

SUBJECT: SCHOOL BOARD MEMBER WITH FAMILY MEMBER EMPLOYED IN SCHOOL DISTRICT

SUMMARY:

A family member of a school board member may continue as an employee of the school district without violating the Ethics Reform Act. A family member of a school board member may be hired by the school district provided the member does not cause the employment or participate in the employment of the family member. School board members who have family members employed within the school district may vote on general salary increases for school employees but may not participate in salary raises for the family member which are not general salary increases.

QUESTION:

The Director of Legal Services of the SC School Boards Association poses several questions:

- (1) If a person is elected to a school board and a member of that person's immediate family is employed by the district, may the family member continue as an employee of the district?
- (2) May a school district employ an immediate family member of a person who is currently a board member? Does it make any difference if it is a position the board votes on (a certified position) versus one the board does not traditionally vote on (a support staff person)?
- (3) If a board can continue to employ and/or employ an immediate family member of one of its members, should the board member remove himself/herself from voting on the particular individual and from voting on the individual's salary in the budget adoption process?

DISCUSSION:

This opinion is rendered in response to a letter dated February 20, 1992 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, 976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

As to the first question, 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 is presently employed by a school district would not be required to resign since Section 8-13-750 prohibits taking action to hire, promote, advance, or participate in disciplinary actions over family members. See also AO92-156 which addresses similar issues. A school board member who has a family member as defined in Section 8-13-100(15) must, however, follow the provisions of Section 8-13-700(B) which 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;

* * *

- (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 votes, 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;

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.

As to the second question, a school district would not be prohibited from hiring a family member of a current school board member. The school board member may not participate in the hiring of such family member in accordance with Section 8-13-700(B) nor may he take any other action to cause the employment, re-employment or contract renewal of the family member, regardless of whether he/she has to vote on the hiring of the family member.

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