



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 3, 2023

Scott Johnson Smith
Superintendent, North Tippah School District
20821 Highway 15
Falkner, Mississippi 38629

Re: Nepotism and Conflicts of Interest

Dear Superintendent Smith:

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

Background

Your request states that a school board member has contacted a North Tippah School District (“School District”) administrator about allowing the administrator’s brother to do concrete work for one of the schools within the School District. You explain that the subject administrator works as the School District’s business manager and purchasing agent. You are concerned that hiring the family member of a school district administrator would violate Mississippi’s nepotism statutes.

Question Presented

Would it be a violation of Mississippi’s nepotism statutes for the School District to hire the brother of a School District administrator to do concrete work for the School District?

Brief Response

There would be no violation of Mississippi’s nepotism statutes if the School District hired the brother of the School District administrator to perform concrete work for the School District. However, there could potentially be a conflict of interest prohibited by Mississippi Code Annotated Section 37-11-27 or a violation of Mississippi Ethics in Government Laws.

Applicable Law and Discussion

Section 25-1-53, Mississippi’s general 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.

(emphasis added).

This office has consistently applied a three-part analysis to determine whether an employment relationship violates Section 25-1-53. “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., *Nowak* at *1 (June 5, 2020) (citing MS AG Op., *Harrington* (May 30, 1991)). In your scenario, there would be no violation of Mississippi’s general nepotism statute because the position being considered –an employee performing concrete work– is not one of the five prohibited positions within Section 25-1-53.

Section 37-9-21, Mississippi’s public school nepotism statute, prohibits school board members from voting “for any person as a superintendent, principal or licensed employee who is related to [them] within the third degree by blood or marriage or who is dependent upon him in a financial way.” This statute is not applicable to your fact scenario because a school district administrator working as the School District’s business manager and purchasing agent is not a member of the school board. Additionally, the prohibition concerns the hiring of a superintendent, principal, or licensed employee, none of which apply to an employee performing concrete work.

Notably, Section 37-11-27, which prohibits conflicts of interest by certain school personnel, is also relevant. That section provides, in pertinent part:

It shall be unlawful for any . . . school district administrator with authority to negotiate school district contracts, to have or own any direct or indirect interest individually or as agent or employee of any person, partnership, firm, or corporation in any contract made or let by the county board of education, the county superintendent of education or the board of trustees of the school district for the construction, repair, or improvement of any school facility, the furnishing of any supplies, materials, or other articles, the doing of any public work or the transportation of children or upon any subcontract arising therefrom or connected therewith in any manner.

This office has previously opined that the use of the terms “any direct or indirect interest” has “very broad implications.” MS AG Op., *Waits* at *1 (Jan. 17, 1980) (opining “that if the Superintendent has absolutely nothing to do with – and takes no part in – the awarding of a contract for repairs to . . . his uncle and father” there would be no violation of Section 37-11-27); *see also* MS AG Op., *Hill* at *1 (Apr. 5, 2019) (opining that “a person generally has an interest in a contract of his or her spouse within the meaning of Section 37-11-27.”). Whether the School District

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administrator mentioned in your request has an actual or indirect interest in a type of contract listed in Section 37-11-27 is a determination of fact to be made by the School District. Likewise, whether the School District administrator is one “with authority to negotiate school district contracts” involves issues of fact to be determined by the School District.

To the extent your question raises other possible ethics issues, we recommend you contact the Mississippi Ethics Commission regarding any potential conflicts of interest governed by Mississippi’s Ethics in Government Law. Miss. Code Ann. §§ 25-4-101, *et seq.*

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/ Beebe Garrard*

Beebe Garrard

Special Assistant Attorney General

OFFICIAL OPINION