

STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

July 6, 2018

Opinion No. 18-31

Tennessee State Employees Uniform Nepotism Policy Act of 1980

Question

Does Tenn. Code Ann. § 8-31-103 preclude a district attorney from hiring the daughter of a deputy district attorney as an assistant district attorney when the deputy district attorney and assistant district attorney would serve in different divisions?

Opinion

No. The deputy district attorney and assistant district attorney would not be in the “same direct line of supervision” given that the deputy district attorney would not be responsible for “supervising the job performance or work activities” of the assistant district attorney. Tenn. Code Ann. § 8-31-103.

ANALYSIS

The Tennessee State Employees Uniform Nepotism Policy Act of 1980 provides in relevant part that, “[w]ithin 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.” Tenn. Code Ann. § 8-31-103. The legislature also provided, however, that “to the extent possible, [the Act] shall not be construed to prohibit two (2) or more such relatives from working within the same state governmental entity.” *Id.*

The Act defines the term “governmental entity” to mean “any state agency, authority, board, commission, department, or office within the executive or judicial branch of state government or any autonomous state agency, authority, board, commission, department, office or institution of higher education,” except “any agency or office of the legislative branch.” *Id.* § 8-31-102(1). The term “state employee” means “any person who is employed by a governmental entity.” *Id.* § 8-31-102(2).

The position of district attorney is established by state law, *see* Tenn. Const. art. VI, § 5; Tenn. Code Ann. § 8-7-101, and the Tennessee Court of Criminal Appeals has noted that “[t]he district attorneys general for this state are officers within the executive branch of government,” *State v. Gilliam*, 901 S.W.2d 385, 389 (Tenn. Crim. App. 1995); *see also Dearborne v. State*, 575 S.W.2d 259, 262 (Tenn. 1978). A district attorney’s office is therefore a “governmental entity” for purposes of the Act, and a deputy district attorney and an assistant district attorney are “state employees” within the meaning of the Act.

Whether the Nepotism Act would preclude a district attorney from hiring a deputy district attorney's daughter as an assistant district attorney turns on whether the two positions are in the same "direct line of supervision, whereby" the father would be responsible "for supervising the job performance or work activities" of his daughter. Tenn. Code Ann. § 8-31-103. The Act does not define the phrases "direct line of supervision" or "responsible for supervising the job performance or work activities or another relative." And there are no reported Tennessee judicial decisions interpreting that statutory language.

In the district attorney's office that is at issue in this request, each deputy district attorney is a team leader for one of the office's divisions and supervises the assistant district attorneys who serve within that division. Each assistant district attorney reports first to his or her team leader and then to the district attorney. The deputy district attorneys provide advice to assistant district attorneys and consult on cases as needed, but they do not supervise assistant district attorneys other than those who serve within their division. Nor do they exercise disciplinary authority over assistant district attorneys. If hired, the daughter of the deputy district attorney in question would not serve in the same division as her father.

On these facts, the district attorney's hiring of the deputy district attorney's daughter as an assistant district attorney would not violate the Nepotism Act. The daughter would not report, either directly or indirectly, to her father. And the father would not be responsible for supervising his daughter's job performance or work activities. This situation is easily distinguishable from the relationships this Office has found problematic for purposes of the Nepotism Act in its prior opinions. In those opinions, the higher-ranking employee had at least indirect supervisory authority over the lower-ranking relative. *See* Tenn. Att'y Gen. Op. 12-61 (June 7, 2012) (district public defender's employment of his brother-in-law as investigator would violate the Act because public defender had the authority to hire and fire investigator and immediate supervisor of investigator); Tenn. Att'y Gen. Op. 06-101 (June 14, 2006) (entity's employment of husband and wife would violate the Act because husband was immediate supervisor of wife's immediate supervisor and ordinarily would sign off on wife's performance evaluation); Tenn. Att'y Gen. Op. 04-113 (July 12, 2004) (entity's employment of two relatives would violate the Act if one relative were responsible for evaluating immediate supervisor of other relative). Here, because the father would not exercise any supervisory authority over his daughter if she served in a different division than her father, their simultaneous employment by the district attorney's office would not violate the Nepotism Act.

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