



ALAN WILSON  
ATTORNEY GENERAL

January 15, 2013

The Honorable Raymond E. Cleary III  
Senator, District No. 34  
Post Office Box 142  
Columbia, South Carolina 29202

Dear Senator Cleary:

Attorney General Alan Wilson has referred your letter of December 10, 2012 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

**Issue:** Does South Carolina Code Section 57-1-310 (1976, as amended) prohibit the son of a retired legislator from being elected to the Department of Transportation commission?

**Short Answer:** South Carolina Code Section 57-1-310 does not define an "immediate family member," but a court is likely to interpret an "immediate family member" of a former legislator to include his/her son.

**Law/Analysis:**

South Carolina Code Section 57-1-310 describes the commission of the Department of Transportation (hereinafter "DOT"), along with its composition, screening and the qualifications required to be a member of the commission. Section 57-1-310(D) says:

(D) No member of the General Assembly or member of his immediate family shall be elected or appointed to the commission while the member is serving in the General Assembly; nor shall a member of the General Assembly or a member of his immediate family be elected or appointed to the commission for a period of four years after the member either:

- (1) ceases to be a member of the General Assembly; or
- (2) fails to file for election to the General Assembly in accordance with Section 7-11-15.

South Carolina Code Section 57-1-310(D) clearly prohibits an "immediate family member" of a current member of the General Assembly from serving on the DOT commission. In addition, S.C. Code Section 57-1-310(D) prohibits an "immediate family member" of a former member of the General Assembly (within the past four years) from serving on the DOT commission. South Carolina Code Section 57-1-310 does not define an "immediate family member" anywhere in the statute. Therefore we must look to statutory interpretation to determine the meaning of an "immediate family member."

As a background on statutory interpretation, the cardinal rule in statutory interpretation is to ascertain the intent of the Legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). This Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). Therefore, we will not look to other statutes to determine the meaning of an "immediate family member" but will look to a clear and unambiguous meaning. Based on a reasonable interpretation of the term, it would seem a son would be included as an "immediate" member of the family. If the legislature intended to limit the term to a son residing in the same household or any other limitation, it would have been expressly listed. Otherwise, the logical and plain meaning of immediate family would include a spouse and children and could include others such as siblings and parents.

Please note South Carolina's statute on nepotism (S.C. Code Section 8-5-10) has been repealed but was interpreted to apply to departments of state government and not to boards and political subdivisions, and thus its definition of an immediate family member would not apply for multiple reasons. Op. S.C. Atty. Gen., 1983 WL 181869 (April 29, 1983). Additionally, even though the courts would likely discourage interpretation based on other statutes, most other statutes generally define an immediate family member to include a child, with exceptions (see S.C. Code Section 8-13-100(18)). See S.C. Code Section 7-25-200, 4-13-20(9), et al.

**Conclusion:** Based on the conclusion that an "immediate family member" would include a son, it appears any son of a legislator (active or retired within the last four years) would be ineligible for commission on such a Department of Transportation board. However, this Office is only issuing a legal opinion based on the information given. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let me know.

Sincerely,



Anita Smith Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General