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### ADVISORY OPINION NO. 17-004-E

February 3, 2017

**Question Presented:** May the sibling of a new superintendent of education be recommended for continued employment in the school district's central office?

**Brief Answer:** No. Pursuant to Section 25-4-105(1), Miss. Code of 1972, the superintendent may not recommend a relative for continued employment, and the "step-aside" provision set out in Section 37-9-17 does not apply to employees of the central office.

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 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.

(b) “Benefit” means any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.

(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.

## II. FACTS

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

Can a school superintendent employ his/her sibling as a Licensed School Business Administrator?

The facts and circumstances surrounding this request are as follows:

Recently, the School District promoted the current Assistant Superintendent of Education to the position of Superintendent. At present, the district employs the now Superintendent's brother as a Licensed School Business Administrator, a position that has historically reported directly to the Superintendent. As Assistant Superintendent and Licensed School Business Administrator, the two avoided a conflict of interest by her not directly supervising him as it relates to financial matters in the district.

As Superintendent and Chief Executive Officer in the school district, can her responsibility for financial oversight be delegated to a subordinate Assistant Superintendent [?] Based on Opinion 14-039-E issued by your office on July 11, 2014, can the Superintendent fully recuse herself of all supervision of her sibling given her statutory role in managing tax payer dollars [?]

## III. ANALYSIS

Section 25-4-105(1), Miss. Code of 1972, quoted above, prohibits a school superintendent from using his or her position to obtain or attempt to obtain any pecuniary benefit for his or her "relative," as that term is defined in Section 25-4-103(q). If a superintendent recommends his or her relative to the school board for employment or renewal, then the superintendent will violate Section 25-4-105(1).

Section 37-9-17, Miss. Code of 1972, reads in pertinent part as follows:

The school board of any local school district shall be authorized to designate a personnel supervisor or another principal employed by the school district to accept the recommendations of principals or their designees for licensed employees or noninstructional employees and to transmit approved recommendations to the local school board; however, this authorization shall be restricted to no more than two (2) positions for each employment period for each school in the local school district. Any noninstructional employee employed upon the recommendation of a personnel supervisor or another principal employed by the local school district must have been employed by the local school district at the time the superintendent was elected or appointed to office; a noninstructional employee employed under this authorization may not be paid compensation in excess of the statewide average compensation for such noninstructional position with comparable experience, as established by the State Department of Education.

The Office of the Attorney General has opined that Section 37-9-17 is applicable only to employees of schools and is not applicable to employees of the district office. Op. Atty. Gen. No. 2002-0137. See Advisory Opinions No. 15-059-E and 11-058-E.

Since Section 37-9-17 does not apply to the position identified by the requestor, the superintendent's relative cannot be recommended to the board for continued employment. The Ethics Commission only has the authority to interpret the ethics in government laws listed at the beginning of this opinion. The commission is not interpreting other laws cited in this opinion but is merely applying them to an interpretation of the ethics laws. Legal opinions on all other laws are issued by the Office of the Attorney General.

Moreover, when an employee works under the direct supervision of his or her relative, a violation of Section 25-4-105(1) is virtually inevitable. The superintendent may be responsible for approving wages, salary or reimbursement to the relative, in addition to periodically reviewing his or her job performance. The superintendent may be responsible for approving various matters related to central office staff and could possibly show preference to the relative in these day-to-day actions. Any of those actions would result in a violation of Section 25-4-105(1). Typically, a public servant can avoid violating Section 25-4-105(1) by recusing himself or herself from the matter in issue. However, recusal by the superintendent under these facts is impractical if not impossible in light of the superintendent's daily supervisory responsibilities.

Additionally, the board of education should pay particular attention to the guidelines set forth in Section 25-4-101. 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. Justified public criticism can result when the superintendent is directly supervising a close relative. The Ethics Commission advises one of the individuals should resign their position.

MISSISSIPPI ETHICS COMMISSION

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