

Anne Arundel County Ethics Commission

Advisory Opinion AO-97-194

Issue

Whether a member of the County Council may hire his spouse to be his legislative assistant.

Whether a member of the County Council may supervise his wife in her position as his legislative assistant.

Background

Upon his election in 1990, a member of the County Council (the "Official"), hired his wife to serve as his legislative assistant. She has served in that capacity ever since and is expected to continue to serve as legislative assistant until the expiration of her husband's term in 1998. In this capacity, she communicates with constituents as a liaison to her husband, conducts research on legislative issues, serves as his substitute when he cannot attend one of the many functions where his attendance is desired or expected, and otherwise assists the Official in several ways. Due to the demands of public service, the duties of the County Council member and his wife are often conducted in the evenings and on weekends and form an integral part of their family life. In fact, the Official stated that since his first election to the County Council in 1964, until 1981 when he resigned to run for another elective office, his wife often helped him, in an unofficial capacity, by answering constituent phone calls and in numerous other ways. Her assistance began prior to the creation of the position of legislative assistants and continued throughout his first 17 years on the County Council.

As her appointing authority, the County Council member established his wife's salary. As her supervisor, he directs her work, evaluates her performance, and authorizes any salary increases. In 1997, as on four previous occasions since her appointment, he authorized the maximum allowable increase to her salary. As a result, the Official's wife now earns almost twice as much as the Official himself, significantly supplementing the couple's income.

This Official is not the first member of the County Council to have hired his spouse or another family member to serve as his legislative aide. The position of legislative assistant was introduced to the county in the mid - 1970s and after that time, at least three other members of the County Council hired spouses and other relatives to serve in the position.

Discussion

The Anne Arundel Public Ethics Law was first enacted in 1979, pursuant to the requirements of the Maryland Public Ethics Law. As it was originally passed, the conflict of interest provision, §14A-300, said in pertinent part, that,

(a) Except as permitted by other provisions of this subtitle, an official or employee may not participate in any manner[sic], except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to that matter, if to his knowledge, he or his spouse, or any relative of him or his spouse within the third degree of consanguinity, or the spouse of any such relative, has interest therein or if any of the following is a party thereto: . . .

The law was amended in 1989 and again in 1994 without substantive changes. This provision, known as the "non-participation" provision, has been a part of the law for 19 years. Prior to 1993, when the Ethics Commission was created, the Ethics Law was administered by the County Solicitor, and its successor, the County Attorney. In the years since its enactment, the applicability of this provision to the hiring of spouses as legislative assistants has apparently never been reviewed.

The non-participation provision, now codified as Article 9, §3-101, prohibits participation by the employee in any matter, ". . . except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter. . ." in which a relative, spouse, or relative of a spouse has an "interest".¹ Administrative or ministerial duties are non-discretionary in nature, such as those duties mandated by law, while discretionary duties require the use of judgment and involve a certain amount of choice. An "interest" is defined as a "legal or equitable economic interest". Section 1-101(n)(1).

The appointment of a legislative assistant is a discretionary duty. Establishing an employee's base salary, within certain guidelines, is a discretionary duty. Directing the employee's day to day assignments is a discretionary duty. Evaluating job performance, awarding salary increases, and choosing the amount of the increases, within certain guidelines, are discretionary duties.

Obviously, the Official participated in matters in which his wife had an interest, the interest being her job and her income. Without his decisive participation, the spouse of the Official would not have the position she holds today. While her abilities and degree of experience make her indispensable, according to the Official, it is unlikely that she have been

¹ A relative is defined in the Ethics Law to include parents, grandparents, great-grandparents, aunts, uncles, brothers, sisters, nieces, nephews, children, grandchildren, and great-grandchildren and the spouses of these relatives. §1-101(t).

hired for the position if she had not been his wife.

It is not the responsibility of the Ethics Commission to determine if a particular employee involved in a conflict of interest is a good employee, a nice person, or a person of outstanding integrity. Even good people can make bad decisions. On the contrary, the Public Ethics Law absolutely prohibits certain conduct because of the possibility or appearance of impropriety, and requires no proof of actual impropriety or wrongdoing. In this sense, §3-101 and other provisions of the Ethics Law are strict liability provisions. It is the participation in a matter that violates the law, and not the effect of the participation, whether it be for good or ill.

Another provision of the Ethics Law, §3-104, was also violated by the elected official's hiring of his wife as his legislative assistant. That section provides that an employee ". . . may not use the prestige, title, or authority of the employee's office or position for the employee's private gain or the gain of another." The elected official did exactly what is prohibited by this section. He misused his authority and position as an elected official in hiring his wife to serve in the one position for which he was the sole appointing authority. It cannot be seriously disputed that his decision was made at least in part, for her financial gain and to the extent that he receives the benefit of her income, his own financial gain.

Finally, §3-105(b)(2) prohibits an employee from holding ". . . any other employment relationship that would impair the impartiality or independent judgment of the employee". The elected official's position as the appointing authority and supervisor of his wife creates an "employment relationship" between them. Even assuming that the spouse is an excellent assistant, it is impossible to conceive of a relationship that is less impartial than one between husband and wife as employer and employee. When he considers the amount of a pay increase to award his wife, for example, can he be impartial? If a constituent calls and complains to him about his wife's response to a question, can he be impartial? If his wife complains about a constituent's behavior toward her, can he be impartial? If his wife has a strong opinion about an issue, can he consider the issue impartially? While the employee would undoubtedly answer these question in the affirmative, his credibility would be suspect.

The County Council established the legislative policy behind the creation of the Public Ethics Law in §1-102(a). That policy provides that the people have a right to the impartial and independent judgment of county officials and employees and that even the appearance of improper influence is to be avoided.

Conclusion

The Anne Arundel County Ethics Commission concludes that in hiring his spouse to be his legislative assistant, the Official violated §3-10(a)(1)(i), §3-104(a), and §3-105(b)(2) of the Anne Arundel County Public Ethics Law. The Commission also concludes that the spouse's continued employment in her current position constitutes an ongoing violation of these sections of the law. Therefore, the Commission advises the elected official that his wife should be promptly terminated from her position as his legislative assistant.

February 10, 1998

By: The Anne Arundel County Ethics Commission