

1980 WL 121074 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 21, 1980

*1 Mr. G. William Dudley
Executive Director
State Board for Technical and Comprehensive Education
Rutledge Building
Columbia, South Carolina 29201

Dear Mr. Dudley:

You have requested an opinion of this Office as to whether CETA Funds for Vocational Education may be distributed by the State Board for Technical and Comprehensive Education (TEC).

The Comprehensive Employment and Training Act (CETA), [29 USCA § 801 et seq.](#), as amended, provides job training and employment opportunities for economically disadvantaged, unemployed, or underemployed persons. It coordinates plans, programs, and activities with economic development, community development and related activities such as vocational education, vocational rehabilitation, etc.

Section 844, as amended, of these CETA laws provides financial assistance, through state vocational education boards, for needed vocational education services in areas served by 'prime sponsors,' in accordance with an agreement between the 'State vocational education board' and the prime sponsor. See also § 842(b), as amended, and SETA regulations found at 44 Fed. Reg., 20040, 20041, §§ 677.33-677.35. This term 'State vocational education board' is not defined in CETA laws or regulations, but under present agreements, TEC is acting as the Vocational Education Board and the Governor's Office is acting as the prime sponsor.¹

The absence of a definition for the term State Board of Vocational Education indicates that state law is to be the source for determining which agency fills that role. In South Carolina, at least two state agencies have responsibility for vocational education, the State Board of Education and the State Board of Technical and Comprehensive Education.

TEC's duties are as follows:

. . . the state-wide development, implementation, coordination and operation of an adequate and high quality post-high school vocational, technical and occupational diploma and associate degree courses and programs financed in whole or in part by state funds; such courses and programs to be characterized by a continuing strong emphasis on the employment needs of the State, the communities and people of South Carolina. [§ 59-53-50\(1\) of the Code](#), as amended. See also § 59-53-20, as amended.

The State Board of Education's responsibility for vocational education is derived, at least in part, from federal law. [20 USCA § 2301, et seq.](#), provides assistance to the states ' . . . in improving, planning in the use of all resources available to them for vocational education and manpower training by involving a wide range of agencies and individuals concerned with education and training within the State in the development of the vocational education plans.' [§ 2301](#). Any state desiring to participate in the program must designate a state board or agency to administer these programs, and apparently the State Board of Education is that agency in this State. [§ 2304](#). Relying on §§ 59-5-60 and 59-53-1810 as authority,² the Board has adopted Rule 43-233 (Vol. 24, Code of Laws of South Carolina, 1976, as amended) which sets up the State's machinery for implementing [§ 2301 et seq.](#) This lengthy rule requires local educational agencies to show, inter alia, how their local activities relate to CETA manpower programs

to assure a coordinated approach to meeting the vocational education and training needs of the area and community. Rule 42-233, § 11A.2d. While this rule and the accompanying federal law gives the State Board of Education broad administrative authority over the wide scope of vocational education assistance provided under § 2301, nothing in them appears to give it supervision over CETA vocational education programs.

*2 Federal law does not require that the same Board be used under 20 USCA § 2301, *et seq.*, and 29 USCA § 844, as amended. Although the State Board of Education does have broad administrative authority under § 2301, TEC has a special responsibility under state law for post-secondary vocational education including employing training programs. Over the years, TEC has been the basic contractual provider of training programs under CETA and its predecessor. Although some provisions are made under CETA for youth, the vast majority of enrollees are over eighteen years of age and eligible to be served by TEC. Thus, a practical interpretation of 'Vocational Education Board' in South Carolina is that it is TEC, the agency which provides vocational education for the same population group that is primary recipient of CETA training services. This interpretation would not prevent the South Carolina State Board of Education from working with TEC to coordinate § 2301, *et seq.*, vocational education programs with CETA programs; however, TEC and the Governor's Office must be certain that all persons entitled to CETA vocational education assistance receive it from an appropriate agency when those persons may fall outside the scope of TEC's vocational education programs.

In conclusion, TEC appears to be the appropriate 'State Vocational Education Board' under CETA provisions; however, the question presented in this opinion cannot be resolved with certainty unless it is decided pursuant to the Uniform Declaratory Judgments Act §§ 15-53-10, *et seq.*, of the Code, as amended.

If you have any questions, please let me know.

Yours very truly,

J. Emory Smith, Jr.
State Attorney

ATTACHMENT

210.1 AGENCY NEPOTISM POLICY

The Code of Laws of South Carolina, 1976 Section 8-5-10, makes it unlawful for the head of any department to hire any person related or connected with him/her by consanguinity or affinity within the sixth degree. It is the policy of the Agency to not only follow the State Statute but also to place the same restriction on individuals who have appointing authority within the Agency as defined in Chapter 200, South Carolina Department of Social Services, Manual of Personnel Administration, Volume III. This restriction also applies to members of the South Carolina Department of Social Services Board and members of the County Department of Social Service Boards insofar as it pertains to their particular counties. In addition to the restrictions outlined above, employment in the same County, or Division of State Office of two (2) or more individuals who are related within the second degree consanguinity or affinity is prohibited except:

*3 (a) when family relationship is the result of marriage occurring after employment and the related employees are not in the chain of command, supervisor/subordinate under the same appointing authority

(b) as a result of reorganization, i.e., when employees are transferred/deployed to the same appointing authority but are not in the chain of command, supervisor/subordinate relationship

(c) when transfers are a result of promotion, demotion, or employee initiated requests that would result in the assignment of relations to positions under the same appointing authority. However, the Commissioner must approve such assignments and the move must be coordinated between the losing and gaining appointing authorities. The gaining appointing authority will be responsible for obtaining approval of the Commissioner—he/she will submit a request for transfer through the Personnel Director to the Commissioner. The request will contain a recommendation of approval or disapproval of the gaining appointing authority, the reason(s) for the move, the title and slot number of the position to which the transfer is to be accomplished,

the names, job titles and relationship of employees involved. Additionally, the request will contain a statement by the gaining appointing authority that the related employees will not be assigned within the same supervisory chain. The Personnel Director will check the request for administrative correctness and forward it to the Commissioner for final approval/disapproval. It is stressed that, under no circumstances, will related employees be assigned within the chain of command, supervisory/subordinate relationship.

Footnotes

- 1 In South Carolina, the arrangement for distribution of CETA funds (formerly Manpower Development and Training Act) was originally handled by the Advisory Committee for Technical Training. (See Opinion of the Attorney General to Dr. Cecil H. Johnson, August 27, 1969). Since that time, the Advisory Committee for Technical Training has been abolished and the State Board for Technical and Comprehensive Education established [§§ 59-53-10, of the Code of Laws of South Carolina (1976), et seq.] to administer those programs previously handled by the Advisory Committee for Technical Training.
- 2 Section 59-5-60 sets out general powers of the Board in all matters. Section 59-53-1810 designates the State Board of Education as the State Board of Vocational Training to put into operation the U.S. law, at that time, which provided for Vocational Education. This section was enacted in 1917 and has not been amended or construed since that time.

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