

Nepotism

Mississippi's nepotism statute, while limited in its application to very specific classifications of employees, nonetheless carries with it a very substantial penalty: forfeiture to the state of the amount of all sums of money paid to any person appointed or employed in violation of the nepotism statute. That statute, Miss. Code Ann. §25-1-53 (1975), provides as follows:

It shall be unlawful for any person elected, appointed or selected in any manner whatsoever to any state, County, district or municipal office, or for any Board of Trustees of any state institution to appoint or employ, as an officer, clerk, stenographer, deputy or assistant who is to be paid out of the public funds, any person related by blood or marriage within the third degree, computed by the rule of the civil law, to the person or any member of the Board of Trustees having the authority to make such appointment, or contract such employment as employer. This section shall not apply to any employee who shall have been in said department or institution prior to the time his or her kinsman, within the third degree, became the head of said department or institution or member of said Board of Trustees. The provision herein contained shall not apply in the instance of the employment of physicians, nurses or medical technicians by governing Boards of charity hospitals or other public hospitals.

According to the Attorney General's office, a three-part analysis should be employed to determine whether an employment relationship violates the nepotism statute:

- (1) Are the parties related within the third degree?
- (2) Is the relative who is the public official a "appointing authority"?
- (3) Is the job included in the list of prohibited positions?

See AG Op. No. 91-0404 to Harrington, dated May 30, 1991.

In *Shelton v. Town of Hickory Flat*, 724 So. 2d 1075 (Miss.), the Mississippi Supreme Court held that a discharged municipal maintenance department employee lacked standing under the nepotism statute to challenge the mayor and aldermen's decision to employ the son of one alderman as his replacement. The Court reasoned that only the Mississippi Ethics Commission and the District Attorney were statutorily authorized to sue for violation of the nepotism statute, and, further, that the discharged employee was not a member of the class of prospective employees for the appointive position in the maintenance department of town and thus was not injured by the hiring of the alderman's son. The Court noted that even if the alderman's son were a candidate for the maintenance position, the hiring was not prohibited by Section 25-1-53, since the position was not that of an "officer, clerk, stenographer, deputy or assistant," which are the only positions declared protected from nepotism by the legislature. For that reason the maintenance position was outside the ambit of the statute.

The nepotism statute has been found applicable to a number of County employment relationships:

- the nepotism statute would prohibit the sheriff of a county from hiring his son as a deputy and assigning him to a multi-jurisdictional drug enforcement unit consisting of Lafayette County, Oxford and the University of Mississippi, but there is no prohibition against the City or the University hiring the Sheriff's son as a law enforcement officer and assigning him to the drug enforcement unit. AG Op. No. 2003-0474 to Gurley, August 22, 2003.

- the nepotism statute's prohibitions regarding employment of relatives within the third degree to certain positions would be violated if a county tax collector hired her husband as a part-time mobile home inspector to work out of the tax collector's office. AG Op. 2003-0379 to Creekmore, July 25, 2003.

- Whether the duties of a bookkeeper/receptionist for a recreation authority created by an interlocal cooperation agreement between a city and county board of supervisors would encompass the duties of "clerk" and would then bring the position within the purview of the nepotism statute is a factual question which must be determined by the appointing authority. AG Op. 2003-0382 to Turnage, July 25, 2003.

- the nepotism statute would be violated by a county board of supervisors' appointment of a supervisor's step-nephew to the county development commission established pursuant to Miss. Code Ann. 59-9-1 et seq., since a step-nephew would be related to the third degree to the supervisor, the relative of the step-nephew is a public official of the appointing authority, and the position is one of the five specific positions listed in the nepotism statute. AG Op. 2003-0340 to Allen, July 18, 2003.

- the nepotism statute would not prohibit a county from hiring the daughter-in-law of a justice court judge to be a deputy justice court clerk, since it is the board of supervisors that hired the deputy justice court clerk and not the justice court judges. AG Op. 2003-0216 to Fortier, May 16, 2003.

- the nepotism statute would not bar the father from continued employment as a road construction manager and employer for a supervisor's district by the board of supervisors if his son is subsequently elected to the position of supervisor, since Section 25-1-53 specifically provides that it does not apply "to any employee who shall have been in said department or institution prior to the time his or her kinsman, within the third degree, became the head of said department or institution or member of said board of trustees." AG Op. No. 2003-0023 to Torrey, February 14, 2003.

- the nepotism statute would not be violated by the employment by a sheriff of a deputy who is the son of a member of the board of supervisors, and by this same rationale, the employment by the sheriff of an auxiliary deputy sheriff who is the son of a member of the board of supervisors would likewise not violate Section 25-1-53. AG Op. 2002-0017 to Shaw, January 24, 2002.

- a Coroner/County Medical Examiner Investigator cannot appoint his son as Deputy County Medical Examiner Investigator. AG Op. No. 91-0077 to Beech, dated February 26, 1992.

- a Board of Supervisors is prohibited from compensating the son of a County Medical Examiner

Investigator for his services as Deputy County Medical Examiner Investigator. AG Op. No. 92-0423 to Sims, dated June 17, 1992.

- the nepotism statute would prohibit the Sheriff from appointing his sister-in-law as Deputy Sheriff, but would not prohibit him appointing her as dispatcher or jailer. AG Op. No. 93-0554 to McMillan, dated September 23, 1993.

- a County Administrator is prohibited by the nepotism statute from appointing the nephew of a County Supervisor as Assistant Purchasing Clerk, since the Board of Supervisors is ultimately the appointing authority of the Assistant Purchasing Clerk in all counties, regardless of whether they operate under the beat system or unit system. AG Op. No. 93-0482 to Trapp, dated July 14, 1993.

The Attorney General's office has consistently construed §25-1-53 strictly. See AG Op. No. 93-0217 to Hathorn, dated April 28, 1993, as the following summary of AG opinions illustrates:

- the employment of a brother of a member of the Board of Supervisors as road hand/machine operator/heavy equipment operator/road maintenance individual does not constitute a violation of the nepotism statute. AG Op. No. 90-0094 to Lamar, dated February 22, 1990.

- the hiring of the sister of a member of the Board of Supervisors by the Tax Assessor and Collector to be Deputy Assessor would not violate the nepotism statute, since the Tax Assessor and Collector is the hiring authority, and not the Board of Supervisors. The employee would thus not be related to the hiring authority within the third degree according to civil law. AG Op. No. 90-0651 to McGregor, dated August 29, 1990.

- the employment by a Sheriff of a Deputy who is the son of a Supervisor does not present a violation of the nepotism statute. AG Op. No. 92-0433 to Hatcher, dated June 17, 1992.

- the nepotism statute does not prohibit a Board of Supervisors from employing the sister-in-law of one of the Board's members as a dispatcher. AG Op. No. 93-0271 to Hathorn, dated April 28, 1993.

- an administrator who implements a federal law such as the Americans With Disabilities Act is not one of the five listed positions in the nepotism statute and thus the Board of Supervisors or the County Administrator could appoint the nephew of a Board member as Administrator in a County charged with responsibility of implementing the ADA. AG Op. No. 93-0482 to Trapp, dated July 14, 1993.