APPOINTMENT OR EMPLOYMENT OF RELATIVES OF SCHOOL SUPERINTENDENTS

EFFECT OF CHAPTER 2018-005, LAWS OF FLORIDA

To: Joy Frank, Esq., Attorney for Florida Association of District School Superintendents (Tallahassee)

SUMMARY:

Advice is provided regarding the amendment to Section 1012.23(2), Florida Statutes, which became effective on July 1, 2019. While the provision's language has been extended to include district school superintendents, prohibiting them from appointing or employing a "relative," as that term is defined in Section 112.3135, Florida Statutes, to work under their direct supervision, it does not apply when a superintendent only makes a recommendation concerning the appointment or employment of a relative. Referenced are CEO 09-16, CEO 02-3, and CEO 00-17.

QUESTION:

Under the recently-added language of Section 1012.23(2), Florida Statutes, are district school superintendents prohibited not only from appointing or employing "relatives," as that term is defined in Section 112.3135, Florida Statutes, to work under their direct supervision, but also from making recommendations to appoint or employ "relatives" to work under their direct supervision?

Your question is answered in the negative.

In your letter of inquiry, you indicate you are inquiring on behalf of several district school superintendents about the applicability of language in Section 1012.23(2), Florida Statutes, which
became effective (via Chapter 2018-005, Laws of Florida, HB 1279) on July 1, 2019. While Section 1012.23(2) previously prohibited only district school board members from appointing or employing "relatives," as that term is defined in Section 112.3135, Florida Statutes,¹ to work under their direct supervision, the amended language extends the prohibition to district school superintendents, stating:

Neither the district school superintendent nor a district school board member may appoint or employ a relative, as defined in s. 112.3135, to work under the direct supervision of that district school board member or district school superintendent. The limitations of this subsection do not apply to employees appointed or employed before the election or appointment of a school board member or district school superintendent. The Commission on Ethics shall accept and investigate any alleged violations of this section pursuant to the procedures contained in ss. 112.322-112.3241.

(emphasis added).

Your question stems from the fact that, despite the language in the amendment, district school superintendents do not have authority to appoint or employ district employees, but only to make recommendations to the school board concerning appointment or employment decisions. As support, you cite Section 1012.22, Florida Statutes, which provides in part:

PUBLIC SCHOOL PERSONNEL; POWERS AND DUTIES OF THE DISTRICT SCHOOL BOARD.--The district school board shall:

(1) Designate positions to be filled, prescribe qualifications for those positions, and provide for the appointment, compensation, promotion, suspension, and dismissal of employees as follows, subject to the requirements of this chapter:

¹ The term "relative" is defined in Section 112.3135(1)(d), Florida Statutes, to mean "... father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister."
(a) Positions, qualifications, and appointments.—

1. The district school board shall act upon written recommendations submitted by the district school superintendent for position to be filled, for minimum qualifications for personnel for the various positions, and for the persons nominated to fill such positions.

2. The district school board may reject for good cause any employee nominated.

3. If the third nomination by the district school superintendent for any positions is rejected for good cause, if the district school superintendent fails to submit a nomination for initial employment within a reasonable time as prescribed by the district school board, or if the district school superintendent fails to submit a nomination for reemployment within the time prescribed by law, the district school board may proceed on its own motion to fill such position.

4. The district school board's decision to reject a person's nomination does not give that person a right of action to sue over the rejection and may not be used as a cause of action by the nominated employee . . .

Given the foregoing, you ask what effect the amended language of Section 1012.23(2) will have on district school superintendents, considering they do not have statutory authority to appoint or employ, but only to make recommendations.

Our interpretation of Section 1012.23(2) necessarily involves recognition of the general principal that, as a penal statute, it must be strictly construed, meaning any doubts as to the meaning of its terms must be construed most favorably toward a potential respondent (i.e., the person against whom it would be applied). City of Miami Beach v. Galbut, 626 So. 2d 192, 194 (Fla. 1993).

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2 No other statute directly addresses the hiring process for district school employees, although Section 1001.42(5)(a), Florida Statutes, gives district school board members appointment authority over district personnel and Section 1001.51(7), Florida Statutes, states district school superintendents are responsible "for directing the work of the personnel."
Strictly construing a statute allows those covered by it to have clear notice of what it proscribes. See CEO 09-16 and CEO 02-3. It also ensures we do not usurp the role of the Legislature by impermissibly broadening a law or enlarging the terms or used in the law. See CEO 00-17.

Here, we find it reasonable that the Legislature knew of the limited role that district school superintendents play in the hiring and appointment process, a role clearly laid out in Section 1012.22. The fact that the Legislature still chose not to include language extending the prohibition in Section 1012.23(2) to situations where a district school superintendent recommends the hiring of a relative shows, to us, that it did not intend for the statute to apply in such a circumstance. To interpret the statute otherwise would broaden its scope beyond the plain meaning of its language.

For this reason, we find the amended language in Section 1012.23(2) applies to district school superintendents only in situations where they appoint or employ a relative (as "relative" is defined in Section 112.3135) to work under their direct supervision, not in situations where they make recommendations to the district school board for the board to appoint or employ their relative.

Regarding your remaining issues, you inquire whether a district school superintendent may recommend a relative, as defined in Section 112.3135, for employment if that relative does not fall under the superintendent's direct supervision. As previously indicated, we do not interpret the amended language in Section 1012.23(2) as extending to making employment recommendations.

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3 While the bill analyses for the amendment do not address the addition of district school superintendents with any specificity, they do state the intent of the amendment was only to prohibit superintendents "from employing or appointing a relative to work under their direct supervision."

4 In contrast to the language of Section 1012.23(2), that of Section 112.3135(2)(a), Florida Statutes, which does not apply to school districts, school boards, or school superintendents (see Opinion of the Attorney General AGO 82-48), contains a prohibition related to recommendations as well as an appointment/employment prohibition. It states a public official "may not appoint, employ, promote, or advance, or advocate for the appointment, employment promotion, or
Moreover, to the extent the statute applies to superintendents, it is only when a superintendent appoints or employs a relative to work under his or her direct supervision. So long as a person other than the superintendent will be the direct supervisor of the relative, the statute will not be triggered.

Similarly, in response to your next issue, we find that a district school superintendent will not trigger the statute if he or she recommends for employment a relative of a district school board member. Again, we do not interpret the statute's language to encompass recommendations. In addition, the amended language in Section 1012.23(2) would apply only if a superintendent appointed or employed one of his or her relatives, not when a superintendent appointed or employed a relative of another district officer or employee, such as a relative of a school board member.

Nor will the provision be triggered if a school superintendent proposes a salary increase or bonus for a teacher or school employee who happens to be a relative. As described above, we must strictly interpret Section 1012.23(2). Its language only applies to appointment or employment.

Your final issue concerns the grandfathering language included in the amendment to Section 1012.23(2), which states, in pertinent part, "[t]he limitations of this subsection do not apply to employees appointed or employed before the election or appointment of a . . . district school superintendent." You note that most school personnel are hired pursuant to an annual contract. You inquire whether the grandfathering protection will apply if a relative of a district school superintendent is employed before the superintendent was elected or appointed, and then, following the election or appointment, the relative's annual contract is renewed by the school board upon advancement" of a relative.
recommendation of the superintendent.

In view of our findings earlier in this opinion and the high likelihood that no particular superintendent will be faced with a potential "grandfathering" situation, we decline at this time to opine on this point. However, should a superintendent be presented with a concrete grandfathering issue in the future, do not hesitate to contact us for advice.

Your question is answered accordingly.

XXX/gps/dw

cc: Joy Frank, Esq.
May 30, 2019

Virlandia Doss, Executive Director  
The Florida Commission on Ethics  
P.O. Drawer 15709  
Tallahassee, FL  32317-5709

Dear Ms. Doss:

Several superintendents have contacted me regarding the implementation of HB 1279 (ch. 2018-005, Laws of Florida) enacted by the Florida Legislature in the 2018 General Legislative Session. The effective date of the bill was delayed until July 1, 2019.

Subsection (2) of s. 1012.23, F.S., currently reads: A district school board member may not employ or appoint a relative, as defined in s. 112.3135, to work under the direct supervision of that district school board member.

Effective July 1, 2019, subsection (2) will read:

(2) Neither the district school superintendent nor a district school board member may appoint or employ a relative, as defined in s. 112.3135, to work under the direct supervision of that district school board member or district school superintendent. The limitations of this subsection do not apply to employees appointed or employed before the election or appointment of a school board member or district school superintendent. The Commission on Ethics shall accept and investigate any alleged violations of this section pursuant to the procedures contained in ss. 112.322-112.3241. (emphasis added)

Section 112.3135, F.S., defines a relative as follows:

(d) “Relative,” for purposes of this section only, with respect to a public official, means an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.
Virlindia Doss, Executive Director
May 30, 2019
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The language that goes into effect on July 1, 2019 extends the prohibition against appointment or employment of a relative to work under direct supervision to district school superintendents. The language does provide a limited “grandfather provision.” Finally, the new language requires the Commission on Ethics to investigate any alleged violations.

This new language has raised several questions which have prompted this inquiry to you.

Currently, the school board acts upon the written recommendations of the district school superintendent for positions to be filled, etc. In essence, the school superintendent recommends and the school board, as the legal entity, employs all district and school personnel. See ss. 1012.22, 1001.32, 1001.33, 1001.40, 1001.41, 1001.42, and 1001.51, Florida Statutes.

Specifically s. 1012.22, F.S., states:

1012.22 Public school personnel; powers and duties of the district school board. — The district school board shall:

(1) Designate positions to be filled, prescribe qualifications for those positions, and provide for the appointment, compensation, promotion, suspension, and dismissal of employees as follows, subject to the requirements of this chapter:

(a) Positions, qualifications, and appointments.—

1. The district school board shall act upon written recommendations submitted by the district school superintendent for positions to be filled, for minimum qualifications for personnel for the various positions, and for the persons nominated to fill such positions.

2. The district school board may reject for good cause any employee nominated.

3. If the third nomination by the district school superintendent for any position is rejected for good cause, if the district school superintendent fails to submit a nomination for initial employment within a reasonable time as prescribed by the district school board, or if the district school superintendent fails to submit a nomination for reemployment within the time prescribed by law, the district school board may proceed on its own motion to fill such position.

4. The district school board’s decision to reject a person’s nomination does not give that person a right of action to sue over the rejection and may not be used as a cause of action by the nominated employee.
Questions:

1. Since s. 1012.22, F.S., specifies that the district school superintendent submit written recommendations to the school board for appointment, etc.; what impact does this have on the new prohibition for superintendents? In essence, district school superintendents do not appoint or employ, but only recommend for appointment or employment. However, superintendents do directly supervise some personnel.

2. May a district school superintendent recommend for employment a relative as defined in s. 112.3135, F.S., if the relative will not be under the direct supervision of the district school superintendent?

3. May a district school superintendent recommend for employment a relative of a school board member as defined in s. 112.3135, F.S., if the relative will not be under the direct supervision of the specific school board member?

4. Most school personnel are hired pursuant to an annual contract. Therefore, they are reappointed every year. What impact, if any, does this have on the “grandfather” provision? If an individual was employed before the board member was elected or the superintendent was elected or appointed, and is reappointed the next year, does the “grandfather” provision still apply?

5. Does this prohibition extend to salary increases or any bonus awards provided to teachers or other personnel?

Thank you for considering these questions. I look forward to any guidance you can provide.

Sincerely,

Joy Frank
General Counsel

cc: Richard Shirley, President – FADSS and Superintendent, Sumter County Public Schools
FADSS Board of Directors