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State of South Carolina

State Ethics Commission

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SEC AO92-156

March 25, 1992

SUBJECT: EFFECT OF NEPOTISM PROVISION

SUMMARY:

In accordance with Section 8-13-750, (1) Continued employment relationships regarding permanent employees prior to 01/92 would not be prohibited, however, a manager or supervisor would be prohibited from taking any action beginning 01/92 to affect the employment relationship of a family member. (2) A manager or supervisor would be prohibited from taking any action regarding a family member who is employed on a temporary basis. (3) Family members may be employed within the agency so long as the manager or supervisor takes no action to affect the family member. (4) Employment relationships caused by marriage after 01/01/92 would be prohibited as in (1) through (3).

QUESTION:

The Executive Director of PRT seeks opinions on the following:

1. Does the Act prohibit continued employment relationships of family members which were legal under the provisions of Sub-Regulation 19-707.02-J?
2. Does "a state or local office or position" as stated in the Act pertain to emergency, seasonal, and temporary employment situations? May supervisors employ covered family members for brief periods in a temporary capacity?
3. Does "office or position" as mentioned in item 2 above refer to only positions directly under the supervision of a public employee who is a supervisor or manager?

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4. Would relationships caused by marriage subsequent to passage of this Act result in the Agency being in violation of the Act?

DISCUSSION:

This opinion is rendered in response to a letter dated March 2, 1992 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the State Ethics Act (Act No. 248 of 1991; Section 8-3-100 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):

"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.

Immediate family is defined in Section 8-13-100(18):

"Immediate family" means:

- (a) a child residing in ... the household;
- (b) a spouse ...; or
- (c) an individual ... claimed as a dependent for income tax purposes.

Sub-Regulation 19-707.02-J is a regulation of the Division of Human Resource Management as was amended 01/92 to be consistent with the provisions of Section 8-13-750.

In response to Question 1, the Commission advised in Opinion SEC AO92-030, that a son who was hired before his father became the

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Chief Administrative Officer, would not require termination, but that the father could not participate in personnel matters affecting his son. Section 8-13-750 does not prohibit a family member being employed in the same agency; however, it does prohibit certain actions regarding that family member. Those prohibited actions include causing the employment, appointment, promotion, transfer, advancement, or discipline. The Commission therefore advises that continued employment relationships regarding permanent employees prior to 01/92 would not be prohibited; however, a manager or supervisor would be prohibited from taking any action beginning 01/92 to affect the employment relationship of a family member. The Commission calls attention to the provisions of Section 8-13-700(B) which provides in part as follows:

(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;

* * *

(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;

In regard to Question 2, Section 8-13-750 does not distinguish between permanent and temporary employees. Therefore, the Commission advises that a manager or supervisor would be prohibited from taking any action regarding employment, appointment, promotion, transfer, advancement or discipline of a

family member who is employed, whether on a temporary or permanent basis.

Regarding Question 3, the Commission addressed a similar issue in Advisory Opinion A092-096 in which a county councilman was advised that a family member could be hired by the Agriculture Fair Board since there was no direct management or supervision of the employee by the Councilman. The Commission therefore advises that family members may be employed within the agency, so long as the manager or supervisor exercises no direct management or supervision and takes no other action to affect personnel actions regarding the family member.

In response to Question 4, the Commission advises that employment relationships caused by marriage after 01/01/92 would fall within the restrictions of Section 8-13-750 in that the manager or supervisor would be prohibited from taking any action affecting the spouse, however, a spouse may be employed in the agency so long as the position is not under the management or supervision of the other spouse.