

SUBJECT: NEPOTISM APPLICABILITY TO CITY

SUMMARY:

A city employee who supervises his son may not participate in actions affecting his son's advancement, promotion, or transfer. There is no specific requirement for the son to be transferred to another division.

QUESTION:

The City Manager of Dillon has advised that a father-son team is employed as Service Director-Foreman in direct supervision. He questions whether there is any problem concerning raises, promotions, etc. He also questions whether he is required to transfer the son to another division where the son would not be supervised by his father.

DISCUSSION:

This opinion is rendered in response to a letter dated February 21, 1992 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; Section 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

As to the first question, Section 8-13-750 provides:

(A) No public official, public member, or public employee may cause the employment, appointment, promotion, transfer, or advancement of a family member to a state or local office or position in which the public official, public member, or public employee supervises or manages.

(B) A public official, public member, or public employee may not participate in an action relating to the discipline of the public official's public member's, or public employee's family member.

Family member is defined in Section 8-13-100(15) as:

"Family member" means an individual who is:

- (a) the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild; or
- (b) a member of the individual's immediate family

The son would not be required to resign from his position with city government, however, the father is prohibited from taking action to hire, promote, advance, or participate in disciplinary actions over the son. The father is advised to follow the procedures of Section 8-13-700(B) which provides in part as follows:

No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

* * *

(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

There is no requirement that the son must be transferred to another division in order that the father has no supervisory responsibility for him, however, under the circumstances presented, the father is unable to take any action affecting his son's advancement opportunities as a result of Section 8-13-750.