

Reg. 4976



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

June 16, 1995

The Honorable Kenneth Kennedy
Member, House of Representatives
Route 1, Box 277
Greeleyville, South Carolina 29056

Re: Informal Opinion

Dear Representative Kennedy:

You have asked my advice regarding whether a member of the board of directors of a 501(c) corporation is required to refrain from voting to appoint an executive director where one of the candidates for the position is the husband of the board member.

I am enclosing a copy of Gilbert v. McLeod Infirmary, 219 S.C. 174, 64 S.E.2d 524 (1961) which establishes the standard of conduct for directors of an eleemosynary corporation. In Gilbert, the Court held that where a member of the board of a non-profit corporation participated in the vote of the Board to convey to himself certain property of the corporation, such action was voidable. The Court stated:

"Undoubtedly the directors of a corporation in the management of the corporate affairs occupy a position of extreme trust and confidence and exercise great power for good or bad over the corporation and its shareholders."

64 S.E.2d at 528. By voting on the matter, the Court held that the trustee's "... conduct failed to measure up to the high standard required by the law of one in his fiduciary relation to the hospital." Supra at 531.

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It is my understanding that the member disqualified herself from participation in the screening of candidates to avoid the appearance of a conflict of interest. This recusal was wise, and I believe warranted in view of the stern language and holding of Gilbert stated above. Certainly, the corporation would not want to jeopardize its 501(c)(3) status, nor the receipt of federal and state funds, and it would thus be prudent to check with those persons who exercise authority over the corporation's receipt of those funds with respect to any specific prohibitions or guidelines regarding the appearance of conflicts of interest.

In any event, it would be my advice, consistent with Gilbert, that recusal and abstention from any participation would be appropriate in the actual selection process.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an
Enclosure