

The State of South Carolina

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Office of the Attorney General

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December 10, 1986

George P. Sullivan, Esquire
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Anderson, South Carolina 29622

Dear Mr. Sullivan:

As the attorney for Anderson County School District No. 3, you have asked for the opinion of this Office as to the propriety of the District hiring the son of the District's Superintendent of Education as an agriculture teacher for a high school within the District. You have concluded that no violation of state law would occur by the hiring of the Superintendent's son; we concur with your conclusion as discussed more fully below.

You have advised that the individual in question meets all of the qualifications necessary to hold the teaching position. Further, you have advised that no policy contained within the District's handbook for personnel has been violated by the hiring. The individual is one of two agriculture teachers in the school district and is supervised by a department head and the high school principal. In addition, the Superintendent is employed by the District's board of trustees and does not sit as a member of that body, though he does keep the board informed as to the day-to-day operation of the District. The only remaining question is whether this hiring may have violated any state laws.

At the outset it must be noted that the employment of teachers in a school district is within the discretion of the board of trustees of that district. Section 59-19-80, Code of Laws of South Carolina (1976), provides the mechanism for a board of trustees to enter into contracts with teachers. Section 59-19-90(2) of the Code specifically vests authority to employ and discharge teachers with the district board of trustees, of which the Superintendent in question is not a member.

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Section 59-25-10 of the Code, as amended, contains special provisions applicable to employment of teachers related to members of school boards or who are serving on school boards; because the Superintendent is not a board member, this Code section is not applicable to his son. Section 59-25-20 permits the board of trustees to impose qualifications on its teachers or teaching candidates; you have advised that no additional qualifications have been imposed by the board and therefore this Code section is not applicable. We are unaware of any other Code section in Title 59, relative to education, which would be considered in this hiring situation.

The State's nepotism statute is found in Section 8-5-10 of the Code and provides that

[i]t shall be unlawful for any person at the head of any department of this government to appoint to any office or position of trust or emolument under his control or management any person related or connected with him by consanguinity or affinity within the sixth degree.

Until recently, this Office had advised that this statute applied only at the State level and not to local political subdivisions. See, for example, Op. Atty. Gen. No. 1681, dated May 26, 1964. However, the South Carolina Supreme Court in Bladon v. Coleman, 285 S.C. 472, 330 S.E.2d 298 (1985), has now applied the nepotism statute to a county governmental entity. Still, in the instant situation, the District's board of trustees, and not the Superintendent, is the hiring body; the individual under consideration is not related to the board or any member making the employment decision, as discussed above. Therefore, the nepotism statute does not appear to be applicable.

During our telephone conversation on Wednesday, November 26, 1986, you also mentioned the board members' concern as to applicability of the federal Hatch Act. The Hatch Act, 5 U.S.C. § 1501 et seq., limits the partisan political activities of federal employees and also state and local governmental employees whose positions are connected to federal funding in some way. Employing the son of the District Superintendent does not in and of itself appear to trigger the provisions of the Hatch Act. If, however, the individual's teaching position is tied to federal funds and the individual is participating in partisan political activity, you may wish to seek an advisory opinion from the Office of the Special Counsel, U. S. Merit Systems

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Protection Board, 1120 Vermont Avenue, N. W., Washington, D. C. 20419; telephone number (202)653-7188. Because an interpretation of federal law is required, this Office refers all questions concerning the Hatch Act to this agency.

We understand that the State Ethics Commission has been contacted about this matter. We would encourage the School District to be aware of the provisions of the State Ethics Act, Section 8-13-410 et seq. of the Code, as may be applicable in instances involving the Superintendent and his son, and to follow whatever advice the Commission may have given the District.

In conclusion, this Office concurs with your conclusion that no violation of state law would occur by the board of trustees of Anderson County School District No. 3 hiring the son of the District's Superintendent as an agriculture teacher for a high school within the District.

With kindest regards, I am

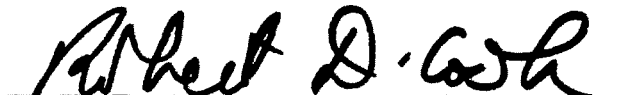
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



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