



BEN H. STONE, Chairman
Gulfport

PAUL V. BREAZEALE,
Vice Chairman
Jackson

DANA S. STRINGER, Secretary
Brandon

SEAN A. MILNER
Clinton

MISSISSIPPI ETHICS COMMISSION

Post Office Box 22746
Jackson, Mississippi 39225-2746
Telephone: 601-359-1285
Facsimile: 601-359-1292
www.ethics.ms.gov

TOM HOOD
Executive Director and Chief Counsel

RON CROWE
Brandon

STEPHEN W. BURROW
Pascagoula

BOBBY WAITES
Brandon

SPENCER M. RITCHIE
Jackson

ETHICS ADVISORY OPINION NO. 20-028-E

August 7, 2020

Question Presented: May a member of the governing board of a charter school also serve on the local “non-charter” public school board?

Brief Answer: Charter school governing board members are “public servants” and are subject to all the restrictions and requirements of the Ethics in Government Law. While charter school board members are not necessarily prohibited from serving on the local “non-charter” public school board, they should not serve on both boards at the same time since such dual service is inconsistent with Section 25-4-101, 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 25-4-101, 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.

(c) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, holding company, self-employed individual, joint stock company, receivership, trust or other legal entity or undertaking organized for economic gain, a nonprofit corporation or other such entity, association or organization receiving public funds.

(d) "Business with which he is associated" means any business of which a public servant or his relative is an officer, director, owner, partner, employee or is a holder of more than ten percent (10%) of the fair market value or from which he or his relative derives more than Two Thousand Five Hundred Dollars (\$2,500.00) in annual income or over which such public servant or his relative exercises control.

(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.

(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.

(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.

(m) “Person” means any individual, firm, business, corporation, association, partnership, union or other legal entity, and where appropriate a governmental entity.

(n) “Property” means all real or personal property.

- (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.
- (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).
- (r) "Securities" means stocks, bonds, notes, convertible debentures, warrants, evidences of debts or property or other such documents.

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.
- (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.

(b) Be a purchaser, direct or indirect, at any sale made by him in his official capacity or by the governmental entity of which he is an officer or employee, except in respect of the sale of goods or services when provided as public utilities or offered to the general public on a uniform price schedule.

(c) Be a purchaser, direct or indirect, of any claim, certificate, warrant or other security issued by or to be paid out of the treasury of the governmental entity of which he is an officer or employee.

(d) Perform any service for any compensation during his term of office or employment by which he attempts to influence a decision of the authority of the governmental entity of which he is a member.

(e) Perform any service for any compensation for any person or business after termination of his office or employment in relation to any case, decision, proceeding or application with respect to which he was directly concerned or in which he personally participated during the period of his service or employment.

(5) No person may intentionally use or disclose information gained in the course of or by reason of his official position or employment as a public servant in any way that could result in pecuniary benefit for himself, any relative, or any other person, if the information has not been communicated to the public or is not public information.

(6) Any contract made in violation of this section may be declared void by the governing body of the contracting or selling authority of the governmental subdivision or a court of competent jurisdiction and the contractor or subcontractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or the services furnished prior to the date of receiving notice that the contract has been voided.

(7) Any person violating the provisions of this section shall be punished as provided for in Sections 25-4-109 and 25-4-111.

II. FACTS

Facts provided by the requestor are set forth below, with identifying information redacted, and are considered a part of this opinion.

Please be advised that I serve as the Board Attorney for the Municipal School District. I am writing to request an official Advisory Opinion from your Commission.

The question I would like to pose is "Whether it would pose an ethical violation for an individual to serve simultaneously on a public school board and the school board of a charter school in the State of Mississippi?"

If your answer is in the negative, would the same situation make any difference if the dual service was done with the respective boards within the same county?

An expedited opinion would be greatly appreciated. Thank you in advance for your consideration and guidance in this matter.

II. ANALYSIS

The first question to be answered is whether a member of a charter school governing board is a "public servant," as defined in Section 25-4-103(p), Miss. Code of 1972. If an individual is a public servant, then that person is subject to the restrictions codified in Section 25-4-105 and other provisions of the Ethics in Government Law. In order to answer this preliminary question, the Ethics Commission must examine statutes outside the Ethics in Government Law. In doing so, the Ethics Commission is not interpreting those statutes but is merely applying the Ethics Law to them. In particular, the commission must consider the Mississippi Charter Schools Act of 2013, Sections 37-28-1 through 37-28-63.

§ 37-28-5. Definitions.

(e) "Charter school" means a public school that is established and operating under the terms of charter contract between the school's governing board and the authorizer. The term "charter school" includes a conversion charter school and start-up charter school.

(h) "Governing board" means the independent board of a charter school which is party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the school's application.

§ 37-28-39. Charter school and certain service providers to be nonprofit education organization; charter school to function as local educational agency.

(2) A charter school and any education service provider which provides comprehensive management for a charter school must be a nonprofit education organization.

§ 37-28-41. Charter school powers.

A charter school may exercise those powers necessary for carrying out the terms of its charter contract, including the following powers:

(a) To receive and disburse funds authorized by law for school purposes;

(c) To contract with an education service provider for the management and operation of the charter school so long as the school's governing board retains oversight authority over the school;

§ 37-28-45. Applicability of statutes, rules, regulations, policies, procedures, etc. that noncharter public schools are subject to; relation to other laws.

(6) Charter schools are not exempt from the following statutes:

(a) Chapter 41, Title 25, Mississippi Code of 1972, which relate to open meetings of public bodies.

(b) Chapter 61, Title 25, Mississippi Code of 1972, which relate to public access to public records.

Additionally, "any employee or member of the governing board of a charter school" is defined as an "employee" under the Tort Claims Act and is protected from liability as any other public servant of state and local government. See Section 11-46-1(f)(iii).

The governing boards of charter schools receive public funds from the Mississippi Department of Education and from local school districts, as well as other sources, and they are authorized by law to expend those public funds. See Section 37-28-55. The boards are subject to the Open Meetings Act and the Public Records Act, and they are afforded Tort Claims protection from lawsuits as other public servants. These factors lead the Ethics Commission to conclude that the members of charter school governing boards are "public servants" as defined in Section 25-4-103(p) and Section 25-4-3(l), are "public officials" as defined in Section 25-4-3(k), and are subject to all the applicable provisions of the Ethics in Government Law, Sections 25-4-1 through 25-4-121. Moreover, because charter schools are public schools, they are also "governmental entities," as defined in Section 25-4-103(h).

Consequently, the members of charter school governing boards are prohibited from engaging in all the actions and conflicts of interest which are proscribed in Section 25-4-105 and Section 109, Miss. Const. of 1890. For example, Section 37-28-39, quoted above, requires education service providers, with which charter schools contract to manage the schools, be non-profit entities. Governing board members are generally prohibited from having any interest in or official connection, whether directly or through a relative, with any non-profit or for-profit business entity which contracts with or otherwise does business with the charter school, as set forth in Section 109 and Section 25-4-105(1), (2) and (3)(a). Governing board members are also required to annually file Statements of Economic Interest, as outlined in Sections 25-4-25 and 25-4-27, just like other local school board members are required to do.

However, because charter schools are "governmental entities," an individual is not necessarily prohibited from serving on the governing board of a charter school while simultaneously serving on a local "non-charter" public school board, unless the public funding provided by the non-charter board to the charter school funds compensation paid to the governing board member for his or her service to the charter school. See Advisory Opinions No. 13-106-E and 13-080-E.

Nevertheless, because of the competing interests between the charter public school and the local non-charter public school district in which the charter school is located, simultaneous service on both boards is inadvisable and inconsistent with Section 25-4-101, which admonishes all public servants to avoid conduct which could raise suspicion among the public that they are violating the public trust. Therefore, individuals should choose between serving on the local “non-charter” public school board or the governing board of a charter school but should not serve on both at the same time.

MISSISSIPPI ETHICS COMMISSION

BY: _____
Tom Hood, Executive Director and
Chief Counsel