



ALAN WILSON  
ATTORNEY GENERAL

May 5, 2014

The Honorable Harvey S. Peeler, Jr.  
Senator, District No. 14  
213 Gressette Senate Office Building  
Columbia, SC 29202

Dear Senator Peeler:

By your letter dated February 28, 2014 you have asked for the opinion of this Office regarding a seat on the Winthrop University (“the University”) Board of Trustees (“the Board”). Per your letter, you explain one of the candidates for a seat on the Board is the nephew of the current President of the University which you believe could create a conflict of interest since the Board “is the entity which hires and dismisses the President.” In light of this you ask, “[i]s there any case law or statute that would prohibit or discourage an immediate family member from serving on the [Board] if a member of the family is the President of the institution?”

In response, we note that while there is no longer a state statutory provision generally prohibiting nepotism, because we believe such an appointment could, with additional facts, be perceived as being at odds with certain provisions of the Ethics, Government Accountability and Campaign Reform Act of 1991 (“the Ethics Act”), we advise you to seek an opinion from the Ethics Commission on this matter. See Op. S.C. Atty. Gen., 2005 WL 2652380 (October 3, 2005) (explaining this Office, as a matter of policy, refrains from issuing opinions regarding State Ethics laws and instead advises individuals to consult with the appropriate body charged with issuing ethics advisory opinions on such issues).

#### Law/Analysis

Prior to being repealed, Section 8-5-10 of the Code generally addressed the issue of nepotism prohibiting the head of “any department of government” from hiring someone related to him in the sixth degree. Op. S.C. Atty. Gen., 1981 WL 157830 (June 23, 1981); Op. S.C. Atty. Gen., 2005 WL 2652380 (October 3, 2005) (noting Section 8-5-10 of the Code has been repealed). However, following Section 8-5-10’s repeal, the General Assembly, rather than regulating nepotism through a general prohibition, instead enacted comprehensive legislation within this area via the Ethics Act. S.C. Code Ann. § 8-13-10, et seq. Today, the Ethics Act continues to regulate the appointment of family members under certain circumstances similar to

those now at issue. For instance, Section 8-13-750 of the Code, created by the passage of the Act, prohibits “public officials, public members and public employees” from causing the employment, appointment, promotion, transfer or advancement of a *family member* to a state or local office where the public official, member or employee supervises or manages such an individual.<sup>1</sup> S.C. Code Ann. § 8-13-750 (1996) (emphasis added). Likewise, Section 8-13-700(A) of the Code, also included within the Ethics Act, restricts public officials, public members, and public employees from knowingly using their respective office to obtain an economic interest for themselves, their *immediate family*, or an individual with whom they are associated.<sup>2</sup> S.C. Code Ann. § 8-13-700 (Supp. 2013) (emphasis added). In sum, South Carolina law, the Ethics Act in particular, recognizes that the appointment of family members can, in certain circumstances, pose a risk of divided loyalties and therefore prohibits certain family members from supervising their kin. See Op. S.C. Atty. Gen., 1981 WL 157830 (June 23, 1981) (explaining that anti-nepotism policies are reasonable conditions of employment and remain “both desirable and advisable” as means of preserving the integrity of government).

Here, while we are unaware of anything suggesting ethical provisions were violated in the present case, one could argue that, in the event the individual at issue was appointed, the appearance of impropriety may arise simply because of the familial relationship between the President and her nephew. Moreover, it could be argued the President’s nephew, by virtue of his status as a family member, may be less likely to be fair and impartial if the Board reviews the President’s job performance, a task presumably included within the Board’s power to hire and fire the President. Notably, one purpose of anti-nepotism policies is to prevent one family member from sitting in judgment of another since the family member conducting such a review, favorable or not, is presumed to be biased based upon their familial relationship. Indeed, the Legislature, by enacting the portions of the Ethics Act noted above, has specifically identified the appointment of family members as presenting a conflict of interest in situations similar to the one

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<sup>1</sup> We note that the phrase “family member” may not generally apply to a nephew unless that nephew meets the definition of “immediate family” as defined in Section 8-13-100(18). See S.C. Code Ann. § 8-13-100(15)(a)-(b) (Supp. 2013) (defining “family member” as an individual who is “the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild” of a public official, public member, or public employee” or is a member of such an individual’s “immediate family”); but see S.C. Code Ann. § 8-13-100(18) (“Immediate family means: (a) a child residing in a candidate’s, public official’s, or public employee’s household; (b) a spouse of a candidate, public official, public member or public employee; or (c) an individual claimed by the candidate, public official, public member, or public employee or the candidate’s, public official’s, public member’s, or public employee’s spouse as a dependent for income tax purposes.”). However, the question of whether the nephew at issue here meets Section 8-13-100(18)’s definition of “immediate family” is a factual question to be determined by the Ethics Commission. See Op. S.C. Atty. Gen., 2013 WL 6924890 (December 23, 2013) (stating the question of how the Ethics Commission may apply the Ethics Act to a given factual scenario is beyond the scope of an opinion of this Office, especially where the relevant facts have yet to be determined).

<sup>2</sup> As with Section 8-13-750, the question of whether 8-13-700 even applies to the scenario here is a factual question to be determined by the Ethics Commission. See Op. S.C. Atty. Gen., 2013 WL 6924890 (December 23, 2013) (stating the question of how the Ethics Commission may apply the Ethics Act to a given factual scenario is beyond the scope of an opinion of this Office, especially where the relevant facts have yet to be determined). For instance, we do not know whether the President nominated her nephew to serve on the Board, and if she did, whether she did so in an effort to obtain an economic interest for either herself or her nephew.

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at issue here. Thus, because “public officers and employees owe a duty of loyalty to the public,” and since, as noted in footnotes one and two *supra*, the question of whether the President’s nephew qualifies as a member of the President’s “immediate family” is a factual one, we believe it would be prudent to request an ethics opinion regarding the candidate mentioned in your letter. Op. S.C. Atty. Gen., 2011 WL 4592368 (September 12, 2011) (explaining, “[p]ublic officers and employees owe a duty of loyalty to the public” and further noting that questions regarding the appointment of family members are governed by the Ethics Act); Op. S.C. Atty. Gen., 2013 WL 6924890 (December 23, 2013) (advising that the State Ethics Commission has the authority to investigate factual matters pertaining to alleged ethics violations and make decisions on the merits of such allegations); Op. S.C. Atty. Gen., 2005 WL 2652380 (October 3, 2005) (stating this Office, as a matter of policy, refrains from issuing opinions regarding State Ethics laws and instead advises individuals to consult with the appropriate body charged with issuing ethics advisory opinions on such issues). Accordingly, we advise you to request an ethics advisory opinion on this matter.

#### Conclusion

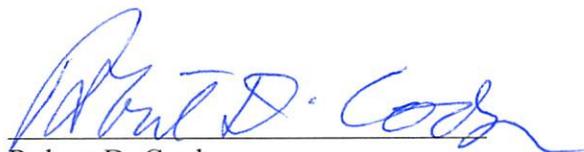
In conclusion, we note that while there is no longer a state statutory provision generally prohibiting nepotism, it appears the appointment of the President’ nephew to the Board could be perceived as being at odds with certain provisions of the Ethics Act, notably Sections 8-13-700 and 8-13-750 of the Code. Indeed, South Carolina recognizes that, as a matter of policy, the appointment of family members can, in certain circumstances, pose a risk of divided loyalties and therefore prohibits certain family members from supervising their kin. However, because such a determination would require additional investigation into the underlying facts, something which this Office is ill-equipped to do for purposes of issuing an advisory opinion, we suggest you seek an opinion from the State Ethics Commission on this matter.

Sincerely,



Brendan McDonald  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General