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ETHICS ADVISORY OPINION NO. 20-008-E

March 6, 2020

Question Presented: May the spouse of a newly elected school board member remain employed by the school district until the end of the current academic year?

Brief Answer: Although inadvisable, the spouse may continue employment for the remainder of the current academic year only if the school board takes no future action to authorize the employment. Under no circumstances may the spouse continue employment with the school district after the conclusion of the current academic year, pursuant to Section 109, Miss. Const. of 1890, and Section 25-4-105(2), 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 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.

I am writing to request an official opinion from the Commission regarding whether the spouse of a newly elected board member for the school district may continue his employment with the District until the end of the current school year.

Factual Background: In November, a new Board member was elected to serve on the Board of Trustees for the District and was sworn in on or about January 14, 2020. However, the new board member's husband has been employed with the District for several years prior to the election of his wife to the Board of Trustees. Also prior to the new Board member's election, the Board voted on August 13 to maintain the husband as a substitute bus driver.

The Board does not vote to pay the husband when he is scheduled to drive a route as his salary was set prior to the beginning of his employment and payments are handled by the District's office according to the prior approved salary. To date, the husband has not driven any routes since his wife took office. However, there is an upcoming route to the coast in March 2020 for which the husband was previously scheduled to drive. The Board will not be required to vote on his payment for this route as it is handled by the District's office pursuant to his previously approved salary.

This office is aware of Ethics Opinion No. 15-073-E wherein the Commission opined that the spouse of a Board member would be allowed to complete her contract with the District as long as the Board was not required to vote on the payment of her salary; but that the spouse would not be allowed to return after the expiration of her current contract.

Issue Presented: Respectfully, with regard to §25-4-105 of the Mississippi Code Annotated and Section 109 of the Mississippi Constitution, would the spouse subjude be allowed to complete his employment with the District or must he vacate the position immediately?

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 an interest in a contract 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). Any contract which violates Section 109 or Section 25-4-105(2) is null and void, and the board member is liable for all money paid to the spouse in violation thereof. Towner v. Moore ex rel. Quitman County School Dist., 604 So.2d 1093, 1096 (Miss. 1992), quoting Smith v. Dorsey, 530 So.2d 5, 9 (Miss. 1988).

The Mississippi Supreme Court has specifically and repeatedly applied this prohibition to school board members whose spouses are employed by the school district. Towner, 604 So.2d 1093; and Waller v. Moore ex rel. Quitman County School Dist., 604 So.2d 265 (Miss. 1992). A violation will occur when the school board takes some action which has the effect of funding or otherwise authorizing the spouse's employment contract. In this context "authorized" means more than just the obvious act of approving a contract. It also means appropriating money. An appropriation or expenditure of public money which funds a contract is an action which authorizes that contract. See Frazier at 693, citing Cassibry v. State, 404 So. 2d 1360, 1366-67 (Miss. 1981).

Thus, a violation of Section 109 and Section 25-4-105(2) will occur if the board votes to renew the spouse's employment or if the school board approves any payment to the board member's spouse. Any other more frequent action by the board which would have the effect of authorizing the spouse's employment could also give rise to a violation, such as authorizing the transfer of funds to a payroll account or approving an item on a docket of claims. A recusal by the school board member in question will not prevent or ameliorate a violation 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. Towner at 1100.

If the school board takes no future action to authorize the spouse's employment, then the spouse may remain employed for the remainder of the current academic year without a violation. However, if the school board takes any action to fund or otherwise authorize the spouse's continued employment as described above, then the board member will violate Section 109 and Section 25-4-105(2). The best way to ensure no violation will occur is for the spouse to resign from school district employment before the new board member takes office or as soon as possible thereafter. Under no circumstances may the spouse continue employment with the school district after the conclusion of the current academic year, pursuant to the rule in Towner, Waller and Dorsey, cited above.

MISSISSIPPI ETHICS COMMISSION

BY: _____
Tom Hood, Executive Director and
Chief Counsel