

## MISSISSIPPI ETHICS COMMISSION

Mississippi School Boards Association  
Legislative Update  
April 27, 2021

### Ethics in Government Law

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## MISSISSIPPI ETHICS COMMISSION

Administers and enforces the **Ethics in Government Law** by

- Keeping Statements of Economic Interest;
- Investigating alleged violations of law;
- Issuing written advisory opinions.

The Commission also enforces the

- **Open Meetings Act** and
- **Public Records Act**

The Commission also issues advisory opinions on the **Campaign Finance Law** and levies fines for late filing of campaign finance reports.

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## Statement of Economic Interest (SEI)

- **Members of all public school boards must file, whether elected or appointed.**
- **Candidates for elected office and persons appointed to fill a vacancy in an elected office must also file.**
- Incumbents must file before May 1 every year.
- Must be filed electronically on Ethics Commission web site.
- System saves information from previous year. If your information has not changed, you simply review it, and click a few buttons to refile.

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## Complaint Process

- Sworn complaint must be filed alleging a violation of law by a public servant before an investigation can be conducted.
- If investigation is authorized by Commission, it is conducted before respondent is notified.
- Respondent has 30 days to file a response.
- All investigative proceedings and records are strictly confidential, and breach of confidentiality constitutes a crime.

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## Enforcement

- Commission will hold hearings to determine guilt and to impose penalties.
- Appeals go to Hinds County Circuit Court.
- Commission can impose fines up to \$10,000, order public servant to repay all money received, and order equitable remedies.
- Commission can *recommend* that Hinds County Circuit Court remove an official or suspend or demote an employee

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## Eight Basic Prohibitions

- Board Member Contracts
- Use of Office
- Contracting
- Purchasing Goods and Services
- Purchasing Securities
- Insider Lobbying
- Post Government Employment
- Insider Information

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Section 109,  
Miss. Constitution 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.

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Section 109,  
Miss. Constitution of 1890

- *Section 109 only applies to members of boards and the Legislature.*
- *There must be some sort of contract but does not have to be a written contract.*
- *The conflict arises when the board funds or otherwise authorizes the contract. Even if the individual member does not vote, he or she may be in violation.*
- *Notice the prohibition is against an interest, not against an act.*
- *The prohibition continues until a board member has been out of office for one year.*

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**Advisory Opinion**

19-024-E An employee of a school district may not continue to be employed by the district after the employee becomes a member of the school board. If elected, he must resign his employment position before he takes office on the school board to ensure no violation occurs.

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### Advisory Opinion

17-025-E A business partially owned by a school board member may not serve as a vendor to the school district. Section 109 and Section 25-4-105(2) prohibit a school board member from having a direct or indirect interest in any contract which is funded or otherwise authorized by the school board during that board member's term or for one year thereafter.

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### Advisory Opinion

17-080-E The spouse of a school board member may not be employed as a substitute teacher by a company which contracts with the school board to provide substitute teachers to the school district. The school board member would have a prohibited interest in the contract in violation of Section 109 and Section 25-4-105(2).

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### Advisory Opinion

19-059-E Although inadvisable, the spouse of a new school board member may remain employed in the district for the remainder of the current academic year **only** if the school board takes no future action to authorize the employment.

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### Advisory Opinion

13-024-E A school board member may have an interest in a Sixteenth Section lease **only** when the lease was authorized **before** the school board member took office, and the school board will **take no action** on the lease during the board member's term or for one year thereafter.

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### Section 25-4-105(1)

(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**.

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### Section 25-4-105(1)

- The statute does not require a public servant misuse his or her position.
- To avoid a violation, a public servant must totally and completely **recuse** himself or herself from the matter giving rise to the conflict.
- A board member must leave the board meeting before the matter comes up for discussion, may only return after the matter is concluded, and must not discuss the matter with anyone.
- An abstention is considered a vote with the majority and is not a recusal. The minutes of the meeting should accurately reflect the recusal.
- **Recusal does not prevent other violations.**

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Section 25-4-105(1)  
"Relative" is the public servant's

- spouse,
- child,
- parent,
- sibling (brothers and sisters) or
- spouse of a relative (in-laws).

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Advisory Opinion  
10-035-E A school board member whose financially independent relative is employed by the school district may not participate in discussions and actions approving the **annual school district budget**. Only when a board member's recusal would result in the **loss of a quorum** and render the board unable to act may board member participate in approving district budget.

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Advisory Opinion  
14-028-E If new school board member and sibling are indeed **financially independent**, then sibling can remain employed by district and no violation of Section 109 or Section 25-4-105(2) should occur, but the board member **must recuse** himself or herself from any matter which would result in a pecuniary benefit to the relative, in compliance with Section 25-4-105(1).

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### Section 25-4-105(1)

- 'Business with which he is associated'** means public servant or his relative is
- officer, director, owner, partner, employee
  - holder of more than ten percent (10%) of the fair market value or
  - from which he or his relative derives more than \$2,500 in annual income or
  - over which such public servant or his relative exercises control.

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### Advisory Opinion

10-006-E A member of a school board may also serve as an officer of a Parent Teacher Organization (PTO) within the same school district. So long as the PTO is not receiving any funds from the district, no violation of Section 109 or Section 25-4-105(2) should arise. But the school board member must fully recuse from any action which would result in a pecuniary benefit to the PTO in compliance with Section 25-4-105(1).

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### Advisory Opinion

13-117-E The school district may enter a construction contract with a business owned by the child of the district's accounts payable clerk, but the accounts payable clerk must fully recuse herself from any matter coming before the school district concerning the contract, the child, or the child's business to ensure compliance with Section 25-4-105(1).

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***Subsection (3)(a) –  
The Contractor Prohibition***

(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.

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**Advisory Opinion**

14-008-E A business owned by a school teacher may not serve as a contractor to the school district which employs the teacher. Section 25-4-105(3)(a) prohibits a teacher from having a material financial interest in a business that serves as a contractor to his or her own school district.

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**Advisory Opinion**

11-054-E School district employees may be assigned additional duties and paid additional compensation. While they cannot hold two separate positions with the same district, one may accept additional duties and receive additional compensation without violating Section 25-4-105(3)(a) if paid under one contract.

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***Subsection (3)(b) –  
The Purchaser Prohibition***

(3) No public servant shall: (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.

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***Subsection (3)(b) –  
The Purchaser Prohibition***

For example, this subsection prohibits a government employee or official from purchasing anything at an auction or other sale conducted on behalf of his or her governmental entity.

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***Section 25-4-105(4) –  
Exceptions to Subsection (3)***

- These exceptions only apply to Subsection (3) and not to any other provisions of law.
- Can apply to a government employee but does not protect a board member from a violation of Section 109 or Section 25-4-105(2). The employee would still have to recuse himself or herself from any action which might otherwise violate Section 25-4-105(1).

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***Subsection (3)(e) –***

***Post Government Employment***

(3) No public servant shall: (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.

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**Advisory Opinion**

14-004-E A former public servant is not prohibited by Section 25-4-105(3)(e), Miss. Code of 1972, from contracting directly with his or her former governmental employer in his or her individual capacity after termination of governmental employment.

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**OTHER LAWS**

Not part of Ethics Law  
but do relate to schools.

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### § 37-9-17: Step-Aside in Hiring

- Principal or superintendent **cannot** recommend employment of relative.
- Board may designate someone else to recommend relative.
- Cannot be used for central office staff.
- Limited to 2 jobs per school.
- Noninstructional employee must have been previously employed and cannot be paid more than statewide average.

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### Advisory Opinion

17-004-E 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.

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### Advisory Opinion

14-039-E A school superintendent’s siblings may be employed as a principal or counselor in the same district. If the school board’s **designee recommends** a superintendent’s siblings and the **superintendent fully and completely recuses** himself or herself from the hiring and supervision process, then the superintendent does not violate Section 25-4-105(1).

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§ 37-9-21: School Nepotism

- Cannot hire licensed employee if related within third degree to majority of board.
- Board member cannot vote on licensed employee related within third degree.
- Contract is null and void if it violates this statute.

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§ 37-7-333: Bank Contracts

- If school board member has connection to a bank which bids on depository contract, then don't open any of the bids.
- Superintendent sends all sealed bids to state treasurer, who opens bids and selects depository.

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Section 210, Miss. Constitution

- No superintendent, trustee or teacher may have any interest in the sale of anything to any public school in the state.

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## Contact Us

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