

SUBJECT: SPOUSE OF SCHOOL BOARD CHAIRMAN APPLYING FOR PRINCIPAL'S POSITION

SUMMARY:

The spouse of a school board chairman may be hired as a principal within the chairman's district, provided the chairman takes no action regarding the hiring and has no supervisory or management authority over his spouse.

QUESTION:

The Chairman of Dillon County School District #3 requests an advisory opinion addressing the ethical implications of his wife's application for a principal's position at a school within the district. Historically, Dillon District #3 has hired its school principals in accordance with the following procedure. First, the District advertises in house and publicly for applicants. The District Superintendent and Assistant Superintendent then screen the applications and schedule initial interviews for the applicants who appear most qualified. Next, a special committee is formed to conduct the initial interviews. This committee usually includes teachers, administrative officials and the School Board Chairman. As a result of the initial interviews, the top three to five applicants are selected for follow-up interviews before the entire school board. After the follow-up interviews have been completed, the District Superintendent presents his recommendation to the board. Although the Superintendent's recommendation is not conclusive, it has traditionally been accorded significant weight. Finally, the entire school board makes the ultimate hiring decision. Once hired, school principals are primarily supervised by the District Superintendent; however, the School Board would be responsible for extraordinary measures such as disciplinary actions.

DISCUSSION:

This opinion is rendered in response to a letter dated March 11, 1993 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.

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.

In previous advisory opinions, the State Ethics Commission has advised that family members may be employed within the same agency, provided that one family member exercises no direct management or supervision and takes no other action to affect personnel actions regarding the other family member. Moreover, a spouse may be employed in the agency so long as the position is not under the management or supervision of the other spouse. In Advisory Opinion AO92-096, 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 family member/employee by the Councilman. In Advisory Opinion AO92-190, the Commission advised that the spouse of a technical education center director would not be prohibited from being hired, provided the director took no action regarding the hiring and had no supervisory or management authority over the spouse.

In the situation at hand, the District Superintendent performs the day-to-day supervision of school principals. Therefore, the State Ethics Commission advises that the School Board Chairman's spouse may be hired as a principal within the district; however, Section 8-13-750 would prohibit the Chairman from being involved in personnel actions affecting his spouse. According also to the facts submitted, the Chairman of Dillon School District #3 normally would be required to participate in the hiring of school principals. Nevertheless, because the Chairman's spouse has applied for the principal's position, the State Ethics Commission advises the School Board Chairman to comply with the recusal 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;

* * *

(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 the 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.

Accordingly, since his spouse is an applicant, the Chairman may not participate in the hiring process. However, if his spouse is hired, the Chairman would not be prohibited from participating in Board deliberations and votes concerning general salary issues since the economic interest would accrue to all district employees as a class. Nevertheless, in accordance with Section 8-13-700(B), the Chairman would be prohibited from participating in Board decisions which directly affect his spouse as an individual and not as a member of a large class.

