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June 14, 2006

Opinion No. 06-101

Application of Nepotism Act

QUESTION

Whether, in the fact situation presented, there is a violation of the Tennessee State Employees Uniform Nepotism Policy Act of 1980, Tenn. Code Ann. §§ 8-31-101, *et seq.*

OPINION

In the fact situation presented, the employment of spouses, one of whom is in the direct line of supervision of the other, violates the Act.

ANALYSIS

You presented the following fact situation: Husband and wife are employed in the same regional office of a state agency. Both are employees of the Tennessee Board of Probation and Parole. They work at the same office location and are civil service employees. The husband is the District Director (Probation Parole Manager 2) and supervises the West Tennessee District. The wife is a Probation Parole Officer 3 in the same regional office. The wife is supervised by a Probation Parole Manager 1 who, in turn, is supervised by the husband, the District Director. The Probation Parole Manager 1 supervises wife and signs off as rater on wife's job performance evaluations. A District Director, her husband, would normally act as reviewer in this situation. In an effort to comply with the statute, however, the Assistant Director for Field Services signs the wife's performance evaluations as reviewer. Husband is neither the rater nor the reviewer in any phase of wife's performance evaluations. Husband directs the activities of all employees in the District. His supervising authority is not solely applicable to his wife.

Tenn. Code Ann. §§ 8-31-101, *et seq.*, the Tennessee State Employees Uniform Nepotism Policy Act of 1980 (Act), prohibits employment of relatives in the same state agency if one relative

will be in the same direct line of supervision as the other, that is, one relative would supervise the other. Tenn. Code Ann. § 8-31-103; *Sloan v. Tri-County Electric Membership Corp.*, No. M2000-01794-COA-R3-CV, 2002 WL 192571, *6 (Tenn. App., Feb. 7, 2002).[1] The Act's definition of "relative" includes a spouse. Tenn. Code Ann. § 8-31-102(2).

In this situation, the wife is within the same direct line of supervision. Normally, in fact, her husband would be responsible for evaluating and rating her job performance. To avoid this direct supervision, the husband, the Director for Field Services, has assigned his supervisory responsibilities over his wife's job activities and evaluation to an Assistant Director. Otherwise, the husband would have a direct hand in these responsibilities. While the arrangement sounds like prudent management, the arrangement cannot change the requirements of the Act, and the husband and wife remain in the same direct line of supervision. The situation may be remedied by either transferring the employee, either within the agency or to another state agency or by accepting the employee's resignation. Tenn. Code Ann. § 8-31-104.

You referred to Op. Tenn. Att'y Gen. 04-113 (July 12, 2004), in which we stated that a situation involving in-laws working in the same location did not violate the Act because the supervising relative's authority did not solely apply to the supervised in-law. That situation was quite different from the present situation. In that instance, one relative was top level management of a state inn and restaurant, and the other relative was a server in the restaurant. The manager was not the direct supervisor of the relative and did not evaluate the relative's job performance nor review the relative's evaluations. Under the present set of facts, the husband would normally be responsible for evaluating and rating the wife's job performance, the very situation prohibited by the Act. This conclusion is congruent with Op. Tenn. Att'y Gen. 04-113, where we noted that if one relative supervised the person responsible for doing evaluations of the other relative, the Act would be violated.

We are aware that, to the extent possible, the Act is not to be construed to prohibit two or more relatives from working within the same state governmental entity. Tenn. Code Ann. § 8-31-103. In the present situation, however, the supervisory connection between the spouses is direct. Despite delegating his supervisory responsibilities over the wife's position, the husband, as director of the regional office, remains in the direct line of supervision over his wife's job performance.

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[1]Tenn. Code Ann. § 8-31-103 states as follows:

> Within each governmental entity, no state employees who are relatives shall be placed within the same direct line of supervision whereby one (1) relative is responsible for supervising the job performance or work activities of another relative; provided that to the extent possible, the provisions of this chapter shall not be construed to prohibit two (2) or more such relatives from working with the same state governmental entity.

This conclusion does not prevent the spouses from working in the same governmental entity so long as they are not in the same direct line of supervision.

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Requested by:

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