

SUBJECT: HIRING OF CHILD OF BOARD MEMBER

SUMMARY:

The child of an agency Board member may be hired by the agency without violating the nepotism provision in the Ethics Reform Act since there is no direct management or supervision of the employee by the Board member.

QUESTION:

A Manager of a public agency requests an opinion concerning the hiring of a child of a member of the Board of that agency. The child has qualifications by which the agency would favorably consider the hiring if the member was not a Board member. There are three levels of management between the Board member and the position under consideration.

DISCUSSION:

This opinion is rendered in response to a letter dated June 9, 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.

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.

It does not appear that the Board member has direct supervision or management authority over

the position for which the child is a candidate. The Board member is advised of the provisions of Section 8-13-700(B) which provides:

(B) 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;

* * *

(5) if he is a public member, he shall furnish a copy to the presiding officer of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause such disqualification and the reasons for it to be noted in the minutes.

The child of the Board member is not precluded from being hired by the agency provided that the Board member takes no action to influence the hiring. The Board member is also advised against participation in matters affecting the child, if the child should be hired by the agency, in accordance with the provisions of Section 8-13-700(B).