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Honorable Matt G. Sharp, Chairman
DeKalb County Board of Education
Post Office Box 325
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Schools – Education, Boards of – Nepotism – Employees, Employers, Employment

Section 41-1-5 of the Code of Alabama applies to employees of county boards of education.

The promotion of an assistant principal to head principal is not "normal promotional advancement" as contemplated by section 41-1-5(b) of the Code.

Section 41-1-5 of the Code prohibits a county school board from promoting a current employee to the position of principal where the new principal would be the immediate supervisor, or in the chain of command, of his or her relative within the fourth degree.

Dear Chairman Sharp:

This opinion of the Attorney General is issued in response to your request on behalf of the DeKalb County Board of Education.

QUESTIONS

(1) Does section 41-1-5 of the Code of Alabama apply to current employees of the DeKalb County School System hired prior to the effective date of Act 2013-242?

> (2) Would a promotion from an assistant principal to that of head principal within the system be considered a "normal promotional advancement" as is stated in section 41-1-5(b) of the Code?
>
> (3) May the DeKalb County Board of Education promote an employee of the system hired prior to the effective date of Act 2013-242 to the position of head principal where a subordinate employee who made no recommendation, cast no vote, and had no involvement with the promotion of the first employee, and where the subordinate employee is within the fourth degree of affinity or consanguinity of the first employee?

FACTS AND ANALYSIS

According to your request, the DeKalb County Board of Education currently has a vacancy at one of its schools for the position of principal. A current employee of the school system has applied for the position. The spouse of the applicant is also employed by the school system as a teacher at the same school where, if hired, the applicant would serve as principal.

The Alabama Anti-Nepotism Law is found in section 41-1-5 of the Code of Alabama. Prior to 2013, section 41-1-5 of the Code stated the following:

> No officer or employee of the state or of any state department, board, bureau, committee, commission, institution, corporation, authority or other agency of the state shall appoint any person related to him within the fourth degree of affinity or consanguinity to any job, position or office of profit with the state or with any of its agencies. Any person related to the appointing authority within the prohibited degree shall be ineligible to serve in any capacity with the state under authority of such an appointment, and any appointment so attempted shall be void. Whoever violates this section is guilty of a misdemeanor and shall be punished by a fine not to exceed $500.00 or by imprisonment not to exceed one year, or both. This section shall not apply, however, in the case of an appointment of a person to a position in the classified

> service of the state made from the register of persons eligible as certified by the State Director of Personnel.

ALA. CODE § 41-1-5 (2000).

This Office has previously determined that section 41-1-5 is applicable to employees of county boards of education. Opinion to Honorable Bill Fuller, Member, House of Representatives, dated March 5, 1996, A.G. No. 96-00146. In 2013, however, section 41-1-5 of the Code was significantly amended. This section now states as follows:

> (a) No officer or employee of the state or of any state department, board, bureau, committee, commission, institution, corporation, authority or other agency of the state shall appoint, or enter a personal service contract with, any person related to him within the fourth degree of affinity or consanguinity to any job, position or office of profit with the state or with any of its agencies.
>
> (b) Any person within the fourth degree of affinity or consanguinity of the agency head or appointing authority, the appointing authority's designee, deputy director, assistant director, or associate director shall be ineligible to serve in any capacity with the state under authority of such an appointment, and any appointment so attempted shall be void. The provisions of this section shall not prohibit the continued employment of any person who is employed as a public employee as of August 1, 2013, nor shall it be construed to hinder, alter, or in any way affect normal promotional advancements under the state Merit System for the employee.
>
> (c) ***Any person within the fourth degree of affinity or consanguinity of a public employee shall not be the immediate supervisor for or in the chain of command of, or participate in the hiring, evaluation, reassignment, promotion, or discipline of, the public employee within any state department, board, bureau, committee, commission, institution, corporation, authority, or other agency of the state.***

> ***However, this subsection shall not apply to an employee of a city or county board of education that is currently employed or to a future employee hired into a non-supervisory position posted in accordance with Section 16-22-15, where his or her relative will not be the employee's immediate supervisor, and where the employee's relative made no recommendation, cast no vote, and otherwise had no involvement concerning the employee's hiring.***
>
> (d) Whoever violates this section is guilty of a misdemeanor and shall be punished by a fine not to exceed $500.00 or by imprisonment not to exceed one year, or both. A willful violation of this section shall subject the public employee and the person or persons within the fourth degree of affinity or consanguinity of the public employee to disciplinary action, up to and including separation from state service.

ALA. CODE § 41-1-5 (2013) (emphasis added).

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000). Thus, the 2013 amendment to section 41-1-5(c) of the Code prohibits a relative within the fourth degree from (1) being the immediate supervisor of a relative, (2) being in the chain of command of a relative, or (3) participating in the hiring, evaluation, reassignment, promotion or discipline of a relative. ALA. CODE § 41-1-5 (2013).

The second paragraph of section 41-1-5(c) of the Code, however, provides an exception applicable to employees of a city or county board of education that were employed at the time of the effective date of the amendment. This exception permits the continued employment of employees in their current positions as of the effective date of the amendment. In other words, section 41-1-5 of the Code continues to apply to employees of county boards of education, but the amendment grandfathers in the current employees as of the effective date of the amendment to preserve the *status quo*, protecting the rights of current employees in their current positions. *Id.* Future hires, however, are only exempt if they are (1) nonsupervisory, (2) not supervised by their relative, (3) and their relative made no vote, recommendation, or involvement in their hiring. *Id.*

If the exception for current employees is read in isolation, the statute would appear to permit the hiring of a current employee as a new principal. In construing statutes, however, courts do not interpret provisions in isolation, but consider them in the context of the entire statutory scheme. *Siegelman v. Ala. Ass'n of School Boards*, 819 So. 2d 568, 582 (Ala. 2001). The courts are not controlled by the literal meaning or language of a statute, but by its clear meaning and intention. *Bell v. Pritchard*, 273 Ala. 289, 292, 139 So. 2d 596, 598 (1962). Moreover, exceptions from a statutory scheme are to be interpreted narrowly. *Pate v. Armstrong World Indus., Inc.*, 578 So. 2d 281, 284 (Ala. 1991).

In the facts you have submitted, the current assistant principal is applying for the new position of principal. Notice of the vacancy must be posted. ALA. CODE § 16-22-15 (2012). To be considered, the current assistant principal must make application. If hired, the new principal would be subject to a new contract with new duties and responsibilities. He or she would be a future employee in a supervisory position over a relative within the fourth degree. This is prohibited by section 41-1-5 of the Code.

With respect to your second question, section 41-1-5(b) of the Code states that the section shall not be construed to hinder, alter, or in any way affect normal promotional advancements ***under the state Merit System*** for the employee." ALA. CODE § 41-1-5(b) (2013) (emphasis added). Employees of county boards of education are not included in the State Merit System. ALA. CODE § 36-26-10 (2013). Accordingly, the promotion of an assistant principal to head principal is not a "normal promotional advancement" as contemplated by section 41-1-5(c) of the Code.

With respect to your final question, as discussed above, the amendment to section 41-1-5(b) of the Code preserves the *status quo* for current employees of county school boards in their current positions. The amendment, however, does not allow for the promotion of a current employee to the position of principal where he or she would be the immediate supervisor for, or in the chain of command of, a relative. If promoted, the new principal would be involved in the evaluation, reassignment, and discipline, or the refusal to discipline, his or her relative. This scenario is expressly prohibited by section 41-1-5(c) of the Code.

CONCLUSION

Section 41-1-5 of the Code of Alabama applies to employees of county boards of education.

The promotion of an assistant principal to head principal is not "normal promotional advancement" as contemplated by section 41-1-5(b) of the Code.

Section 41-1-5 of the Code prohibits a county school board from promoting a current employee to the position of principal where the new principal would be the immediate supervisor, or in the chain of command, of his or her relative within the fourth degree.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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