

ADVISORY OPINION

*The Legislative Ethics Commission has approved generic advice on the topic listed below. The guidance offered is general in nature and the Commission's response to individual questions may vary according to the facts of each particular request. **You are strongly advised to consult Commission staff or your counsel's office for advice pertaining to your individual situation.***

BAN ON EMPLOYMENT OF RELATIVES GENERIC ADVICE

The following advice pertaining to restrictions on legislative members or legislative employees with regard to hiring relatives was approved by the Commission in response to multiple inquiries regarding the nepotism ban which was established by Chapter 14 of the Laws of 2007. (Effective Date April 25, 2007)

RELEVANT STATUTE: Public Officers Law §73(1)(m) and §73(14)

DISCUSSION: Public Officers Law §73(14)(a) provides the general rule regarding the nepotism ban and states, in pertinent part:

No ... member of the legislature or legislative employee may participate in any decision to hire, promote, discipline or discharge a relative for any compensated position at, for or within any state agency, public authority or the legislature

Public Officers Law §73(14)(a), prohibits “participation” by a member or legislative employee in the hiring of a relative for a compensated position within the legislature. The statute does not, however, provide a clear understanding of what activities constitute participation in the hiring process. The Commission concludes that “participation” in hiring should be broadly interpreted when the legislator or legislative employee has any authority in the process of a relative being hired. Therefore, **even** if the involvement of a legislative member or legislative employee in the hiring of their relative is solely administrative, such as signing a Personnel Action Request, such administrative action is participation in the hire for purposes of Public Officers Law §73(14)(a).

Pursuant to Public Officers Law §73(1)(m), “[t]he ‘relative’ of any individual shall mean any person living in the same household as the individual and any person who is a direct descendant of that individual’s grandparents or the spouse of such descendant.”

The Commission notes that the definition “relative” was also intended by the Legislature to be far reaching. As we have concluded in specific situations in the past, the Commission concludes that any person who is a direct descendant of one of the individual’s grandparents is included within the scope of the nepotism ban.

It should be noted that, pursuant to statute, the prohibition against hiring relatives does NOT apply to the hiring of a relative with a physical impairment, for the sole purpose of assisting with that impairment, as necessary and otherwise permitted by law. The prohibition also is NOT applicable to the temporary hiring of legislative pages, interns or messengers.

Adopted Unanimously February 16, 2011