

SUBJECT: ANTI-NEPOTISM APPLICABILITY TO PUBLIC SERVICE DISTRICT

SUMMARY:

The Ethics Reform Act of 1991 applies to employees or officials of public service districts. Section 8-13-750 would not require the termination of a family member, however, a commissioner could not participate in personnel matters affecting the family member.

QUESTION:

The attorney for Sea Pines Public Service District questions whether an inherent conflict exists if a newly-appointed commissioner is related to a captain of the fire department who is and was serving prior to the commissioner's appointment. The fire department is under the control of the public service district. The commissioner would have no direct control or oversight over the fire department employee. The employee reports directly to the fire chief.

DISCUSSION:

This opinion is rendered in response to a letter dated December 5, 1991 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.

Public employee is defined in Section 8-13-100(25) as:

"Public employee" means a person employed by the State, a county, a municipality, or a political subdivision thereof.

Public official is defined in Section 8-13-100(27) as:

"Public official" means an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, including candidates for the office. "Public official" does not mean a member of the judiciary except that for the purposes of campaign practices, campaign disclosure, and disclosure of economic interests, a probate judge is considered a public official and must meet the requirements of this chapter.

Thus, an official or employee of a public service district would be encompassed by the provisions of the Ethics Reform Act.

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. Family member is defined in Section 8-13-100(15) as:

(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.

A family member who is currently employed by the public service district would not need to be terminated since such employment is not prohibited. However, taking some action to affect the continued employment and promotional opportunities for the family member is prohibited. The Commissioner is advised of 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;

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(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body 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 require that the member be excused from any voters, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and reasons for it to be noted in the minutes;