



Nepotism

Question:

I am a trustee in my local district. My spouse is employed in the school district. Does this cause a conflict of interest?

Answer:

Idaho code 33-507 is the specific statute relating to schools and nepotism. It is unlawful for the District to enter into a contract with the spouse of any member of the board which requires the payment of district funds – unless provided for in 18-1361 or 18-1361A. If any other relative of the board member or relative of the spouse of a board member – within the second degree of affinity or consanguinity (blood or marriage) is considered for employment at the school, the trustee must abstain from the decision and shall be absent from the meeting while such employment is being considered and determined. So, the Board can hire any individual, other than the individual's spouse, but that board member should not be involved in the discussion or vote. For a more detailed Memorandum on this topic, please continue on to the next page to read the full legal memorandum.

MEMO

TO: Idaho School Boards Association
FROM: Anderson Julian & Hull
DATE: March 8, 2011
RE: Whether a trustee may sit as a trustee at the same time their spouse is an employee of the District.

Idaho Code §§ 33-507, 18-1359, 1361, 1361A, and 59-701 et seq. all deal with various conflicts of interest that apply to School District Trustees.

The general rule is that no Board member can have a pecuniary interest directly or indirectly in any contract or other transaction pertaining to the school. **See I.C. §§ 33- 507 and 1359(1)(d and e).** **See also Id. Atty. Gen. Opinion 93-10.** This would mean that a Trustee who receives a direct or indirect pecuniary benefit pursuant to an employment contract with the District, such as a spouse's salary, absent one of the specific enumerated exceptions, may be in violation of this general rule.

However, with regard to the general prohibition of pecuniary interest, there are some exceptions that may apply. I.C. §§ 18-1359, 1361, and 1361A are criminal statutes, and §§ 59-701 et seq. applies to public officers in a very general sense, and as such both are statutes of general applicability.

Specific statutes such as § 33-507 (addressing school districts and school district trustees specifically) govern over general statutes. See **Tomich v. City of Pocatello**, 127 Idaho 394, 400 (1995). I.C. § 33-507 contains the following language:

When any relative of any trustee or relative of the spouse of a trustee related by affinity or consanguinity within the second degree is considered for employment in a school district, such trustee shall abstain from voting in the election of such relative, and shall be absent from the meeting while such employment is being considered and determined.

This provision relates more broadly to the employment of family members of a board member or the spouse of a board member, within the second degree of affinity or consanguinity. In such a situation, specific requirements and limitations are established with regard to an employment situation in this type of a family setting. This specific provision is further supported by the general legal provisions of I.C. § 18-1359(5)(a), which states

An employee of a governmental entity holding a position prior to the election of a local government official, who is related within the second degree, shall be entitled to retain his or her position and receive general pay increases, step increases, cost of living increases, and/or other across the board increases in salary or merit increases, benefits and bonuses or promotions.

However, with regard to the spouses of board member of school districts, there is a very specific statutory provision that is controlling. I.C. § 33-507 contains the following language:

It shall be unlawful for the board of trustees of any class of school district to enter into or execute any contract with the spouse of any member of such board, the terms of which said contract requires, or will require, the payment or delivery of any school district funds, money or property to such spouse, except as provided in section 18-1361 or 18-1361A, Idaho Code.

As addressed earlier in this memorandum, a specific provision of law is going to be controlling over a broad or general provision. In this situation, the Idaho Code has a number of broad provisions relating to public officers and pecuniary interests. In -3- reading through these general provisions, one may reach the conclusion that a spouse of a board member can be a paid employee of the District. However, such a reading fails to consider the very specific prohibition which is enumerated in Section 33-507, **I.C.**

Specifically stated in the prohibitions of section 33-507, **I.C.** contains reference to the general provisions contained in the criminal code. However, both §§ 18-1361 and 18-1361A only deal with public bidding situations, which in the context of employment situations at a public school district does not apply to employment contracts.

Therefore, it is almost without question that the specific provisions of **I.C.** § 33- 507 with regard to contracts with spouses will govern over all of the more general statutes (including the more general portions of § 33-507), and thus employment contracts with a person who is a spouse of a trustee will likely be deemed illegal, and void. **See Independent Sch. Dist. v. Collins**, 15 Idaho 535 (1908).

contact us with your question:



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