

1977 S.C. Op. Atty. Gen. 185 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-255, 1977 WL 24596

Office of the Attorney General

State of South Carolina

Opinion No. 77-255

August 12, 1977

*1 Ms. Bonita T. Cutler
Board Policy Committee
Board of Trustees of Dorchester School District #2
118 Sycamore Drive
Summerville, SC 29483

Dear Ms. Cutler:

You have requested from this office an opinion as to whether the adoption of a hiring policy by the Board of Trustees of Dorchester School District #2 that would prohibit the employment of new teachers or other staff members who are related within the second degree to current members of the Board or the District office administrative staff is legal. In my opinion, this hiring policy which you described in your letter can be lawfully adopted by the Board of Trustees of Dorchester School District #2. However, any policy adopted by the Board of Trustees should accord with applicable statutory mandates concerning nepotism.

Under the general provisions of law, the Board of Trustees is empowered with broad authority to operate all public schools within the District and under the Board's supervision. See S.C. Code Ann. §§ 59-19-90 and 59-19-270 (1976). In construing these broad statutory provisions, it has been recognized generally that the 'Boards of Trustees have the full responsibility of operating the public school system'. Rackley v. School District #5, 258 F.Supp. 676 (D.S.C. 1966). By implication, the Board of Trustees, in discharging its various responsibilities, may fulfill its administrative role by the proper adoption of written regulations concerning the hiring of personnel, as long as such regulations are consonant with state law.

Various states have anti-nepotism statutes, which generally are regarded as reasonable conditions of employment. See 78 C.J.S., Schools and School Districts, § 156 (1952). However, there have been only a few reported cases where the validity of anti-nepotism provisions are discussed, and the courts have generally recognized that nepotism is an evil that ought to be eradicated through reasonable regulations. See 88 A.L.R. 1103.

South Carolina has a general anti-nepotism statute, S.C. Code Ann. § 8-5-10 (1976), which states:

It 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 to or connected to him by consanguinity or affinity within the sixth degree.

In a previous opinion issued by this office, it was found that this general provision of law applied only to departments of this State, such as the Health Department, Highway Department, Department of Education, etc., and to the heads of those departments, but did not apply to 'any local subdivision of government such as a municipality or county health department'. See 1963-64 Op. Atty'y Gen., No. 1681, p. 131. In this light a school district board of trustees would constitute a 'local subdivision of government' and would not be included under the provisions of § 8-5-10. This view is supported by the fact that there are separate 'conflicts of interest' and 'antinepotism' statutes concerning members of local boards of trustees. See S.C. Code Ann. §§ 59-19-300 [propriety of trustees' receiving pay as teacher]; 59-25-10 [employment of teachers related to board members]; 59-590 [school personnel not permitted to act as agents for publishers]; and 59-69-260 [officials shall not acquire interests in claims or contracts] (1976).

*2 S.C. Code Ann. § 59-25-10, which is the applicable statutory law concerning employment of teachers related to board members, states:

No person who is a member of the board of trustees or a member of the immediate family of a member of the board of trustees of any school district shall be employed by the board as a teacher without the written approval of the board of trustees of the district and, when applicable, of the board of education of the county, or unless a majority of the parents or guardians of the children attending the school for which such teacher is employed requests such employment in writing. The provisions of this section shall not apply to any teacher who was employed prior to the time he or his family member became a board member. For purposes of this section, the immediate family of a member of the board of trustees shall include only his parents, children, brothers or sisters. Provided, that the provisions of this section shall not apply to school bus drivers.

Because anti-nepotism laws are penal in nature, any regulatory policy adopted by the board of trustees in this regard should not extend beyond the terms of § 59-25-10, supra, as set forth above. Similarly, any such hiring policy for teachers adopted by the board cannot act to relax the provisions set forth in § 59-25-10.

However, it appears that the board may adopt a separate and distinct hiring policy concerning nepotism for non-teacher administrative personnel, since § 59-25-10 extends only to 'teachers'. See [Cimino v. Board of Education of County of Marion](#), 210 S.E.2d 485 (W. Va. 1974), holding that 'statute which placed teachers and other professional personnel in one class of persons who were entitled to employment with board of education even though their spouse might be a member of the board, and which placed non-professional personnel in classification of persons who could not retain employment under such conditions created a rational classification which bore a reasonable relationship to a legitimate governmental purpose and did not deny equal protection to non-professional personnel.'

In the formulation of an anti-nepotism hiring policy for administrative personnel, you may consider the use of a provision which would permit the employment of a relative (who would be otherwise qualified except for the disqualifying relationship) of a school official with employment powers, provided that the related school official reveals the relationship and disqualifies himself from voting for or participating in the making of the employment contract. Also, the board may wish to consider implementing a provision that would prohibit employment on the administrative staff of relatives (who are otherwise qualified except for the disqualifying relationship) only where supervision of one over the other would exist. See [McSpadden v. Mullins](#), 456 F.2d 428 (8th Cir. 1972); 68 Am.Jur.2d, Schools § 139 (1973).

I hope this information will be of some assistance to you.

Sincerely yours,

*3 Nathan Kaminski, Jr.

Assistant Attorney General

1977 S.C. Op. Atty. Gen. 185 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-255, 1977 WL 24596