



BEN H. STONE, Chairman  
Gulfport

WALLEY R. NAYLOR,  
Vice Chairman  
Madison

BILLY R. POWELL, Secretary  
Madison

WILLIAM R. WHEELER, JR.  
Tupelo

ROBERT G. CLARK  
Pickens

SUE H. STEDMAN  
Natchez

MICHAEL R. COOPER  
Madison

PAUL V. BREAZEALE  
Jackson

## MISSISSIPPI ETHICS COMMISSION

Post Office Box 22746  
Jackson, Mississippi 39225-2746  
Telephone: 601-359-1285  
Telecopier: 601-354-6253  
www.ethics.state.ms.us

TOM HOOD  
Executive Director and Chief Counsel

### ADVISORY OPINION NO. 10-035-E

June 11, 2010

**Question Presented:** May a school board member whose financially independent relative is employed by the school district participate in discussions and actions approving the annual school district budget?

**Brief Answer:** No. Only when a board member's recusal would result in the loss of a quorum and render the board unable to act may a board member with a relative employed by the district participate in deliberation and action on the annual budget without violating Section 25-4-105(1), 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.

(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.

(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.

(q) "Relative" means:

- (i) The spouse of the public servant;

- (ii) The child of the public servant;
- (iii) The parent of the public servant;
- (iv) The sibling of the public servant; and
- (v) The spouse of any of the relatives of the public servant specified in subparagraphs (ii) through (iv).

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 City Public School District (the "District"). We have a board member whose son works for the District as a non-licensed employee, namely, as a program coordinator. The son/employee is fully emancipated and is not financially dependent upon his parent, our board member. In the upcoming weeks, the school board will be considering and will have to adopt a budget for the 2010-2011 fiscal year, a portion of which will provide monies for employee salaries, obviously including the board member's son. I am requesting an advisory opinion whether my board member has a conflict of interest that would prevent her from either discussing or voting upon all or part of the District's budget for the upcoming school year.

## III. ANALYSIS

Section 109, Miss. Const. of 1890, and its statutory parallel, Section 25-4-105(2), Miss. Code of 1972, both quoted above, prohibit a member of a public board from having any direct or indirect interest in a contract with the government 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). Assuming the board member has no common financial interest with the "relative" identified above, the board member should not have a prohibited interest in the relative's employment contract. If the board member and relative are indeed totally, financially independent, the employment of the relative

should not result in a violation of Section 109 or Section 25-4-105(2) on the part of the board member.

However, Section 25-4-105(1) also prohibits a school board member from taking any action in his or her official position to obtain or attempt to obtain any pecuniary benefit for a relative, as that term is defined in Section 25-4-103(q). The term “relative” includes the child of a board member. Therefore, the board member must recuse himself or herself from any action which would result in a monetary benefit to the son. Such action would include the hiring of the relative, approval of the relative’s annual contract, if any, performance evaluations and disciplinary proceedings, or adjustments to his or her salary, benefits or supplemental compensation by the school district, either as an individual employee or as a group of employees, and any other action which is a necessary predicate to the relative’s employment.

Section 37-61-9, Miss. Code of 1972, requires every school board to “hold at least one (1) public hearing to provide the general public with an opportunity to comment on the taxing and spending plan incorporated in the [board’s] proposed budget.” The statute also requires the board to adopt an annual budget, submit the budget to the levying authority (i.e. – municipal board or board of supervisors) and the State Department of Education and publish a synopsis of the budget in the local newspaper. Certain types of expenditures for compensation of personnel are also limited in the statute.

The commission has previously and consistently considered approval of the school district’s annual budget to be an action which is a necessary predicate to the relative’s employment and which results in a pecuniary benefit to a relative. See Advisory Ops. No. 10-014-E, 09-038-E and 08-073-E. However, the commission is also aware that in some instances a majority of the school board have relatives employed by the district. Such boards would be unable to approve an annual budget if all affected members recused themselves. In such cases the restrictions imposed by the Ethics in Government Law must be reconciled with the statutory mandate to adopt an annual budget and construed together.

Due to the statutorily-imposed requirement to adopt an annual school district budget, the commission finds that where a majority of the school board members have relatives employed by the school district, the participation of those members is absolutely necessary, and will not result in a violation of Section 25-4-105(1). In such circumstances the school board should make a finding recorded in its minutes that the participation of those members is absolutely necessary to adopt the annual budget. That finding should be made and recorded before any affected members participate in any discussion or action involving the budget. Under those particular circumstances, school board members have not used their position to obtain or attempt to obtain a pecuniary benefit for their relatives employed by the school district. Nevertheless, school board members still must recuse themselves from all other matters affecting their relatives as outlined above.

Where, as here, only one school board member is affected, the commission finds the board member should recuse himself or herself from deliberation and action on the annual budget to avoid any appearance of impropriety. Pursuant to Section 25-4-101, Miss. Code of 1972, quoted above, public servants should conduct themselves in a manner which enhances the public trust in government and avoid actions which may tend to create public suspicion regarding the honesty and integrity of those in government. Participation by a board member with one or more relatives

employed by the district could tend to reflect unfavorably upon the board when the participation is not absolutely necessary to fulfill the board's statutory duties.

A total and complete recusal requires the school board member leave the meeting room before the matter comes up for discussion and remain absent until the vote is concluded. The board member must not only avoid debating, discussing or taking action on the subject matter during official meetings or deliberations but must also avoid discussing the subject matter with any other school district officials or employees. This includes casual comments, as well as detailed discussions, made in person, by telephone or by any other means. An abstention is considered a vote with the majority and is *not* a recusal. Furthermore, any minutes or other record of the meeting or other proceeding should state the recusing board member left the room before the matter came before the board and did not return until after the vote. Advisory Opinions No. 08-073-E, issued on September 12, 2008, No. 09-038-E, issued on May 8, 2009, and No. 10-014-E, issued on March 5, 2010, are hereby modified to conform herewith.

## MISSISSIPPI ETHICS COMMISSION

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