

SEC AO2009-001

July 16, 2008

SUBJECT: NEPOTISM

SUMMARY: A public employee and a public member must review the personnel policy for their governmental entity since its nepotism policy can be more restrictive than Section 8-13-750 of the Ethics Reform Act. Greenville Technical College's nepotism policy is more restrictive than Section 8-13-750. A commissioner may not employ a family member, to include a spouse, in any position under his significant influence or control. The college may enforce its own nepotism policy in addition to Section 8-13-750.

QUESTION:

A committee to review a potential nepotism issue at Greenville Technical College seeks a clarification of SEC AO2006-003 wherein a public employee of the technical college had married a public member of the college's commission. She asked based on the Ethics Reform Act's nepotism provisions of Section 8-13-750 whether they could each remain in their positions? The committee seeks further review of its nepotism policy to confirm that the college may enforce its own policy in addition to Section 8-13-750.

DISCUSSION:

This opinion is rendered in response to a letter dated June 24, 2008 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 by Section 8-13-750 to resign. 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;

* * *

(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 Greenville Technical College Policy and Procedure section about the employment of relatives provides:

Individuals with supervisory or management authority (to include State Board and local Commission members) may not hire, or have employed in any position (FTE, temporary, or temporary grant) under his/her direct supervision, chain of command, significant influence or control, any person(s) related or connected to the employee or to the supervisor by blood or marriage including spouses, parents, grandparents, children, brothers, sister, grandchildren, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law.

Notwithstanding the language in Section 8-13-750, the college policy states that a commissioner may not employ a family member, to include a spouse, in any position under his significant influence or control. The college may enforce its own nepotism policy in addition to Section 8-13-750.

CONCLUSION:

The Ethics Reform Act does not prohibit family members from working or serving the same governmental entity; however, a public member and a public employee must also review the personnel policy for their governmental entity as its nepotism policy can be more restrictive than the Ethics Reform Act's policy. Greenville Technical College can enforce its nepotism policy; notwithstanding, that the policy is more restrictive.

KEY WORDS:	nepotism, family member
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ANNOTATIONS:	8-13-750, 8-13-700(B), 8-13-100(15)
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