



Lynn Fitch
ATTORNEY GENERAL
OPINIONS

June 5, 2020

Anthony E. Nowak, Esq.
Attorney for the DeSoto County Board of Supervisors
Post Office Box 346
Hernando, Mississippi 38632

Re: Nepotism

Dear Mr. Nowak:

The Office of the Attorney General is in receipt of your request for the issuance of an official opinion.

Questions Presented

Would a violation of the Nepotism Statute result if an elected official employed his/her grandchildren for temporary positions during a particularly busy time of the year to perform certain ministerial duties, such as opening the mail and answering the phone?

What would be the potential for liability if it is determined that such employment is in violation of the Nepotism Statute or Miss. Code Ann. Section 25-4-105 (conflicts of interest)?

Background Facts

An elected county official seeks to hire his/her two (2) grandchildren for temporary positions within his/her office during a particularly busy time of the year. The grandchildren will open and distribute the mail to the office clerks and answer the telephones when the regular staff members are too busy to do so. The grandchildren will perform only ministerial tasks.

Brief Response

Whether the hiring of an elected official's grandchildren to perform the ministerial duties described in your letter would violate the Nepotism Statute, Miss. Code Ann. Section 25-1-53, would be a question of fact to be determined by the hiring authority.

Miss. Code Ann. Section 25-1-55 renders an appointing authority liable for all amounts paid to a person appointed in violation of the Nepotism Statute.

Questions pertaining to a potential conflict of interest and a resulting penalty arising from the proposed employment should be addressed to the Mississippi Ethics Commission.

Applicable Law and Discussion

Section 25-1-53, provides, in pertinent part:

It shall be unlawful for any person elected, appointed or selected in any manner whatsoever to any state, county, district or municipal office, or for any board of trustees of any state institution, to appoint or employ, as an officer, clerk, stenographer, deputy or assistant who is to be paid out of the public funds, any person related by blood or marriage within the third degree, computed by the rule of the civil law, to the person or any member of the board of trustees having the authority to make such appointment or contract such employment as employer.

This office has consistently employed a three-part analysis to determine whether an employment relationship violates the Nepotism Statute. First, are the parties related within the third degree? Second, is the relative who is a public official the “appointing authority”? Third, is the job included in the list of prohibited positions? If the answer to any of these three questions is ‘no’, there is no violation of the statute.” MS AG Op., *Dickinson* (February 3, 2017) *citing* MS AG Op., *Harrington* (May 30, 1991).

By reference to the facts as stated in your request, the prospective employees are related within the third degree to the hiring authority for the positions. However, whether the job duties contemplated by the proposed positions are those of any one of the five positions listed by Section 25-1-53 is a question of fact¹. An official opinion cannot determine facts but must be based on the facts as presented. Miss. Code Ann. Section 7-5-25. Thus, the hiring or appointing authority must answer the third question of the analysis and if that answer is in the affirmative, then the proposed employment would be a violation of Section 23-1-53.

If the proposed employment results in a violation of the Nepotism Statute, the appointing authority shall be held liable for all amounts paid to those employees. Section 25-1-55 states:

[a]ny person violating the provisions of Section 25-1-53 shall forfeit to the State of Mississippi, and shall be liable on his official bond for, an amount equal to the sum of all moneys paid to any person appointed or employed in violation of the provisions aforesaid.

¹ See, MS AG Op., *Jones* (April 12, 1982)(the wife of an alderman could not be employed by the City to “just fill in and collect water bills the first ten working days of each month”).

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This office cannot address your question pertaining to a potential conflict of interest resulting from the proposed employment, please direct this question to the Mississippi Ethics Commission.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Phil Carter*

Phil Carter

Special Assistant Attorney General

OFFICIAL OPINION