

1983 WL 181732 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 31, 1983

*1 Mr. Cecil Bearden
Board Member
Woodruff-Roebuck Water District
Route 2
Woodruff, South Carolina 29388

Dear Mr. Bearden:

Representative David O. Hawkins recently requested this office's opinion as to whether a member of the Board of Commissioners of the Woodruff-Roebuck Water District may lawfully participate in a vote to determine whether the member's brother-in-law will be hired as the Water District's attorney. Representative Hawkins requested that our reply be addressed to you. It is the opinion of this office that a Board Member cannot lawfully participate in a vote to determine whether the member's brother-in-law will be hired as the Water District's attorney.

The state statute forbidding nepotism ([§ 8-5-10, Code of Laws of South Carolina](#), 1976) does not apply to the factual situation presented for review because that statute applies only to departments of State government, not to political subdivisions of the State. 1964 Ops.Atty.Gen. 131; 1961 *id.* 88. Moreover, there is no suggestion in Representative Hawkins' letter requesting this opinion that the Board member in question would benefit financially—either directly or indirectly—from the hiring of his brother-in-law as the Water District's lawyer. Assuming that the member in fact would not realize any such direct or indirect financial benefit from his vote, the member's voting for his brother-in-law would not appear to breach the State Ethics Act ([§ 8-13-10 et seq., Code of Laws of South Carolina](#), 1976, as amended). Nevertheless, the member's voting on whether his brother-in-law will be hired as the District's attorney is contrary to public policy and the common law.

This office has previously noted that, as a matter of personal and public policy, members of the governing bodies of municipalities of the state generally refrain from voting on the selection of a relative as an officer or employee of the city. 1961 Ops.Atty.Gen. 88. Both public policy and the common law, which is expressly preserved by statute to the extent the same is not inconsistent with the Constitution or laws of this State ([§ 14-1-50, Code of Laws of South Carolina](#), 1976) compel this practice. As one leading commentator has observed:

Public policy requires that local government officials and members of local boards and commissions cannot be permitted to place themselves in a position in which personal interest may conflict with public duty. * * *

The evil against which the policy is directed lies not only in influence improperly exercised, but also in creating a situation tending to weaken public confidence in the integrity of the public service. * * *

2A C. Antieau, Municipal Corporation Law § 22.60 (1979); accord, 4 McQuillin, Municipal Corporations § 13.35 (3d revised ed. 1979). Although statutes and ordinances frequently specifically ban conflicts of interest, they merely reinforce the common law which itself prohibits government officers from participating in decisions in matters in which they have a personal or private interest distinct from the interest which they hold in common with members of the public. 1A, Antieau § 8.06 and 8.07; 56 Am.Jur.2d Municipal Corporations, Counties, and Other Political Subdivisions § 142 (1971). In determining whether such a disqualifying interest exists, the relevant question is 'whether the circumstances involved could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty.' [Van Itallie v. Borough of Franklin Lakes](#), 28 N.J. 258, 146 A.2d 111, 116 (1958); accord, 2A, Antieau § 22.61; cf. 4 McQuillin § 13.35 at 566 ('Whether

a particular interest justifies disqualification is necessarily a factual question, for not every interest, no matter how remote and infinitesimal, may be said to possess the likely capacity to tempt the public official to depart from his sworn duty.’)

*2 This office is of the opinion that the circumstances presented in this case (i.e., a Board member voting on whether to hire his brother-in-law as the Water District's attorney) could reasonably be interpreted to show that they had the likely capacity to tempt the Board member to depart from his sworn public duty. See [Van Itallie v. Borough of Franklin Lakes, supra, 146 A.2d 116](#) where the court commented: ‘It is obvious that a councilman should not participate in a . . . matter . . . where he might reasonably be expected to favor or promote a relative's interest. . . .’

Sincerely,

Vance J. Bettis
Assistant Attorney General

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