



ALAN WILSON
ATTORNEY GENERAL

December 21, 2023

Howard Garland
Town Administrator
Town of Jefferson
P.O. Box 306
Jefferson, SC 29718

Dear Mr. Garland:

We understand you are the town administrator for the Town of Jefferson (the Town) and wish to request an Attorney General's opinion on behalf of the Town. By way of background, you state:

The husband of our assistant town clerk is running for Mayor of the Town and with the retirement of our current town clerk, the assistant town clerk is in line to be promoted to the town clerk position. If elected mayor, the husband of our assistant town clerk would be his wife's direct supervisor if she were to assume the town clerk position.

You have also provided the text of the Town's nepotism policy:

People in the same immediate family may not be employed or continue to be employed if one directly or indirectly supervises another or interacts with another in the handling of money or compensation. Immediate family is defined as spouse, parent, child, grandparent, brother or sister, parent-in-law, grandparent-in-law, brother-in-law, and sister-in-law.

We understand you are requesting an opinion on whether the Town's nepotism policy would be implicated in the factual scenario outlined in your letter.

Law/Analysis

Initially, we believe it is within the Town Council's authority to interpret and decide whether to enforce the Town's nepotism policy. It is our understanding that the Town operates under a council form of government pursuant to sections 5-11-10 to -40 of the South Carolina Code (2004). "Under the council form of government there shall be a municipal council composed of five, seven

or nine members including the mayor.” S.C. Code Ann. § 5-11-20. “All legislative and administrative powers of the municipality and the determination of all matters of policy shall be vested in the municipal council. Each member of council, including the mayor, shall have one vote.” S.C. Code Ann. § 5-11-30. We believe a court would determine that under the South Carolina Tort Claims Act,¹ a municipality could not be held liable for a loss resulting from the failure to enforce written policies. *See* S.C. Code Ann. § 15-78-60(4) (2005) (providing that under the South Carolina Tort Claims Act, a governmental entity is not liable for a loss resulting from the “adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies; . . .”); S.C. Code Ann. § 15-78-30(d) (2005) (“‘Governmental entity’ means the State and its political subdivisions.”); S.C. Code Ann. § 15-78-30(h) (2005) (providing “political subdivision” includes municipalities of the State); *see Adkins v. Varn*, 312 S.C. 188, 192, 439 S.E.2d 822, 824 (1993) (“The provisions of [s]ection 15-78-60(4) are clear and unambiguous on their face, and are not subject to judicial interpretation.”). Accordingly, we believe the interpretation and enforcement of the Town’s nepotism policy is within the Town Council’s discretionary authority. Nevertheless, because we believe a scenario such as the one described in your letter could implicate certain provisions of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (the Ethics Act),² we advise that you seek an opinion from the Ethics Commission on this matter.³ *See Op. S.C. Atty. Gen.* 1998 WL 62947 (January 6, 1998) (“State law does not authorize this Office to issue an opinion upon any matter which is within the jurisdiction of the State Ethics Commission.”).

However, we provide the following law in the hope it may be helpful to you.

The Ethics Act 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.

S.C. Code Ann. § 8-13-750 (2019). As an elected official of a municipality, the Town’s mayor is a public official under the provisions of the Ethics Act. S.C. Code Ann. § 8-13-100(27) (2019) (“‘Public official’ means an elected or appointed official of the State, a county, a municipality, or

¹ S.C. Code Ann. §§ 15-78-10, *et seq.* (2005 & Supp. 2023).

² S.C. Code Ann. §§ 8-13-100, *et seq.* (2019 & Supp. 2023).

³ We note the State statutory provision generally prohibiting nepotism, section 8-5-10 of the South Carolina Code, has been repealed.

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a political subdivision thereof, including candidates for the office.”); S.C. Code Ann. § 5-11-20(b) (“The mayor and members of the council shall be elected in accordance with Chapter 15.”). The Ethics Act defines “family member” to include a spouse. S.C. Code Ann. § 8-13-100(15)(a) (2019).

We believe both subsections of section 8-13-750 could be implicated in the scenario described in your letter. Pursuant to section 5-7-220 of the South Carolina Code (2004), the Town Council “shall appoint an officer of the municipality who shall have the title of municipal clerk.” As a voting member of the Town Council, the mayor would likely participate in the appointment of the town clerk. Therefore, we believe a spousal relationship between the Town’s mayor and the appointed town clerk could be prohibited under subsection (A). Further, assuming the Town’s mayor acts as the town clerk’s direct supervisor, any participation in disciplinary matters concerning the town clerk could be prohibited under subsection (B) if a spousal relationship existed between them.

Moreover, section 8-13-700 of the South Carolina Code (2019) prohibits a public official from knowingly using their office to obtain an economic interest for themselves or an immediate family member, such as a spouse. § 8-13-700 (“No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated.”); § 8-13-100(18)(b) (2019) (providing “immediate family” includes a public official’s spouse).

The determination of whether sections 8-13-700 and -750 apply to the scenario described in your letter is a factual question to be determined by the Ethics Commission. *See Op. S.C. Att’y Gen.*, 2013 WL 6924890 (S.C.A.G. December 23, 2013) (recognizing the Ethics Commission’s “exclusive jurisdiction regarding any resolution of questions involving interpretation and administrative enforcement of the State Ethics Act”); *Op. S.C. Att’y Gen.*, 2006 WL 1207271 (S.C.A.G. April 4, 2006) (providing that “[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions.” (alteration in original) (quoting *Op. S.C. Att’y Gen.*, 1989 WL 406130 (April 3, 1989))). Accordingly, we advise you to request an ethics advisory opinion on this matter.

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Conclusion

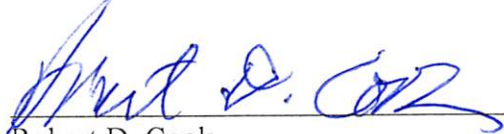
We believe the interpretation and enforcement of the Town's nepotism policy is within the Town Council's discretionary authority. Nevertheless, because we believe the Ethics Act could be implicated in a scenario such as the one described in your letter, we advise you to seek an opinion from the Ethics Commission on this matter.

Sincerely,



Elizabeth McCann
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General