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The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-758-3970

February 7, 1985

Helen T. Zeigler, Special Assistant
for Legal Affairs
Office of the Governor
Post Office Box 11450
Columbia, South Carolina 29211

Dear Ms. Zeigler:

I am enclosing several prior opinions of the Honorable Daniel R. McLeod which appear to be controlling as to the applicability of the nepotism statute (§ 8-5-10 of the Code) to appointments made to county boards of social services. While the nepotism statute is inapplicable to county D.S.S. boards, see Op. Atty. Gen., September 18, 1979, as I understand it, State D.S.S. policy has extended the provisions of the nepotism law to county D.S.S. boards. See, Section 210.1 D.S.S. - S.C. Manual of Personnel Administration, Vol. III. 1/

The opinion of June 11, 1982 indicates that the nepotism statute is violated if a governing board member participates in

1/ We do not understand the present D.S.S. policies concerning nepotism to conflict with State Personnel Regulation 19-707.02J. This regulation speaks only to "employment" of two individuals within an agency, not service on a board. Moreover, it appears that the State Personnel Division is of the view that the foregoing regulation does not cover the employment of a relative of a member of a local board or commission and thus has invited each local board to develop a policy concerning nepotism. Since state law gives State D.S.S. the authority to promulgate policies and procedures relative to county boards, see, Op. Atty. Gen., No. 77-219, we would thus assume the D.S.S. policies cited above to be still in effect.

Continuation Sheet Number 2

To: Helen T. Zeigler, Special Assistant
for Legal Affairs

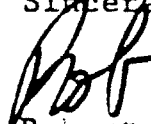
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the decision to employ an individual related in the sixth degree to the board member. The opinions of February 1, 1979, September 18, 1979 and November 24, 1982 conclude that the nepotism provision is inapplicable where the person in question had already been appointed or employed at the time the agency head (or member of the governing board) is appointed. The September 18, 1979 opinion of former Attorney General McLeod covers your situation almost precisely. However, as to any future appointments or reappointments of the person related within the sixth degree to the board member, the nepotism provision would probably be applicable, see Malara v. Managhan, 131 N.Y.S.2d 270, 274 and Op. Atty. Gen., September 18, 1979, thus requiring at a minimum the related board member to disqualify himself from the decision-making process to reappoint. See, Op. Atty. Gen., June 11, 1982. See also, McMahan v. Jones, 94 S.C. 362 (1912). 2/

As to any questions you may have concerning the applicability of the State Ethics Act, I refer you to the State Ethics Commission which would have primary jurisdiction in this area. However, I am enclosing for your information several prior opinions of the Commission which address the applicability of the Ethics Act to situations similar to the one which you describe. The opinions appear to indicate the advisability of a board member's disqualification of himself from participation in any decision regarding the appointment or retention of a person to whom he is related. See particularly Op. No. 83-036.

If I can be of further assistance, please do not hesitate to contact me. With kindest regards, I am

Sincerely yours,



Robert D. Cook
Executive Assistant for Opinions

RDC:djg
Enclosures

2/ Pursuant to § 43-3-10 et seq., county board members are appointed by the Governor upon the recommendation of the legislative delegation. We do not understand any member of the delegation appointing the board member to be related to that individual and thus do not understand any nepotism question to arise pursuant to such appointment.