

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

April 5, 2019

John S. Hill, Attorney  
Starkville Oktibbeha Consolidated School District  
Post Office Box 7120  
Tupelo, Mississippi 38802-7120

Re: Miss. Code Ann. Section 37-11-27

Dear Mr. Hill:

Attorney General Jim Hood has received your opinion request and has assigned it to me for research and reply.

### Issues Presented

According to your request, an architect who contracts with the Starkville Oktibbeha Consolidated School District ("School District") recently married an assistant principal employed by the school district. Citing Sections 25-4-101, *et seq.*, and 37-11-27 of the Mississippi Code, you ask whether existing contractual relationships with the architect must be terminated and whether the School District can prospectively enter into a contractual relationship with the architect.

### Response

It is the opinion of this office that a person generally would have at least an indirect interest in the contracts executed by his or her spouse. Whether the specific employee mentioned in your request has an actual direct or indirect interest in a type of contract listed in Section 37-11-27 requires factual determinations to be made by the school board.

### Applicable Law and Discussion

Section 37-11-27 of the Mississippi Code provides:

It shall be unlawful for any member of the board of trustees of any school district, any member of the county board of education, the county superintendent of education or any superintendent, principal, teacher, or

employee of a county board of education or any school district 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. The board of trustees of any school district shall be authorized to contract with a teacher or school district employee to perform extra work without being in violation of the provisions of this section. The board of trustees shall make a case by case determination of the possible conflicts of interest arising from any extra work contracts and such decision by the board shall be final. Any contract entered into in violation of the provisions of this section shall be void and of no effect. Any person who shall authorize or enter into any contract in violation of the provisions hereof, or who shall knowingly or wilfully pay out or receive any money upon any such contract shall be civilly liable for the amount so paid or received, and, in the case of an official who has furnished a bond, the surety upon such bond shall likewise be liable for such amount. In addition thereto, any person who shall violate the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or by imprisonment in the county jail not less than thirty (30) days nor more than ninety (90) days, or by both such fine and imprisonment, in the discretion of the court.

According to the plain language of the above-cited statute, a school principal cannot have a "direct or indirect interest" in any contract made by 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." Our office has previously opined that the use of the terms "any direct or indirect interest" has "very broad implications." The present situation involves a spouse of an assistant principal providing architectural services under a contract with the School District. It is the opinion of this office that a person generally has an interest in a contract of his or her spouse within the meaning of Section 37-11-27.<sup>1</sup>

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<sup>1</sup>In MS AG Op., Waits (January 17, 1980), this office opined that "under the factual situation stated in your letter, it is the opinion of this office that if the Superintendent has absolutely nothing to do with – and takes no part in – the awarding of a contract for repairs to or purchasing [of] gas and tires from his uncle and father, it would not be illegal for Stone County to continue buying from both of these parties." The relationships involved in Waits were that of father/adult son and uncle/adult nephew. Under those facts, there was no evidence that the individual had any interest in either his father or uncle's contract. Moreover, it was not suggested that the individual used his position to

This interpretation is supported in prior interpretations by the courts and the Mississippi Ethics Commission of similar language in constitutional and statutory provisions. Both Section 109 of the Constitution<sup>2</sup> and Section 25-4-105(2)<sup>3</sup> contain prohibitions against certain public servants having direct or indirect interests in contracts. The Ethics Commission has opined, relying on Supreme Court precedent, that under these provisions, a person has an interest in his or her spouse's contract. See e.g., Ethics Advisory Opinion No. 19-001-E (Feb. 1, 2019)(citing *Smith v. Dorsey*, 530 So.2d 5, 9 (Miss. 1981)). Moreover, the Ethics Commission has stated that the proper manner in which to handle existing contracts is for the contract to be terminated before a violation occurs.<sup>4</sup> For these reasons, it is the opinion of this office that a spouse of an employee/officer identified in Section 37-11-27 may not contract or maintain a contract that is "made or let by the county board of education, the county superintendent . . . or the board of trustees" with regard to "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."

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obtain these contracts for his relatives. The references in Waits that the Superintendent had "nothing to do with the contract" may have been relevant to show that he did not have a direct or indirect interest in the contract or that he did not improperly use his office to gain a pecuniary benefit for himself or his relative. See Miss. Code Ann. Section 25-4-105 (1972). This office issued its opinion in MS AG Op., Chaney, Jr. (March 9, 2001) and carried forward the language that "it is the opinion of this office that if a secretary or part-time teacher has absolutely nothing to do with, and takes no part in, the awarding of a contract for the performance of odd jobs or the purchasing of batteries from her spouse, it would not be illegal for South Delta School District to contract with..." the spouse. The Chaney opinion did not draw the distinction of that in Waits — a spousal relationship was not involved. Given the interpretation of similar language in both Section 109 and Section 25-4-105(2) discussed *infra*, we are of the opinion that a spouse, by default, does have an interest in his or her spouse's contracts. To the extent that the Chaney opinion conflicts with this opinion, it is hereby modified.

<sup>2</sup>Section 109 provides: "**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." Miss. Const. Art. 4, Section 109 (emphasis added).

<sup>3</sup>This section provides: "(2) **No public servant shall be interested, directly or indirectly,** during the term for which he shall have been chosen, or within one (1) year after the expiration of such term, **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." Miss. Code Ann. Section 25-4-105 (1972) (emphasis added).

<sup>4</sup>This situation occurs often where a spouse is elected as a member of a governing body for whom his or her partner is employed. For example, if a spouse is elected to a school board, the other spouse that is an employee generally should resign before the spouse takes office. Generally, contracts that would be violative of such a provision should be terminated prior to an act which would place such contract in violation of the statute.

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Because your request involves past action and because it requires a factual determination as to whether the subject contract<sup>5</sup> is, in fact, covered by Section 37-11-27, this office expresses no opinion regarding the subject facts or whether there has been a violation of the statute. The first part of your inquiry concerns whether existing contractual relationships must be terminated. This office cannot validate nor invalidate past actions. Here, the actions have already occurred and potentially implicate misdemeanor violations. Our office can neither legally nor ethically opine with regard to whether the prior acts identified in your letter constitute a criminal violation. With regard to the second part of your inquiry relating to entering into a prospective contract, it is our opinion that a violation of Section 37-11-27 could occur if a spouse of an assistant principal enters into a contract with the School District. This determination is, of course, dependent on whether the prospective contract is of the type identified in Section 37-11-27. That determination is a factual matter that must be made by the School District in the first instance.

To the extent your questions raise possible ethics issues under Sections 25-4-101 *et seq.*, we refer you to the Mississippi Ethics Commission to determine whether the Ethics in Government Laws are implicated.

If we may be of further service, please let us know.

OFFICIAL **OPINION**  
Very truly yours,  
JIM HOOD, ATTORNEY GENERAL

By:



Beebe Garrard  
Special Assistant Attorney General

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<sup>5</sup>This office has not reviewed the contract nor would we undertake to make this determination.