

# The State of South Carolina



## Office of the Attorney General

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March 8, 1991

The Honorable Roger M. Young  
Member, House of Representatives  
323-A Blatt Building  
Columbia, South Carolina 29211

Dear Representative Young:

By your letter of March 4, 1991, you have asked that this Office address three questions relative to special purpose districts. Each question will be addressed separately, as follows.

### Question 1

What is the law of South Carolina as it relates to the hiring of relatives of commissioners of a special purpose district for positions within the special purpose district?

The statute prohibiting nepotism in South Carolina is § 8-5-10, S.C. Code Ann. (1986), which provides as follows:

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 or connected with him by consanguinity or affinity within the sixth degree.

This Office opined previously that this statute did not apply to special purpose districts. Op. Atty. Gen. dated January 31, 1983 (copy enclosed). That conclusion was in keeping with the Attorney General's opinion at the time that the nepotism statute did not extend to counties, municipalities, or similar political subdivisions.

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Subsequently, however, the Supreme Court decided Blandon v. Coleman, 285 S.C. 472, 330 S.E.2d 298 (1985) and applied the nepotism statute to a situation involving a county employee. Since that time, this Office has noted that our interpretation of the statute as applicable only at the state governmental level is not free from doubt. Ops. Atty. Gen. dated August 4, 1986 (as to municipalities); September 23, 1986 (as to a county treasurer); cf., December 10, 1986 (as to a school board). It may well be that our Supreme Court would apply the nepotism statute to a special purpose district's hiring practices, based upon their interpretation in Blandon v. Coleman, supra.

Even if the nepotism statute should not be applicable to the hiring practices of special purpose districts, there are other considerations, such as applicability of the State Ethics Act, common law principles, and public policy considerations. These factors are discussed in the enclosed opinion dated January 31, 1983.

#### Question 2

What is the law of South Carolina as it relates to the competitive bidding purchase of goods and services by a special purpose district?

The South Carolina Consolidated Procurement Code, § 11-35-10 et seq., is applicable to expenditures of public "funds by this State under contract acting through a governmental body as herein defined...." § 11-35-40(b). The term "governmental body" is defined in § 11-35-310(18) and specifically excludes public service and special purpose districts. Thus, the Consolidated Procurement Code is inapplicable to special purpose and public service districts.

Instead, § 11-35-50 requires that "[a]ll political subdivisions of the State shall adopt ordinances or procedures embodying sound principles of appropriately competitive procurement no later than July 1, 1983." Given the exclusions of political subdivisions from the definition of "governmental body" in § 11-35-50, a special purpose or public service district would be required by § 11-35-50 to adopt its own competitive bidding policy. Indeed, such a policy should have been in place not later than July 1, 1983, according to § 11-35-50. Thus, no state law establishes competitive bidding practices or policies for special purpose districts to follow.

#### Question 3

What is the law of South Carolina as it relates to the sale of equipment by a special purpose district and purchases of same by commissioners of that special purpose district and their relatives?

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At least two areas of consideration are presented by your question. The first is the possibility of a policy regarding the disposition of surplus personal property which may be embodied within a given special purpose district's purchasing or competitive bidding policies. No state law concerning procurement would be applicable to a special purpose district. See Op. Atty. Gen. No. 83-4 (enclosed). For guidance in the disposal of surplus property, we are also enclosing a copy of an opinion dated August 27, 1985; while the opinion is not directly on point, it does contain applicable legal principles for your consideration.

The other consideration would be applicability of the State Ethics Act, § 8-13-10 et seq. A copy of the Act is enclosed for your review. Whether the Act would apply to a particular sale, and further whether the Act may have been violated, could be determined only on a case-by-case basis considering all relevant facts and circumstances.

The Ethics Act is administered or enforced by the State Ethics Commission, which issues ethics opinions, investigates complaints, and takes actions authorized under the Ethics Act. If you have questions about any particular procurement or sale, or about any conduct generally which is within the purview of the Ethics Act, you may wish to contact the Ethics Commission.

We trust that the foregoing will be as helpful as is possible under the circumstances. We must note that the enabling legislation of a specific special purpose district may contain additional guidance as to nepotism or procurement and suggest that such enabling legislation be examined. Additionally, a special purpose district may have adopted policies as to nepotism or procurement (particularly since the latter is required by § 11-35-50), which policies should also be examined.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP/an  
Enclosures

REVIEWED AND APPROVED BY:

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