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## MISSISSIPPI ETHICS COMMISSION

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### ETHICS ADVISORY OPINION NO. 21-031-E

November 5, 2021

**Question Presented:** May the financially independent child of a member of the board of directors of a governmental district be employed by the district?

**Brief Answer:** Yes. If the parent and child are financially independent, then no violation of Section 109, Miss. Const. of 1890, or Section 25-4-105(2), Miss. Code of 1972, will occur, and the parent's full and complete recusal will prevent a violation of Section 25-4-105(1). The requestor should also consult the Office of Attorney General regarding nepotism.

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.

(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).

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 ... a political subdivision of the State of Mississippi, operating in accordance with Mississippi Code Annotated Section 17-15-1. In accordance with Mississippi Code Annotated § 17-15-1 the district is governed by a Board of Directors.

Would there be any ethical violations and/or prohibitions in hiring the daughter of a member of the Board of Directors to serve in a customer service position so long as the board member totally and completely recuses himself from any matters relating to his daughter? The position at issue does not report directly to the Board of Directors nor attend any board meetings. The board member's daughter is completely financially independent from her father and is married with children of her own. Her job duties would require her to work at the district office taking customer payments and handling customer related inquires, issues or problems.

Can your office please provide an advisory opinion in regard to any ethical violations or issues in relation to the hiring of the board member's daughter? Please let me know should your office need anything further from me.

### 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 any direct or indirect interest in a contract authorized by that board during the board member's term or for one year thereafter. Frazier v. State, ex rel. Pittman, 504 So.2d 675, 693 (Miss. 1987). If the director and his or her child are totally financially independent from each other, then the director would have no interest in the child's contract of employment with the district. See Advisory Opinion No. 14-032-E.

Examples of common financial interests precluding total financial independence include, but are not limited to, the child leasing or renting property from the parent, owing money to the parent, living on property owned by the parent, sharing liquid assets with the parent or co-owning a business with the parent. If the parent and child are indeed totally financially independent, then no violation of Section 109 or Section 25-4-105(2) should occur if the child is employed by the district.

However, the parent/director is still prohibited from participating in any action by the board of directors which could result in a monetary benefit for his or her child. Section 25-4-105(1), Miss. Code of 1972, bars the director from using his or her official position to obtain, or attempt to obtain, pecuniary benefit for his or her relatives, including a child. See Advisory Opinion No. 08-085-E. To avoid violating Section 25-4-105(1), the director must totally and completely recuse himself or herself from any matter coming before the board which would result in a monetary benefit to the child, such as payroll disbursements or claims, promotions, pay raises, benefit adjustments, evaluations, and any other matter which would result in a monetary benefit to the child, whether individually or as a member of a class of district employees.

A total and complete recusal requires that the director not only avoid debating, discussing or taking action on the subject matter during official meetings or deliberations, but also avoid discussing the subject matter with any other district employees or officials. This restriction 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, the minutes of the meeting should state the recusing director left the room before the matter came before the board and did not return until after the vote.

The Ethics Commission only has the authority to interpret the ethics in government laws listed at the beginning of this opinion. Legal opinions on all other laws are issued by the Office of the Attorney General. The requestor may wish to seek advice concerning the nepotism statute, Section 25-1-53, and any other matters arising outside of the Ethics in Government Law which may prohibit the proposed employment.

MISSISSIPPI ETHICS COMMISSION

BY: \_\_\_\_\_

Tom Hood, Executive Director and  
Chief Counsel