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STATE OF NEBRASKA
OFFICIAL
APR 9 1993
DEPT. OF JUSTICE

DATE: April 7, 1993

SUBJECT: Conflict of Interest: Nepotism

REQUESTED BY: Rex Amack, Director
Nebraska Game and Parks Commission

WRITTEN BY: Don Stenberg, Attorney General
Linda L. Willard, Assistant Attorney General

You have requested the opinion of this office on whether Neb. Rev. Stat. § 49-1499.01 (1988) applies to temporary (seasonal) employment of family members the same as it does for permanent employment of family members. We would first note that the rules and regulations for the Nebraska Department of Personnel define temporary employee as an employee hired for a limited period of time not to exceed one year (273 NAC 3.041). The Personnel rules and regulations contain no definition or acknowledgement of seasonal employment. Since seasonal employment presumes a temporary nature, we have addressed your question as a question about temporary employment of family members.

The first paragraph of the statute cited above sets out the conditions or circumstances when a public official or employee may employ, recommend the employment of, or supervise the employment of an immediate family member. This paragraph applies equally to the permanent or temporary employment of family members.

The second paragraph of the statute states that, with exceptions noted, "this section shall not apply to an immediate family member of a public official or public employee who (1) was previously employed in a position subject to this section prior to the election or appointment of the public official or public employee or (2) was employed in a position subject to this section prior to July 17, 1986."

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In construing a statute, the court must "determine and give effect to the purpose and intention of the Legislature as ascertained from the entire language thereof considering its plain, ordinary, and popular sense." ***State v. Tingle***, 239 Neb. 558, 563, 477 N.W.2d 544, 548 (1991). ***See also Adkisson v. City of Columbus***, 214 Neb. 129, 333 N.W.2d 661 (1983). Clearly, the intent of the Legislature was to establish guidelines for when family members could be hired and to grandfather in those individuals who were related to the public official for whom they were working and were already employed by the State or political subdivision prior to July 17, 1986. This section would also allow an individual who is employed by the State or political subdivision to continue employment if a relative were subsequently elected or appointed to a public position.

According to the definition in the Personnel Department rules and regulations cited above, an individual who has a temporary position holds that position for less than one year. An individual holding such a position prior to the appointment of a relative as a public official could continue the employment until the end of the temporary employment. Any subsequent employment in the same or other temporary or permanent position would be subject to the conditions set out in paragraph one of § 49-1499.01. Because of the definition of temporary employee, any individual employed on July 17, 1986, would no longer be employed in that temporary position after July 17, 1987. Consequently, it is our determination that employment of family members must be in conformity with the first paragraph of § 49-1499.01 (1988) except in those instances which may conform with subpart (1) of the second paragraph of this statute. Then the exception cited would apply only until the end of the temporary employment period. Any subsequent employment of the individual in any temporary or permanent position which may involve nepotism must be in conformity with the first paragraph of § 49-1449.01.

Sincerely,

DON STENBERG
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28-03-14.93
APPROVED:

Attorney General