



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
8 EAST LONG STREET, SUITE 210
COLUMBUS, OHIO 43215
(614) 466-7090

Advisory Opinion Number 85-015
December 2, 1985

Syllabus by the Commission:

Division (A)(1) of Section 2921.42 of the Revised Code prohibits a county sheriff from authorizing or otherwise using the authority or influence of his office to secure approval of a contract for the employment of his spouse or a family member as a deputy, matron, cook, assistant, clerk, bookkeeper or other employee in the county sheriff's office.

* * * * *

You asked whether Division (A)(1) of Section 2921.42 of the Revised Code prohibits a county sheriff from appointing his spouse or a family member as a deputy, matron, cook, assistant, clerk, bookkeeper or other employee in his office.

You stated, by way of history, that a county sheriff has the authority to appoint deputies pursuant to Section 311.04 of the Revised Code. You stated further that a deputy sheriff and other county officers have the authority to appoint and employ deputies, assistants, clerks, bookkeepers, or other employees pursuant to Section 325.17 of the Revised Code. Finally, a county sheriff has the authority to appoint matrons and cooks pursuant to Section 341.20 of the Revised Code. You asked whether a county sheriff is prohibited from appointing and employing his spouse or other family member to these positions.

Division (A)(1) of Section 2921.42 of the Revised Code provides:

(A) No public official shall knowingly do any of the following:

(1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest.

A county sheriff is a "public official" as defined in Division (A) of Section 2921.01 of the Revised Code, since he is an elected officer of a political subdivision of the state. A spouse is a family member for purposes of the prohibition (see: Ohio Ethics Commission Advisory Opinion No. 80-001). In Ohio Ethics Commission Advisory Opinion No. 85-003, the Commission held that Division (A)(1) of Section 2921.42 of the Revised Code prohibits a county engineer from authorizing or otherwise using the authority or influence of his office to secure approval of a contract for the employment of his spouse in the county engineer's office or other agency of the county. In that opinion, the Commission stated that an office is conferred by law and not by contract. State ex rel. Gordon v. Barthallow, 150 Ohio St. 499 (1948). However, an

employment relationship is usually a creature of contract. 14 Ohio Jur. 3d Civil Servants and Other Public Officers and Employees §9. In addition, an employment relationship is a "public contract" as defined in Division (E)(1) of Section 2921.42 of the Revised Code, since the governmental entity is purchasing or acquiring the services of the employee.

Under the facts presented, it is clear that a county sheriff is a public officer. However, the crucial issue is whether a deputy, matron, cook, assistant, clerk, bookkeeper, or other appointee of the county sheriff is a public officer or a public employee. In Ohio Attorney General Opinion No. 82-085, it was held that a deputy sheriff is not an officer:

Turning first to an examination of the position of deputy sheriff, I point out that in 1970 Op. Att'y. Gen. No. 70-035 my predecessor concluded that the position of deputy sheriff is not a public office, and thus a deputy sheriff may serve as a village council member. The fact that the opinion dealt specifically with special deputy sheriffs is of no consequence since the analysis of the opinion encompassed deputy sheriffs in general. Op. No. 70-035 was followed in Op. No. 79-111.

Furthermore, in the case of In re Termination of Employment, 40 Ohio St. 2d 107 (1974), the Ohio Supreme Court held that deputy sheriffs are members of the unclassified civil service only when they are assigned to, and perform, duties such that they hold a fiduciary or administrative relationship to the sheriff:

Deputy sheriffs are clearly employed by and directly responsible to their sheriffs, who are elected county officials. However, R. C. 124.11(A)(9) applies to only such employees who also have "a fiduciary or administrative relationship" to their elected principals. Id. at 114.

Thus, deputy sheriffs usually are members of the classified civil service, which clearly makes them employees, rather than officers. This is consistent with the general rule that deputies are not considered to be public officers:

The reasons for the rule that deputies generally are not public officers are: (1) that in order to constitute a position of public office the duties of the position must be independent of the control or direction of the superior officer and (2) that the incumbent must be clothed with some part of the sovereignty of the state, to be exercised in the interest of the public as required by law. Since a deputy sheriff has no independent powers or duties and is endowed by law with no part of the sovereignty of the state, it has been said to be clear that a deputy sheriff is not a public officer within the meaning of the constitution and statutes of Ohio. Also, one of the characteristics of the public office is tenure of office, and a deputy sheriff has no definite tenure. The mere fact that one takes an oath and is required to give a bond does not constitute him a public officer. 49 Ohio Jur. 2d Sheriffs, Marshalls and Constables §2.

As stated above, a public employee usually serves as a matter of contract. In addition, the employment of a deputy sheriff by the county would be the "purchase or acquisition" of his services as defined in Division (E)(1) of Section 2921.42 of the Revised Code. Thus, Division

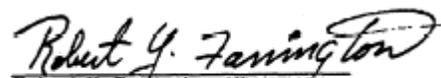
(A)(1) of Section 2921.42 of the Revised Code would prohibit a county sheriff from authorizing, or otherwise using the authority or influence of his office to secure approval of a contract for the employment of his spouse or a family member as a deputy sheriff. While the common law rule may have distinguished an appointment from an employment, the term appointment does not preclude an employer-employee relationship. State ex rel. Geyer v. Griffin, 80 Ohio App. 447 (Allen County 1946). Indeed, while Section 311.04 of the Revised Code provides the county sheriff with the authority to appoint deputies, Section 325.17 indicates that deputies, assistants, clerks, bookkeepers, or other employees of county officers are appointed and employed.

Although jail matrons and cooks are appointed pursuant to Section 341.20 of the Revised Code, the relationship is clearly contractual. A jail matron is not a public officer, but rather is a deputy or assistant to the sheriff. State ex rel. Falconer v. Cooper, 12 Ohio N. P. (n.s.) 659,665 (C.P. Hamilton County 1912). Also, Ohio Attorney General Opinion No. 57-842 indicates that a jail matron who is appointed a cook with charge over the preparation of food for feeding prisoners is entering a contract with the county. The Attorney General permitted the jail matron to enter such a contract, whether she was the wife of the county sheriff or not, because a jail matron serving as cook was expressly permitted by Section 341.20 of the Revised Code. However, the opinion did not consider the underlying question of whether the jail matron, as a result of her employment relationship with the county, was serving under contract.

For the reasons described above, it is clear that jail matrons and cooks, as well as deputies, assistants, clerks, bookkeepers, and other appointees of the county sheriff, are public employees, and are not officers. In addition, they are providing services to the county by which they are employed, which is a "public contract" as defined in Division (E)(1) of Section 2921.42 of the Revised Code. Therefore, the prohibition of Division (A)(1) of Section 2921.42 of the Revised Code would apply to the employment of a spouse or other family member by a county sheriff. While it may be argued that a county sheriff has broad discretion in the appointment of deputies and other employees, this authority does not override the criminal prohibition.

This advisory opinion is based on the facts presented, and is limited to questions arising under Chapter 102. and Section 2921.42 of the Revised Code.

Therefore, it is the opinion of the Ohio Ethics Commission and you are so advised that: Division (A)(1) of Section 2921.42 of the Revised Code prohibits a county sheriff from authorizing or otherwise using the authority or influence of his office to secure approval of a contract for the employment of his spouse or a family member as a deputy, matron, cook, assistant, clerk, bookkeeper or other employee in the county sheriff's office.


Robert Y. Farrington, Chairman
OHIO ETHICS COMMISSION