 2025. [The board member's] spouse works as a part-time employee (twenty hours per week) for the [lead district, not his own district]. In [the spouse's] role, [the spouse] assists the director of the Initiative by visiting each school district to ensure implementation of the program. [The spouse's] salary is paid from the state funding provided for the Early Learning Initiative.

At some point after taking office, the [school board with the new member] will be required to vote to approve the District's participation in the 2025-26 Early Learning Initiative.

[The district with the new board member] is requesting an opinion on whether a conflict of interest will exist if [the newly elected board member] votes for the ... District to participate in the Early Learning Initiative.

If the answer to the question above is that a conflict of interest would exist, would the conflict be removed if [the newly elected board member] recuses [himself/herself] from the board meeting and does not participate in the vote.

Thank you for your consideration in this matter. Please let me know if you need additional information.

### III. ANALYSIS

Section 109, Miss. Const. of 1890, and its statutory parallel, Section 25-4-105(2), Miss. Code of 1972, prohibit a member of a public board from having any direct or indirect interest in a contract which is funded or otherwise authorized by that board during his or her term or for one year thereafter. Frazier v. State, ex rel. Pittman, 504 So.2d 675, 693 (Miss. 1987). A member of a public board has an indirect interest in his or her spouse's employment. Smith v. Dorsey, 530 So.2d 5, 7 (Miss. 1988). Therefore, a board member and his or her spouse are prohibited from having an interest in a contract authorized by the board.

Any contract which violates Section 109 or Section 25-4-105(2) is null and void, and the contractor has no right to payment. Towner v. Moore, ex rel. Quitman County School District, 604 So.2d 1093, 1096 (Miss. 1992), quoting Smith v. Dorsey, 530 So.2d 5, 9 (Miss. 1988). With regard to spouses, they are jointly and severally liable to repay all amounts received. Towner at 1100. Additionally, while recusal can be effective in preventing other violations, recusal does not prevent or ameliorate violations of Section 109 or Section 25-4-105(2), as these sections do not require any affirmative act by an individual member but merely action by the board. Id.

The timing of the board's authorization is also important. When the contract was authorized before the trustee took office on the board, no violation occurs automatically once the trustee takes office. Therefore, under the facts provided above, no violation of Section 109 or Section 25-4-105(2) has resulted from the current contract. See Advisory Opinions No. 24-008-E, 22-026-E, 19-052-E, 18-060-E, 17-051-E, 15-056-E and 13-111-E. Yet the new trustee's spouse may not continue in the current employment position if the school board approves the district's participation in the 2025-26 Early Learning Initiative.

The participation agreement between the three school boards authorizes the spouse's employment in the initiative, in which the school board trustee has a prohibited, indirect interest. This situation is similar to interlocal agreements opined on by the commission numerous times in the past, in which the commission found a violation would occur. See Advisory Opinions No. 13-080-E, 21-010-E, 14-019-E and 13-106-E. See also Advisory Opinion No. 17-080-E. If the board approves the agreement again for the next school year and the board member's spouse remains employed in the initiative, then a violation of Section 109 and Section 25-4-105(2) will occur. To reiterate, the only way to avoid this violation is for the board member's spouse to resign employment with the initiative before a participation agreement is approved for the coming school year.

MISSISSIPPI ETHICS COMMISSION

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