



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

April 12, 2021

Scott F. Slover, Esq.
Attorney, Adams County Board of Supervisors
314 State Street
Natchez, Mississippi 39120

Re: Nepotism in appointment of assistant public defender

Dear Mr. Slover:

The Office of the Attorney General has received your request for an official opinion.

Question Presented

Would Mississippi's nepotism statute be violated by a public defender appointing, to the position of assistant public defender, the sister and/or daughter of the Senior Circuit Court Judge?

Brief Response

No. However, we suggest you contact the Mississippi State Ethics Commission regarding a potential conflict of interest.

Applicable Law and Discussion

Mississippi Code Annotated Section 25-1-53, Mississippi's nepotism statute, provides, in 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 section shall not apply to any employee who shall have been in said department or institution prior to the time his or her kinsman, within the third degree, became the head of said department or institution or member of said board of trustees; and this section shall not apply to any person seeking appointment as an election worker who has served as an election worker in the election immediately preceding the

commencement of a term of office as an election commissioner by his kinsman within the third degree. The provision herein contained shall not apply in the instance of the employment of physicians, nurses or medical technicians by governing boards of charity hospitals or other public hospitals.

In describing the analysis required to determine whether a violation of Mississippi's nepotism statute has occurred, this office has opined in the following manner:

In determining whether the nepotism statute applies, it is necessary to apply a three-part analysis. One, are the parties related within the third degree? Two, *is the relative who is a public official the appointing authority?* Three, is the position one of the five enunciated positions in the statute? If the answer to any one of these questions is no, the nepotism statute does not prohibit the appointment or employment of the individual in question.

MS AG Op., *Gilfoy* at *1 (Aug. 26, 1993). As we stated in *Gilfoy*, if the answer to any of these questions is “no,” “the nepotism statute does not prohibit the appointment or employment of the individual in question.” *Id.*

Your request states that the public defender would appoint the assistant public defenders. Accordingly, under your facts, the public defender is the appointing authority. Since the Senior Judge—the relative of the prospective assistant public defender in question—is not the appointing authority, there is no violation of Mississippi's nepotism statute.

As an additional note, whether the appearance of the assistant public defender before the relative judge would impose any obligations on the judge under the Code of Judicial Conduct is beyond the scope of this opinion. MS AG Op., *Shepard* at *3 (Apr. 1, 2013) (stating the Attorney General, by official opinion, does not “analyze or offer opinions on issues raised by the Mississippi Rules of Professional Conduct or the Mississippi Code of Judicial Conduct”). Further, we recommend you contact the State Ethics Commission regarding any potential conflicts of interest.

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