



July 11, 2006

# EDUCATION LAW WATCH

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## Act 1 Slot Money, Tax, and Referendum Legislation Overview

### Tax Study Commission – Definition of “Relative”

Act 1 dictates that Tax Study Commission members may include one school board members, but otherwise may not include any district official or employee *or a “relative” of a district official or employee.*

We have received many questions concerning the definition of “relative.”

Act 1 does not define “relative.” Similarly, the Pennsylvania Statutory Construction Act, which provides general definitions for many terms used in Pennsylvania statutes, does not define “relative.”

We looked to other Pennsylvania statutes and regulations for definitions of “relative.” Although definitions from other sources will not necessarily apply in interpreting Act 1, they are helpful by analogy, and might be relied upon by a court interpreting Act 1.

Unfortunately, there is no uniform definition in other statutes.

The most expansive definition of “relative” is contained in regulations of the Department of Environmental Protection, which define “relative” to include – a spouse, parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, nephew, or first cousin – by blood, marriage, or adoption.

The Family Caregiving Support Act uses a similar definition, but excludes first cousins, and adds great aunts and uncles.

The narrowest definition we found is that contained in the Public Welfare Code licensing provisions, which defines “relative” to include – a spouse, parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, nephew – thus, excluding first cousins and great aunts and uncles.

The School Code does not contain any definition of the word “relative.” However, 24 P.S. § 11-1111 precludes employment as a teacher, unless approved by a majority of the school board, of anyone “related” to a school board member – as a father, mother, brother, sister, husband, wife, son, daughter, stepson,



stepdaughter, grandchild, nephew, niece, first cousin, sister-in-law, brother-in-law, uncle, or aunt. Although this is not technically a definition of the term “relative,” it is essentially the same as a definition of this term for purposes of hiring. This coverage is similar to the Department of Environmental Protection definition, except that it excludes stepparents and grandparents.

The Pennsylvania Ethics Act does not contain a definition of “relative,” but contains a definition of “immediate family” for purposes of determining the existence of a conflict of interest. For this purpose, “immediate family” is defined to include – a parent, spouse, child, brother or sister. Since this is a definition of “immediate family” rather than “relative,” KKAG believes there would be some risk in relying on this definition.

School districts may refer to the above statutes in interpreting the definition of “relative” of Act 1. Although we are not prepared to say that districts are required to follow any particular definition, we recommend consideration be given to using the expansive Department of Environmental Protection definition. Following this conservative course should avoid problems.

In any event, KKAG recommends that “relative” be interpreted broadly to avoid any criticism. In any questionable cases, the district should consult with legal counsel concerning whether the individual would be considered a “relative.” Moreover, the district should prior to appointing any individual ask the individual to confirm that the individual is not a relative of a district official or employee.

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We hope you find this issue of KKAG’s Education Law Watch helpful and informative. Please understand that the Law Watch is designed to provide information about current developments and required actions. It does not constitute legal advice, and school districts should consult a lawyer knowledgeable in this area of the law prior to taking specific actions on the issues addressed. If you have any questions regarding any education law matter, including the issues discussed in this newsletter, please do not hesitate to contact us.