

SUBJECT: EFFECT OF NEPOTISM STATUTE

SUMMARY:

Section 8-13-750(A) would not require the termination of a son who was hired before his father became the Chief Administrative Officer. The father, however, cannot participate in personnel matters affecting his son.

QUESTION:

Counsel for five units of local government seeks an opinion on the following situation:

The son of the Chief Administrative Officer of a unit of local government was employed by the unit prior to his father becoming Chief Administrative Officer. Thereafter the father was promoted to Chief Administrative Officer but the son does not work directly for the father and there are intervening links in the chain of command.

Question 1. Is termination of employment of the son required?

Question 2. If not, may the son be promoted if the father does not participate in the decision?

Question 3. Can the son be promoted if the father does participate in the decision?

DISCUSSION:

This opinion is rendered in response to a letter dated November 27, 1991 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 8-13-100 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.

This section does not absolutely prohibit a family member being employed in the same agency, however, it does prohibit one family member taking certain actions regarding that family member. Those prohibited actions include causing the employment, appointment, promotion, transfer, or

advancement of a family member.

From the facts as submitted, it appears that the son would not need to be terminated. Such employment is not prohibited. However, taking some action to affect the continued employment and promotional opportunities for the family member is prohibited.

As to the second and third questions, Section 8-13-750(A) provides that the father cannot participate in matters affecting the promotion of his son. The son could be promoted in accordance with this section if the father takes no action regarding that promotion.