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ETHICS ADVISORY OPINION NO. 26-007-E

April 10, 2026

Question Presented: May a company owned by the spouse of a school district employee be a contractor to the school district?

Brief Answer: Yes, the “spousal exclusion” will apply under these circumstances, and the company can be a contractor to the school district without violating Section 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 25-4-101, 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.

(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.

(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.

(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 writing to request an advisory opinion regarding the following:

We would like to sell surplus school buses at a public county auction conducted by a licensed auctioneer. The auctioneer is married to a central office director who is employed by the [School District]. The auctioneer's business would be paid ten percent of the proceeds from the sale of the buses.

We seek guidance on whether it is permissible for the district to pay the auctioneer under these circumstances, given that the auctioneer's spouse is an employee of the district. Specifically, we want to ensure that any actions taken comply with Mississippi's Ethics in Government Law and avoid any appearance of conflict of interest.

To further clarify, the central office director would not be involved in:

- Decisions regarding which buses are sent to auction
- Selection of the auctioneer
- Approval of auction terms or payment

We are requesting the Commission's guidance on whether the district may proceed with this arrangement, and if so, what measures or disclosures are necessary to comply fully with state law and ethics rules.

In response to questions from the commission's staff, the requestor provided the following additional information:

Payment would go directly to the spouse's husband's company – [...]. He owns the company and also is the auctioneer. The spouse doesn't have any direct or indirect control over the contract with her husband. I will say she usually takes a personal

day during the auction and works at the auction. Therefore, I could not honestly say she has no involvement in the auction itself.

Answers to the questions asked:

1. She is the federal programs director for the district. Our transportation director oversees the sale and disposal of surplus school buses. The spouse wouldn't have any involvement in this process as the federal programs director.
2. The business is an LLC.
3. The name of the business is [...]

III. ANALYSIS

Section 25-4-105(3)(a), Miss. Code of 1972, prohibits all public servants of the school district from having a “material financial interest” in a business which is a contractor, subcontractor or vendor to the district. The term “material financial interest” is defined very broadly as “a personal and pecuniary interest, direct or indirect, accruing to a public servant or spouse, either individually or in combination with each other.” Section 25-4-103(k).

However, the definition of “material financial interest” also contains several exclusions, including the “spousal exclusion” found in Section 25-4-103(k)(iv). This section provides that a financial interest which would otherwise be material is not a material financial interest when based solely on the income of the public servant's spouse, and the public servant exercises no control, direct or indirect, over the contract.

Here, the income would go to the limited liability company owned by the public servant's spouse, and the school district employee would exercise no control over this contract. While the law does not explicitly prohibit the school district employee from helping her husband with the auction, she must not be paid by the LLC for that work. Furthermore, her appearance in that capacity could create confusion or even suspicion that she is abusing the public trust, which should be avoided, under the admonition in Section 25-4-101. Therefore, the school district employee should not be present at the auction to avoid any appearance of impropriety. Yet under these facts, the statutory exclusion applies, and the school district employee's spouse can be a contractor to the school district without violating Section 25-4-105(3)(a).

MISSISSIPPI ETHICS COMMISSION

BY: _____

Tom Hood, Executive Director and
Chief Counsel