

SUBJECT: FACILITY DIRECTOR MARRYING STAFF MEMBER

SUMMARY:

The future spouse of the Director of a Mental Health facility would not be prohibited from remaining employed at that facility since the Director has no supervisory or management authority over the doctor.

QUESTION:

The Deputy Commissioner of the Division of Human Resource Services at the Department of Mental Health questions:

The Director of one of the agency facilities plans to get married to a doctor who is a staff member of the same facility. The Director does not have a supervisory role in relation to the doctor. Would it violate the Ethics Reform Act for these individuals to remain employed at the same facility in the same roles after they are married?

DISCUSSION:

This opinion is rendered in response to a letter dated June 23, 1992 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; Section 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

Section 8-13-750 provides:

(A) No public official, public member, or public employee may cause the employment, appointment, promotion, transfer, or advancement of a family member to a state or local office or position in which the public official, public member, or public employee supervises or manages.

(B) A public official, public member, or public employee may not participate in an action relating to the discipline of the public official's, public member's, or public employee's family member.

Family member is defined in Section 8-13-100(15):

"Family member" means an individual who is:

- (a) the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild; or
- (b) a member of the individual's immediate family.

Immediate family is defined in Section 8-13-100(18):

"Immediate family" means:

- (a) a child residing in ... the household;
- (b) a spouse ...; or
- (c) an individual ... claimed as a dependent for income tax purposes.

The Commission addressed a similar issue in Advisory Opinion AO92-096 in which a county councilman was advised that a family member could be hired by the Agriculture Fair Board since there was no direct management or supervision of the employee by the Councilman. In Advisory Opinion SEC AO92-190, The Commission advised that the spouse of a technical education center director would not be prohibited from being hired, provided the director takes no action regarding the hiring and has no supervisory or management authority over the spouse.

The Commission therefore advises that family members may be employed within the same agency, so long as the manager or supervisor exercises no direct management or supervision and takes no other action to affect personnel actions regarding the family member. A spouse may be employed in the agency so long as the position is not under the management or supervision of the other spouse.

The Director is advised to follow the provisions of Section 8-13-700(B) which provides in part as follows:

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:

- (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

* * *

(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;