STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

September 4, 2014

Opinion No. 14-80

Disqualification from Service as Bail Bondsperson

QUESTION

Does Tenn. Code Ann. § 40-11-128 prohibit the spouse of a deputy sheriff from serving as a bail bondsperson?

OPINION

Yes, if the spouses commingle funds.

ANALYSIS

Tenn. Code Ann. § 40-11-128 provides:

> The following persons or classes shall not be bail bondsmen or agents of bail bondsmen or surety companies and shall not directly or indirectly receive any benefits from the execution of any bail bond: jailers, attorneys, police officers, convicted felons, committing magistrates, municipal or magistrate court judges, clerks or deputy clerks, sheriffs, deputy sheriffs and constables, and any person having the power to arrest or having anything to do with the control of federal, state, county or municipal prisoners.

In Tenn. Att'y Gen. Op. 79-145 (Mar. 28, 1979), this Office addressed the question whether the spouse of a city police officer was prohibited from writing bail bonds for persons appearing in the general sessions and criminal courts in the county where the police officer was employed. Citing Tenn. Code Ann. § 40-1228 (now Tenn. Code Ann. § 40-11-128), the Office observed that a "police officer who is married to a bail bondsperson would clearly be in a position to receive . . . indirect benefit from every bond written by his spouse" and opined: "The writing of bonds by the spouse of a police officer accordingly appears to be contrary to the intent of [§ 49-11-128] and should not be allowed." Tenn. Att'y Gen. Op. 79-145, at 1.

In 1981, however, addressing whether a conflict of interest existed where the husband of an employee of a government agency was a partner in a project financed by the agency, this Office opined that the question whether one spouse has a financial

interest in the investments of the other spouse would depend on the circumstances. Tenn. Att'y Gen. Op. 81-449 (Aug. 5, 1981). *See also* Tenn. Att'y Gen. Op. 82-394, at 5 (Aug. 3, 1982) (opining that the question whether a city alderman stood to benefit from her spouse's accounting contract with the city "would depend on whether the spouses commingle their funds, share responsibility for expenses, or jointly accumulate debts and assets"). Since then, this Office has opined on several occasions that when spouses commingle assets, a person has at least an indirect interest in any contract directly affecting his or her spouse's employment. *See, e.g.,* Tenn. Att'y Gen. Op. 88-122 (July 13, 1988); Tenn. Att'y Gen. Op. 00-181 (Nov. 22, 2000); Tenn. Att'y Gen. Op. 05-017 (Feb. 3, 2005); Tenn. Att'y Gen. Op. 08-102 (May 6, 2008).

A bail bond is a contract, *In re Sanford & Sons Bail Bonds, Inc.*, 96 S.W.3d 199, 202 (Tenn. Crim. App. 2002), and clearly a bail bondsperson's employment is directly affected when the bondsperson executes a bail bond. The bail bondsperson's spouse would have an indirect interest in any such contract if the spouses commingle funds and, therefore, would "indirectly receive any benefits from the execution" of that bail bond under Tenn. Code Ann. § 40-11-128. Because deputy sheriffs are specifically included in the prohibited "person or classes" listed in § 40-11-128, the statute would prohibit the spouse of a deputy sheriff from serving as a bail bondsperson if the spouses commingle funds.

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Requested by:

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