

1984 WL 249903 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 12, 1984

\*1 Victor S. Evans  
Chief Counsel  
Department of Highways and Public Transportation  
955 Park Street  
Suite 302  
Columbia, South Carolina 29202

Dear Mr. Evans:

You have asked us to advise you whether there is any violation of State statute or regulations with respect to the continued employment of the son of [the person] . . . who will become Chief Highway Commissioner on July 1, 1984.

You note that the son has been employed by the Department since November 9, 1981 as a full-time employee of the Department within the State Classification and Merit System. Further, you indicate that the son's employment by the Department is not prohibited by any agency regulation or policy of the South Carolina Department of Highways and Public Transportation. Specifically, you inquire whether [§ 8-5-10 et seq. of the Code of Laws of South Carolina \(1976\)](#) prohibits the son's continued employment and whether 'any regulations of the South Carolina Budget and Control Board apply to prohibit continued employment . . .'. We would advise that [§ 8-5-10 et seq.](#) does not prohibit continued employment of the son. We would further advise that we are unaware of any regulations of the Budget and Control Board or any other State regulations or policies which would prohibit his continued employment with the Department.

[Section 8-5-10](#) provides that

It shall be unlawful for any person at the head of the 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.

While the Chief Highway Commissioner would be the head of a department of state government, see, § 57-3-430, the foregoing statute is nevertheless inapplicable to the situation you have presented. This office has stated that the 'purpose of the nepotism statute is to prevent a person coming into office and proceeding to hire his relatives.' Op. Atty. Gen., November 24, 1982. Accordingly, we have consistently concluded that if a person is not the head of the agency at the time the individual in question is employed, then 'the nepotism statute does not come into play in any manner.' Op. Atty. Gen., November 24, 1982; Op. Atty. Gen., February 1, 1979. (Copies attached). In this instance, you have advised us that the son was employed as a classified employee of the Department almost three years prior to his father becoming the head of the agency. Further, you have informed us that, when the father assumes office on July 1, 1984, there is no requirement or necessity for reappointment of the son by the new commissioner. Accordingly, consistent of the son by the opinions on the subject, we would advise that [§ 8-5-10 et seq.](#) does not prohibit the son's continued employment.

We have also examined pending regulations promulgated by the State Personnel Division of the Budget and Control Board which are scheduled to take effect on July 1, 1984 Pursuant to proposed Regulation 19-707.02J,

\*2 'Persons related by blood or marriage within the sixth degree shall not be employed concurrently within any one agency of State government (1) if such employment will result in an employee supervising a covered relative, or (2) if such employment would result in an employee occupying a position having influence over a covered relatives' employment, promotion, salary administration or other related management or personnel matters; . . .'

However, the proposed Regulation (copy attached) also provides 'that any action taken by an agency prior to July 1, 1984 pursuant to its then-existing internal nepotism policy shall not be affected by the adoption of this Section.' (Emphasis added). As you have presented the situation to us, the father has already been elected to the position of Chief Highway Commissioner by the Highway Commission and will occupy the office on July 1, 1984. In other words, the 'action taken by the agency' is prior to July 1, 1984, and as you have stated, is in accord with the Department's existing internal nepotism policy. Thus, if the proposed regulations to take effect as scheduled on July 1, 1984, we do not believe they would be applicable to the situation you have described, because of the foregoing proviso. Further, as stated the referenced regulation is still pending and unless it becomes effective, would be of no force.

We are unaware of any other regulations or provisions of law which would be applicable and prohibit the circumstances you have described. If we can be of further assistance, please do not hesitate to contact us.

With kindest personal regards, I remain  
Very truly yours,

Robert D. Cook  
Executive Assistant for Opinions

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