

**To: Candyee B. Pardee**

**June 20, 2000**

**Re: Decisions Concerning Relatives of  
School Board Members**

**Chief Dupty County Attorney  
Gila County Attorney**

**I00-013  
(R00-026)**

Pursuant to Arizona Revised Statutes ("A.R.S.") § 15-253(B), this Office revises the opinion you prepared for the superintendents of the Hayden-Winkelman School District No. 41 and the Young Public School District No. 5.

### **Questions Presented**

1. Whether a school board member may participate in filling a secretarial position for which his or her first cousin has applied.<sup>(1)</sup>
2. Whether a school board member may vote on budgetary issues related to his or her child who works as a teacher's aide within the district.

### **Summary Answers**

1. A school board member may participate in filling a secretarial position for which his or her first cousin has applied.
2. For reasons unique to school district governing board members, a school district governing board member may participate in budgetary decisions regarding that board member's child who is employed by the district, unless the child is a dependent as defined in A.R.S. § 43-1001. If the child of the governing board member is the board member's "dependent," then the board member must not participate in any decisions in which the child has a substantial interest.

### **Background**

In both the Hayden-Winkelman School District and the Young Public School District, questions have arisen concerning the application of Arizona's conflict of interest laws and anti-nepotism laws to various decisions that involve school board members who have relatives who either are employed by the school district or are seeking employment in the school district. In one situation, for example, an applicant for a secretarial position is the first cousin of a board member. In another, a school board member's child works as a teacher's aide in the district.

Under Arizona's anti-nepotism statute, it is unlawful

for an executive, legislative, ministerial or judicial officer to appoint or vote for appointment of any person related to him by affinity or consanguinity within the third degree to any clerkship, office, position, employment or duty in any department of the State, district, county, city or municipal government of which such executive, legislative, ministerial or judicial officer is a member, when the salary, wages or compensation of such appointee is to be paid from public funds or fees of such office. . . .

A.R.S. § 38-481.

In addition to the anti-nepotism statute, which applies to hiring decisions, the conflict of interest

statutes further limit the involvement of public officers or employees in decisions affecting relatives. See generally A.R.S. §§ 38-501 through -511. In general, the conflict of interest statutes apply to decisions in which a public officer or employee or his or her relative has a "substantial interest." A.R.S. § 38-503(A), (B). A substantial interest is "any pecuniary . . . interest, either direct or indirect, other than a remote interest." A.R.S. § 38-502(11). The statute lists ten qualifying "remote interests." A.R.S. § 38-502(10). When a substantial interest exists, the public officer or employee must disclose the interest in the manner specified in statute and refrain from voting or otherwise participating in any manner in the matter. A.R.S. §§ 38-502(3), -503(A), (B). The relatives subject to the conflict of interest statutes generally include: "the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse." A.R.S. § 38-502(9). For school board members, however, the Legislature has provided that a "remote interest" includes "that of a public school board member when the relative involved is not a dependent, as defined in § 43-1001, or a spouse." A.R.S. § 38-502(10)(h). Under A.R.S. § 43-1001, "dependent" has "the same meaning as prescribed by § 152 of the Internal Revenue Code."<sup>(2)</sup>

In addition, in Title 15, the Legislature has established other requirements unique to school district governing board members. For example, the Legislature has prohibited any dependent, as defined in A.R.S. § 43-1001, of a governing board member from being employed in that school district, "except by consent of the board." A.R.S. § 15-502(C). Also, "no employee of a school district or the spouse of such employee may hold membership on a governing board of a school district by which such employee is employed." A.R.S. § 15-421(D). The Legislature also provided:

Notwithstanding any other provision of law, a governing board member is eligible to vote on any budgetary, personnel or other question which comes before the board, except:

1. It shall be unlawful for a member to vote on a specific item which concerns the appointment, employment or remuneration of such member or any person related to such member who is a spouse or a dependent as defined in § 43-1001.
2. No member may vote on the employment of a person who is a member of the governing board or who is the spouse of a member of the governing board and whose membership on the board and employment are prohibited by § 15-421, subsection D.

A.R.S. § 15-323(A).

### Analysis

#### **A. A School Board Member May Participate in Decisions Relating to Hiring a Relative, Unless the Relative Is the Board Member's Spouse or Dependent.**

For most public officers in Arizona, the anti-nepotism statute governs whether they may participate in decisions to hire or appoint relatives. A.R.S. § 38-481. That statute prohibits any "executive, legislative, ministerial or judicial officer" from being involved with decisions to hire or appoint a relative within the third degree of consanguinity or affinity.<sup>(3)</sup> *Id.* The term "executive, legislative, ministerial or judicial officer" includes

all officials of the state, or of any county or incorporated city within the state, holding office either by election or appointment, and the heads of the departments of state, county or incorporated cities, officers and boards of managers of the universities.

## A.R.S. § 38-481(C).

Until 1977, the anti-nepotism statute included "public school trustees" as officers subject to the anti-nepotism statute, but in that year the Legislature struck "public school trustees" from the statute and adopted different restrictions for school board members. See 1977 Ariz. Sess. Laws ch. 164. These restrictions applicable to school board members are now found in A.R.S. § 15-323, and under that statute a school board member may vote on any hiring decision, unless it involves that board member's spouse (who, under A.R.S. § 15-421(D), cannot be employed by the district) or a dependent of that board member (and dependents may only be employed by the district with board approval under A.R.S. § 15-502(C)). See Ariz. Att'y Gen. Op. I85-006 (concurring in county attorney opinion that school board member is not precluded from participating in an employment decision regarding a relative who is neither the spouse nor a dependent of the member). Thus, a school board member may participate in hiring decisions that involve that board member's first cousin.<sup>(4)</sup>

## **B. A School Board Member May Participate in Decisions Concerning the Salary of a Child Who Is Employed by the District, Unless the Child Is a Dependent as Defined in A.R.S. § 43-1001.**

A public officer's participation in compensation decisions is governed by the conflict of interest statutes, A.R.S. §§ 38-502, -503. These statutes prohibit public officials from participating in decisions in which a relative covered by these statutes has a substantial interest. *Id.*

A "substantial interest" is "any pecuniary or proprietary interest, either direct or indirect, other than a remote interest." A.R.S. § 38-502(11). A "remote interest" includes "that of a public school board member when the relative involved is not a dependent, as defined in § 43-1001, or a spouse." A.R.S. § 38-502(10)(h).<sup>(5)</sup> This is consistent with the language in A.R.S. § 15-323(A), which allows school board members to participate "on any budgetary, personnel or other question" unless it involves a spouse or dependent. A.R.S. § 15-323(A). Therefore, under A.R.S. §§ 15-323 and 38-502(10)(h), a school board member may participate in salary decisions concerning his or her child who is employed by the district, unless that child is the board member's dependent.

## **Conclusion**

A school district governing board member may participate in decisions that involve hiring or compensating a relative, unless that relative is a spouse or dependent.

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Janet Napolitano  
Attorney General

1. Your opinion also addressed this issue with regard to a second cousin and a grand niece of board members. Although this Opinion focuses on first cousins, the same analysis applies to the other relatives.
2. The Internal Revenue Code defines "dependent" as "any individual [listed in the statute] over half of whose support, for the calendar year . . . , was received from the taxpayer . . . ." IRC § 152(a).

3. As you correctly noted in your opinion, for the purposes of the anti-nepotism statute, the civil law method applies to determine the degree of relationship. *See Graham County v. Buhl*, 76 Ariz. 275, 263 P.2d 537 (1953). This calculation begins with the relative in question, traces up to the common ancestor and then back down to the public official. Using this method, first cousins are related to the fourth degree, which is outside the anti-nepotism statute. *See* A.R.S. § 38-481.

4. Although your opinion reached the same conclusion by relying on the anti-nepotism statute, this Opinion revises the analysis to apply the more specific A.R.S. § 15-323(A).

5. The Legislature added this provision specifically applicable to school board members to the definition of "remote interest" in the same 1977 legislation that amended the anti-nepotism statute to eliminate the reference to "public school trustees." *See* 1977 Ariz. Sess. Laws ch. 164.

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