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## MISSISSIPPI ETHICS COMMISSION

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### ADVISORY OPINION NO. 10-037-E

May 7, 2010

**Question Presented:** May a substitute teacher continue to be employed by the school district after the employee's spouse becomes a member of the school board?

**Brief Answer:** Although inadvisable, the spouse may continue employment for the remainder of the current academic year based on the specific facts provided herein. 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.

Please accept this correspondence as my formal request for an ethics opinion from the Mississippi Ethics Commission regarding my recent appointment to the County School Board and my wife's service with that district as a substitute school teacher. The following rendition of the facts is pertinent to the requested opinion:

I was appointed by the County School Board to fill the unexpired term of an individual, who retired from the County School District in January, 2010. I was appointed to the office on February 15, 2010 and, as this is an elected county board position, will run for election in November 2010 to fill the unexpired term which will expire in 2012.

My wife is a certified English teacher with the State of Mississippi and has served as a approved substitute teacher with the County School District since 2007.

Substitute teachers are approved by the school district prior to the school year from a list of approved substitutes maintained by the school district office. The substitute teachers are paid directly by the school district and their pay is not reflected on a claims docket which would be approved and voted on by the school board at each monthly meeting.

Given the above factual scenario, my questions to the ethics commission are the following:

1. May my spouse continue to serve as a substitute teacher through the 2010 school year once I have become a member of the County School Board?
2. May my spouse serve as a substitute teacher within the County School district during my term, so long as I have no role in compiling the approved substitute list and recuse myself from the vote approving the substitute list which will take place prior to the school year?
3. If my spouse chooses to seek employment as a full-time certified teacher with the County School District, would she be prohibited from engaging in that employment or would it be sufficient for me, as a school board member, to recuse myself from any and all discussions or approval of her contract?

### 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 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). The Mississippi Supreme Court has specifically and repeatedly applied this prohibition to school board members whose spouses are employed by the school district. Towner v. Moore ex rel. Quitman County School Dist., 604 So.2d 1093 (Miss. 1992); Waller v. Moore ex rel. Quitman County School Dist., 604 So.2d 265 (Miss. 1992) and Smith v. Dorsey, 530 So.2d 5 (Miss. 1988). Additionally, 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 at 1096, and Smith v. Dorsey at 9.

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, the school board member would be in violation of Section 109 and Section 25-4-105(2) if the board votes to renew the spouse's contract or to approve any payment to the spouse. Any other more frequent action by the board which would have the effect of authorizing the spouse's employment, such as paying a claim for salary or authorizing the transfer of funds to a payroll account, could also give rise to a violation. A recusal will *not* prevent or ameliorate a violation of Section 109 and Section 25-4-105(2), as they do *not* require any affirmative act by an individual member but merely action by the board.

If the facts provided by the requestor about the selection and compensation of substitute teachers are correct and "their pay is not reflected on a claims docket," then the spouse may continue for the remainder of the current academic year. However, if the school board takes any action to fund or otherwise authorize the spouse's employment as described above, then the board member will violate Section 109 and Section 25-4-105(2). 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