

SEC AO2006-003

May 17, 2006

SUBJECT: NEPOTISM

SUMMARY: A public employee and a public member may continue in their respective positions with the same governmental entity following their marriage without violating the nepotism prohibitions of Section 8-13-750.

QUESTION:

A public employee of a technical college has married a public member of the college's commission. She asks based on the Ethics Reform Act's nepotism provisions of Section 8-13-750 whether they may each remain in their positions?

DISCUSSION:

This opinion is rendered in response to a letter dated May 3, 2006 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the State Ethics Act, S.C. Code §2-17-10; 8-13-100 (Supp. 1996). 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 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.

A family member who was employed by a technical college prior to marrying a college commissioner would not be required to resign since Section 8-13-750 prohibits taking action to hire, appoint, promote, transfer, or advance family members to positions which the college commissioner manages or supervises. The college commissioner must not participate in disciplining a family member. A college commissioner whose spouse is an employee of the college must, however, follow the provisions of Section 8-13-700(B) if dealing with compensation of his spouse.

Section 8-13-700(B) 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;

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- (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.

Economic Interest is defined in Section 8-13-100(11) as:

(11)(a) Economic interest" means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

On general salary raise issues, the college commission would not be prohibited from participating in deliberations and votes since the economic interest accrues to all college employees as a class. The Commission advises, however, that in accordance with Section 8-13-700(B), the college commissioner could not participate in deliberations and votes on matters directly affecting his spouse as an individual, such as a raise for that specific employee outside the raises approved for all college employees as a group.

Finally, the Commission does not normally review employee compliance of other agencies' policies and procedures; however, the nepotism prohibition of both the state policy and the local policy track the language of Section 8-13-750. The actions of the college employee and college commissioner appear to comply with both the state policy and local policy.

CONCLUSION: The Commission concludes that a public employee and a public member may continue in their respective positions with the same governmental entity following their marriage without violating the nepotism prohibitions of Section 8-13-750.

KEY WORDS: nepotism, family member, immediate family member, economic interests
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ANNOTATIONS: 8-13-750, 8-13-700(B), 8-13-100(11) and (15)
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